

BLOODLINE Podcast

Episode 1: *The Case of the Phantom Cockfight*

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Tommy Carrano first discovered his passion for game fowl as a child on his family's farm in Brooklyn, New York. It was a typical childhood on a farm in most ways. Days were spent outside, working or playing alongside his siblings, but it was far from a rural life. The farm's acreage was smack in the middle of the second-most densely populated county in the United States, housing 2.6 million people on about 70 square miles of land.

Residential housing surrounded the acreage before Tommy was born in the mid-70s. First, came the city residents. Some complained about the animals, especially the crowing, anytime Tommy got a few roosters. The city folk made suggestions, at first, then rules, regulations, laws and oversight relating to the family's hogs and other animals. Eventually, the rules became too much to manage, pushing the family off the farm.

QUOTE

Years later, in 2009, Tommy and his wife Gina would buy a farm of their own in northern New York. It would be a rural area, agriculturally zoned, and it'd be theirs and Tommy would finally have a place to raise the game fowl he'd coveted since childhood.

For the next eight years, Tommy built coops and pens and a barn. He woke each morning to the sound of his prized gamecocks crowing, and for the first time in his life, he didn't have to worry about the sound upsetting any city-minded neighbors, or some suit stopping by to tell him how to run his farm. He had about 100 chickens, 30 roosters and 70 hens, and when Tommy wasn't working his day-job, he was usually in the chicken yard, tending the birds day and night.

He registered with the New York State Ag board, permitting an official to come periodically to inspect the flock, and he ran a tight ship. The grounds were well-kept, the barn and pens were painted and inspected regularly for signs of wear. He got along well with his neighbors, and competed in poultry shows.

Life was good. But after nearly a decade on the farm living his dream, people from big-city would again come knocking.

AUDIO: IT WAS 6 AM

Investigators, along with about 40 ASPCA employees combed through the property, confiscating anything of interest in their case, including cell phones, computers, most of Tommy's game fowl library, magazines, books, videos, art and heirloom collectibles. The chickens would be gone, too, taken to an undisclosed location. The officers told Gina she could leave for work. They left Tommy on the empty farm with few answers.

TOMMY QUOTE

A day passed. Then a week. No indictment, so they waited. June came and went. Then most of July ticked away, and the couple allowed themselves to hope the whole nightmare would blow over until, on July 20, the indictment and arrest warrant were issued by a federal judge in New York City, 320 miles removed from the Carrano's farm. He was charged with conspiracy.

TOMMY QUOTE: THEY WERE SAYING I WAS

MUSIC

Your listening to Bloodline. Episode 1, The Phantom Cockfight.

Many of you have heard or read about Tommy and his case. Today, we begin our series about game fowl and the law by taking a closer look at this test case, which advanced the judicial reach over farmers in the country into the realm of conspiracy to violate animal welfare laws.

I'm not a lawyer, so none of this is legal advice or counsel—just a layman's look at this situation. The information discussed is for historical and educational purposes only.

In 2017, Tommy Carrano was charged, and later found guilty by jury trial held in Manhattan, New York federal court to one count of conspiracy to violate the Animal Welfare Act's animal fighting prohibition statutes—which to summarize, make it a crime to knowingly sell, buy or transport a rooster, or any fighting implements for the purposes of fighting.

Animal welfare laws are in place, supposedly, for the welfare of animals, to protect animals, but the details of this case, the theory-in-practice, sends a mixed-message about the government's concern for animal welfare.

Before we look at the government's care of Tommy's property, his animals, during the criminal proceedings meant to protect their welfare, let's look at this case.

The question we should be asking ourselves as we read about this case is not: "Is it possible Tommy's guilty" but "Is it possible he's not guilty?"

Is it possible for a U.S. game farmer to raise game birds for hobby or show or to preserve bloodlines within the confines of the law without fear of prosecution?

CONSPIRACY

There are, generally, two parts to a conspiracy charge: First, there must be an agreement between two or more people to commit an act prohibited by law. Then, one of the people in the agreement must do something to further the agreed-upon crime, also called “an overt act”. It’s important to note that only one person in the group has to commit the overt act. After that, everyone in the agreement is liable for a conspiracy.

