STATE OF FLORIDINA
DISTRICT OF STINSONIA

THE PEOPLE OF THE STATE OF FLORIDINA,

Plaintiff.

v.

JEFFREY WILLIAMS,

Defendant.

Cr. No. 08-1028

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

Jeffrey Williams is the sole proprietor of Truckin Chicken, a company that transports live birds in large tractor-trailer trucks. Most of Truckin Chicken's current work involves the movement of so-called "spent hens." These chickens, formerly used in egg production, can no longer lay eggs and have no obvious market value. The disposal of spent hens has become a nationwide problem for egg producers, who must dispose of tens of thousands of the animals each month. Apparently many chickens are simply loaded into dumpsters once they stop laying eggs, and from there they are thrown out like other industrial trash. Discarding the chickens in this manner creates a potential for environmental and human health dangers because of the magnitude of chickens. Recognizing a business opportunity, Williams began collecting the birds at various points along the East Coast and selling them to the United States Department of Agriculture ("USDA"). USDA provides the spent hens for food in school lunch programs.

The farms that provide the spent hens to Williams do so for free because it is cheaper than paying the cost of disposing of them; it also eliminates the risk of incurring fines for the

environmental hazards created when hens are left to die in dumpsters. Williams pays nothing to the farmers, and the farmers pay nothing to Williams for his removal efforts.

Williams packs approximately ten thousand chickens tightly in a tractor-trailer truck for each run. His trips always traverse at least two states. None of his drives takes more than twenty-four hours, and he never stops between his starting point and his destination. The chickens receive no food, water, ventilation, or veterinary care during transit. Upon arrival at their destination, approximately fifteen percent of the chickens are usually dead.

While traveling through Floridina on the way to New York in 2008, a Floridina Highway Patrol officer stopped Williams because one of his taillights was out. The highway patrol officer found a large number of dead chickens, live chickens standing on top of dead chickens, and chickens that appeared to be unable to stand upright. He was concerned and consulted with the local animal control officer, who confirmed that the reported conditions were a violation of state law. The highway patrol officer then arrested Williams for cruelty to animals in violation of Floridina's Cruelty to Animals Law, 8 Floridina Revised Statutes ("FRS") section 621, subsections (a) – (d).[1]

Williams was eventually charged with forty-five counts of cruelty to animals. He did not deny the facts in the charging document. Instead, he chose to place all his eggs in one basket, entered into a stipulation of facts with the prosecutor,[2] and raised a sole defense to his indictment and prosecution. Williams argued that the state was barred from prosecuting him because his conduct complied with 49 U.S.C. section 80502, commonly known as the Twenty-Eight Hour Law, and was therefore humane and not cruel, as determined by the United States Congress. The State argued that (1) the Twenty-Eight Hour Law does not bar prosecutions under the Floridina

[1] The Floridina Cruelty to Animals Law is a fictitious state anti-cruelty statute created for the purposes of this competition.
[2] As part of the stipulation, Williams waived his constitutional right to a trial by jury.

anti-cruelty law and (2) even if there was preemption with respect to other animals, chickens are not "animals" within the coverage of the Twenty-Eight Hour Law.

As discussed below, I find that chickens are animals under the Twenty-Eight Hour Law so that Williams is subject to the requirements of that law. Upon careful examination of that law and federal preemption doctrine, however, I find that the Twenty-Eight Hour Law does not bar Williams' indictment or prosecution under Floridina's anti-cruelty law.

II. RELEVANT STATUTES

Floridina's Cruelty to Animals Law, 8 FRS section 621, states, in pertinent part:

> "Animal cruelty" is committed by every person who directly or indirectly causes any animal to be (a) overdriven, overworked, tortured, or tormented; (b) deprived of necessary sustenance, drink, shelter or protection from the weather; (c) denied of adequate exercise, room to lie down, or room to spread limbs, or (d) abused.

Animal cruelty can be charged as either a misdemeanor or a felony in Floridina. According to the definitional section of the statute, "animal" means all living creatures, including birds, regardless of their function or use by humans. 8 FRS § 620(1).

The federal Twenty-Eight Hour Law governs transportation of animals. 49 U.S.C. § 80502. The current statute states, in pertinent part, that truckers

> [(a)] transporting animals from a place in a State … of the United States through or to a place in another State . . ., may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.
>
> (b) Unloading, feeding, watering, and rest. Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours.