Conspiracy charges are often used to go after ring-leaders, crime bosses and those who oversee criminal activity from some distance.

TOMMY QUOTE: They were saying I was an international leader

EVIDENCE

Through a search of Tommy’s property, at least two facebook accounts and a search of another man’s property in Tennessee, the investigators formed their case. Some of the items include:

- The Carranos home computer along with two cell phones were sent off for forensic needs to analyze.
- A box of heirloom collectible gaffs that Tommy had inherited from his late-mentor Joe Z, who’s name was on the box.
- a ladder, presumably used to exercise the birds
- medicine from his cockhouse
- a pair of scissors or shears
- wooden portable stalls.
- The contents of his personal library and art related to game fowl, including game fowl magazines, newsletters and videos
- A forensics expert with the ASPCA was flown up from Florida and found traces of what a laboratory later identified as chicken blood in the Joe Z box as well as in a carry stall.

In court, these items were combined with Facebook messages from two accounts Tommy allegedly operated: a personal account in Tommy’s name and a group account under the NYUGBA name. The scope of the case included all posts and messages from these two accounts over a 5-year period, amounting to “tens of thousands of pages” full of messages, conversations and comments. Tens of thousands of pages of messages dating back 5 years. When asked, the investigator said he spent two work weeks just reading through the trove of messages.

I'll note that it seems impossible to know for sure if Tommy sent the messages used in the case against him. All we know is that it's the Tommy Carrano facebook account and the NYGBA facebook accounts. There's no attempt to match the user's IP address at the time of the message to the address at Tommy's home. The investigator said it wasn't possible in his testimony.

Think about your own inbox, messages, texts, emails for the past 5 years, but keep in mind that conspiracy investigations aren't limited to five years. The statute of limitations does not begin to roll until the last overt act of conspiracy is committed.

Sometimes, these messages can seem innocuous. Consider one facebook conversation from the case:

Someone messaged one of the Facebook accounts Tommy allegedly operated, asking where he could "get a set of short heels" adding "I broke one last week in the drag." In reply, Tommy's account referred the person to Dwight Orr, specifically for "collectibles", but in court, the prosecution construed this conversation as one example of an "agreement" to a criminal conspiracy.

There are other conversations, references, etc. and I won't go over all of them because we don't have the time.

I simply wanted to illustrate the breadth of a conspiracy, and emphasize the fact that this case had no cockfight -- No fight bust. In the search of the property and within the troves of data, images, phone records, facebook records and other items seized, there was nothing found placing Tommy at a cockfight. His birds were in excellent health. Tommy wasn't accused of mistreating these animals, and throughout the case Tommy was the only one asking questions as to the welfare of the animals.

EVIDENCE IN-QUESTION

There was some evidence introduced that I had questions about. First, I wondered about the validity of the facebook messages, which played a big role in the prosecution's case.

- **FACEBOOK MESSAGES:** How can we know the messages were sent by Tommy and not some third-party actor? There was no attempt (or it wasn't possible) to match the IP addresses associated with the account to Tommy's internet provider or home location at the time of the messages. In fact, in cross-examination, the government's expert testified he didn't have the means to trace the messages back to any specific computer. I'm not up-to-date on case-law related to facebook messages as evidence in conspiracy, but it seems particularly relevant since one account represents the NYGBA group. How can we know without reasonable doubt that Tommy was actually sending the messages

in question and was actually a party to the conspiracy? Tommy's lawyer noted this during the trial, as I mentioned and also objected to the introduction of these messages into evidence (on grounds of relevance, if memory serves) and was over-ruled each time.

- **BLOOD:** Regarding the traces of chicken blood collected by forensics experts, I would only ask if it's uncommon to find trace amounts of blood on a re-usable transport container on a chicken farm? Regarding the blood traces found in the Joe Z gaff box, I would assume there's no way of knowing how long that blood had been there. Since before Joe Z gave the box to Tommy? Since before the 2008 prohibition? Regardless, I'd ask again, is it uncommon or illegal to find blood on stuff at a chicken farm? I know it's not.

CIRCUMSTANTIAL EVIDENCE

Before the trial began, the prosecution was successful in convincing the judge to preclude, or not allow, certain facts to be presented in the trial. Somehow, they convinced the judge that information about the history and culture of cockfighting in the country would be irrelevant in Tommy's conspiracy trial and distract from the facts-at-hand. This significantly limited the amount of context the defense could provide to the jury about the operations of a game farm.

Keep in mind, this was a downtown Manhattan jury—city folk. The trial is 350 miles from Tommy's rural farm upstate, but the two places are worlds apart.

Of the 50 people in the initial juror pool, 17 had either owned a rescue dog or donated to ASPCA, HSUS or another animal welfare group. Only two admitted that'd impede their ability to be a juror. One worked for the New York Times. There were legal assistants, accountants, corporate officers, etc. Its likely that most of them wouldn't know how many toes are on a chicken's foot. They may have never stepped foot on a farm, and may not know anyone who has. They were blank slates when it came to chickens, and the prosecution was quick to fill them in on the details.

The trial's first witness was a government cockfighting expert, a sherrif from Kentucky who'd taken some classes on animal investigations and who'd been undercover on a cockfighting case for a couple years.

The officer described to the jury and judge—no doubt for the first time—what happens at a cockfight. He described what gaffs and knives were and explained there usage. He described everything from handlers to referees to keeps, and he told the jury that trimming and dubbing was done solely for fighting, apparently unaware that it's done for health and safety reasons and required by the gamefowl show standards.

The officer, thus, provided the jury with its first education of game fowl, leaving the defense to pick away at his account. The most obvious way to do this would be to have a defense expert widen their education, provide some context, but since the prosecution blocked historical and cultural discussion, the scope was controlled more or less to what the officer had explained in his testimony—a tough obstacle to surmount.

The whole ordeal, from the property search to the end of the trial, took a year-and-a-half, and Tommy began his one-year, two-month sentence in late 2018.

Throughout the proceedings, the property confiscated from Tommy, specifically his chickens, were held at two ASPCA facilities, pending the outcome of the case. Concerned for his property, and well-aware of the time, effort and facilities required to tend the birds, Tommy requested to visit the facilities and inspect the confiscated animal property.

After six months, Tommy and poultry expert Anthony Saville were granted access to the two facilities for a visual-only inspection. What they saw inside was beyond what either had imagined.

TOMMY QUOTE: IT MADE MY STOMACH TURN

The pale-faced, stagnant birds cowered in the shadows of brick cells with cement floors with no natural light. Some were gone.

Anthony Saville founded and authored the American Gamefowl Society's show standards and is a certified show judge with the Oxford Old English Game Club as well as the South African Poultry Association. Saville accompanied Tommy on the walkthroughs.

IT WAS ABSOLUTE NEGLECT

In his report to the court, Saville pointed out numerous injuries such as scalped roosters, knobby, injured feet, missing toes, gimp legs and missing spurs, all tell-tale signs of roosters that had fought through wire partitions. Because of the detailed records made by the investigators, he explained in a brief to the judge, it'd be easy to verify these injuries occurred after being taken into government custody.

ABSOLUTE STUPIDITY ON THEIR PART

The judge, however, granted the prosecution's request to prohibit any testimony about the care the birds had received since being confiscated by the government on the grounds that it had no relevance in Carrano's conspiracy case, and risked creating a trial-within-a-trial. It was a separate issue, they said.

And, maybe that argument makes sense on paper, but the whole thing stinks of hypocrisy. There's some verifiable evidence presented that the state could have, either through neglect or

direct activity, caused birds to fight, that the facilities were inadequate and the flock was unhealthy, decimated since entering the state's care, while their owner stands trial merely for conspiring to violate welfare law. Where's the justice in that?

Saville: It was a complete miscarriage of justice.

I've seen some photos from the facilities, and I agree with Saville's expert opinion. They look like they're struggling in the concrete facility, pale-faced and huddled together. In one, a full-grown rooster with a towering straight comb stands next to his feed container, which is made for baby chicks and dispenses feed beneath one-inch circular holes in the plastic, not near large enough for the cock's head, with the tall comb to reach in and eat.

I'll post some photos or video, along with Saville's precluded testimony to the court, on the website at bloodlinepodcast.com and I encourage you all to see for yourselves.

TOMMY: We got a quarter.

As I've already mentioned, Tommy would eventually be found guilty of one count at the trial, and has since served a year in prison, and is now on probation that prohibits him from tending his chickens, but he's eager to get back.

TOMMY: THANK GOD

He won't, however be returning to the role of a quiet farmer. Taking inspiration from the gamecock, he's been spurred on by the ordeal.

TOMMY Don't feel bad for me.

Tommy has been working to organize and educate farmers across the country about the current state of animal law. He's started a website, gamefowlpreservationsociety.com. He's appeared twice on the popular radio and podcast segment, LoosTales with Trent Loos, and has been very active in lobbying for changes alongside the gamefowl as well as the larger agricultural community. To see Tommy's latest projects or get involved, visit his website at gamefowlpreservationsociety.com.

I'll post a link to Tommy's site, as well as his interviews with Loos and supplemental documents and media for this episode, visit us at bloodlinepodcast.com.

One programming note: I had initially planned to continue our series on gamefowl and the law with an episode next week entitled: How They Outlawed Cockfighting in Oklahoma, but since next week is Christmas, I've decided to wait until after the new year for that episode. Instead, we'll continue our analysis of present-day federal law with the latest info on the case of the Puerto Rican gamefowl community, who made oral arguments last week to federal appeals

court judges in Boston about their case against the federal ban in the U.S. territories that went into effect this week one year ago.

If you'd like to join me on the show to talk about any of the above topics or any other topic of cultural, historical or personal relevance to the gamefowl community, let me know. Find my contact information on the website at Bloodlinepodcast.com.

Thanks for listening. Ya'll keep'em crowing, and Merry Christmas.

And, I guess that makes sense, legally speaking, but

Tommy's concern about the care of his chickens and the adequacy of the holding facilities was not without reason. The management of the birds, or the inability of the government to house and care for them during trials is a contentious issue in several state-level cases, according to news coverage of trials related to cockfighting. The simplest, and no doubt the most frequent solution, is to hand them over to be destroyed by an animal welfare organization—the same ones that lobby for these laws, help enforce them and claim to be concerned for their welfare.

Tommy and Anthony found the flock in poor health, kept in cement cells under artificial light. Saville reported to the court that several birds showed signs of having fought through wire, including scalped heads, marred, knuckled and knobby feet, missing toes, injured legs and broken beaks.

SAVILLE AUDIO:They just let them fight.

“This chicken has been severely fighting during the ASPCA incarceration at their facility. There is permanent severe damage to this birds head. To prove the fighting the bird also has a severe healed up broken leg and has damaged spurs. Someone at the ASPCA has to be aware of the severity of the injuries to this bird and will be called at trial to explain the injuries. Clearly now it is evidenced as to why the ASPCA took almost 6 months to allow an inspection of the birds in their care.”

After leaving the Carrano facility a Cockfight happened somewhere. My inspection found slipped bills, half grown spurs, scalping and missing and broken feet and toes

NOTES ON THE TRIAL

Prosecuting attorneys: 2 and an aid; sometimes 3 plus legal aid

Jury selection:

- Of pool of 60 potential jurors, 17 had donated to ASPCA, HSUS or other Animal Welfare groups or owned a rescue dog.
- Only two said this would affect their ability to be impartial
- Two, one rescue dog owner and one donor to HSUS and ASPCA wound up in the final jury.
- One juror asked to be excused because he'd attended a fight in the Dominican, said it was a good experience, so that would probably skew him to "the other side" AKA defense
- One juror said her father fought chickens in Columbia, and that'd affect her ability to be a juror.

Manhattan jury, so city folk, almost to a man. Government presents case first and put cockfighting expert on the stand. This expert, law enforcement officer described to the court—for the first time in their lives, no doubt—what happens at a cockfight, in detail. He described what gaffs were, knives, gameness, described the pit, the whole process of a fight start to finish. He explained, poorly, what dubbing is and why it's done, and he said it's indicative of fighting.

This is a huge psychological advantage.

As far as experts go, he wasn't the worst I've seen. He'd worked a couple years in an undercover cockfighting investigation in addition to being certified as an animal cruelty investigator at a law enforcement training institute, but most of his knowledge seemed to be learned first-hand. He was no expert by cocking standards, to be sure. Had limited exposure to it. Handled a couple hackfights, he said, and seemed proud of that fact (and that he'd won both). He got some of his facts wrong, and was miffed by a few questions. For example, he said—perhaps confusing it with spurs—that combs grow back and are trimmed as they do, and he said the combs and wattles were trimmed because a puncture to them in a fight would result in the rooster bleeding out, which makes little sense. If they'd bleed out from a puncture wound, wouldn't they definitely bleed out when cut off entirely? He seemed a little confused about fly pens and their usage. Couldn't identify or even guess at the breed of rooster shown to him in a picture. He'd never attended a poultry show.

The prosecution claimed that the chicken blood they found in the Joe Z gaff box was on short gaffs stamped DO for Dwight Orr.

After seeing Dwight Orr's name mentioned in relation to gaff collectibles in the facebook messages, another raid was conducted on his property in Tennessee, which produced a ledger with Tommy's name in it two times.

This was, more or less, what was used in court to convince the jury of conspiracy.

In late 2015 or early 2016, New York City investigators responded to a noise complaint of crowing at a Brooklyn, NY farm. Not Tommy's place. A farm in the city. While investigating and pursuing a case against the owner of the farm in the city, agents apparently first learned of Tommy in about Feb. 2016, which is also when the case was picked up by federal investigators.

On the morning of May 23, 2016, Tommy and his wife Gina were drinking coffee at 6:30 a.m. in the kitchen of their farm house in Ontario, New York, when the black federal suburban convoy rolled into the driveway. By the time the knock came, the house was, more or less surrounded, with officers in the front and rear of Tommy's house per the general protocol on serving a search warrant. Soon, a convoy of animal investigators with the ASPCA arrived to assist with the search. The team fanned out across all parts of the property, taking pictures of his pens, seizing items of interest into documented collections bags after taking additional photos.

The important thing to keep in mind, I think, is that the officers did not find, nor did they appear to be expecting to find, any notable signs of an ongoing cockfighting pit on the property. None of the investigators noted any signs of injuries that might indicate fighting. One of the lead investigators in the case testified in court that he'd never witnessed Tommy at a cockfight.

Also of note is that throughout the search and for days afterward, Tommy had not been charged with a crime. Unbeknownst to him, the team had been investigating, combing his online accounts and any other available source for something—or several things—that would complete the link between Tommy and a formal charge.

After searching his entire property, feed barns and house, the team left with much of his property in-tow. The seizures and investigation yielded these items, among others:

10s of thousands of Facebook messages spanning FIVE years from two accounts—the NYUGBA and the Tommy Carrano account.

Gaff collectibles, including an heirloom box of such collectibles that Tommy inherited from his mentor, Joe Z, just before he died. The box had Joe's name on it.

Portable carry stalls

Literature, such as magazines, books and newsletters related to game fowl as well as business cards, videos and a public court document we'll discuss later.

There was a Puerto Rican stuffed sparring dummy.

Medicine, including veterinary steroids

A pair of scissors

A small ladder and other exercise equipment.

From the portable stalls and from Joe Z's gaff box, a forensic animal specialist who'd flown up from Florida, was able to extract samples that a laboratory in Florida would identify as chicken blood.

The Carrano's home computer along with a pair of cell phones were seized and sent off for nerds to analyze.

Keep in mind, at this point, Tommy has not been indicted or charged with a crime, though there's been an investigation, which the investigators hope can be concluded with the evidence they find around the place.

They spend hours searching through the house and all the structures on the yard, filling and dutifully documenting potential evidence in collections bags. They took a bunch of stuff, including all of Tommy's chickens, which were by all accounts, happy and healthy with no one noting any evidence of fighting injuries to the fowl.

To As always, when looking at a case in light of over-breadth, it's always important to look at the circumstantial evidence used.

This included that the chickens were trimmed and dubbed, facts that were continually associated with fighting, despite being consistent with U.S. game fowl show requirements and generally healthy practices when keeping game fowl.

The literature seized, introduced circumstantially at trial included videos, books and magazines were frequently cited for associations to crime with no regard for their educational, historical or cultural value, and at least in one case, no regard for the age of the publication (Prosecution introduced an advertisement that included a New York city address with a two-digit zip code, a format officially dropped nation-wide in the 1960s.)