Id. Congress has determined that it is humane to transport animals for less than twenty-eight hours without food, water or rest. Conversely, any transport over twenty-eight hours (without a stop for food, water, and rest) is presumably cruel under the federal law.[3]

III. ANALYSIS

The Court's ruling requires a two-part analysis, with both segments contributing to the ultimate question of whether the state law is preempted by the federal law and, therefore, whether Williams' indictment should be dismissed. The first question the Court must answer is whether the term "animals" in the Twenty-Eight Hour Law includes chickens.

A. Chickens Are Included in the Group of "Animals" Covered By the Twenty-Eight Hour Law.

No Floridina court has ever ruled on the question of whether a chicken is an "animal" before, especially in this federal statute. Williams argues that the analysis of the issue is straightforward, because "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 127 S. Ct. 638, 643 (2006); *Gonzales v. Carhart*, 550 U.S. 124, 127 S. Ct. 1610, 1630 (2007) ("In interpreting statutory texts courts use the ordinary meaning of terms unless context requires a different result.").

According to the dictionary, an animal is:

> [a]ny living thing typically having certain characteristics distinguishing it from a plant, [such] as the ability to move voluntarily, the presence of a nervous system and a greater ability to respond to stimuli, the need for complex organic materials for nourishment obtained by eating plants or other animals, and the delimitation of cells usually by a membrane rather than a cellulose wall.

Webster's Encyclopedic Unabridged Dictionary of the English Language 59 (New Rev. Ed. 1996). There can be no *scientific* doubt that a chicken meets this definition. A chicken is a

[3] There are statutory exceptions to the time limits, which are not relevant to the facts here.

member of the kingdom *Animalia*. *See, e.g.*, Afaf Al-Nasser, *et al*., *Overview of Chicken Taxonomy and Domestication*, 63 World's Poultry Sci. J. 285 (2007). Accordingly, Williams argues, the Twenty-Eight Hour Law's use of the word "animal" must, under any commonsense view of the term, include chickens. "Where the statutory language is clear *and* consistent with the statutory scheme at issue, the plain language of the statute is conclusive and the judicial inquiry is at an end." *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 732 (9th Cir. 2007) (citation and quotation omitted) (emphasis added).

Were this Court bound solely by dictionary or scientific/taxonomic definitions, the question would be answered – all birds, including chickens, are animals. The law and the legislature, however, both fly on their own and are not servants to science or semantics. It is not entirely clear to the Court that, while chickens may biologically be animals, they are necessarily animals under the statute – because this construction may not be "consistent with the statutory scheme." *Id.*

The cases and codes are anything but consistent. Multiple courts have reached the conclusion that "in the common everyday experience of mankind chickens are seldom thought of as animals; rather they are birds, with avian characteristics, in contrast to beasts of the field." *State of Kansas v. Claiborne*, 505 P.2d 732, 735 (Kan. 1973). *Cf. State v. Buford*, 65 N.M. 51 (1958) (implicitly holding roosters *were* animals). Legislatures have found that some birds are animals, and some are not. *See, e.g.*, La. Rev. Stat. Ann. § 102.1. This confusion affirms the Court's dilemma over whether the "ordinary meaning" of "animals" includes birds and/or chickens.

The State cites the prior language of the law, which included reference to "cattle, sheep, swine, or other animals," to establish that the drafters, and the revisers, intended to cover only four-footed animals and not fowl. The State points out that the relatively recent substitution of

the word "animals" for "cattle, sheep, swine, or other animals" was done "to eliminate unnecessary words." From this the State argues that the revisions carried forward a limitation to four-footed mammals. Of course, the substitution could just as easily confirm that Congress wanted all animals, including chickens, to be covered – under the original "other animals" phrase.

The Court finds no guidance in the cornucopia of decisions and opinions on whether Truckin Chicken's cargos are animals. The only federal court that has come close to the issue ruled that the law was intended to cover "all animals that might be shipped in crowded cars or boats, and which would suffer also for want of food, water, or rest." It neither excluded nor included chickens. *Chesapeake & O. Ry. Co. v. Amer. Exch. Bank*, 23 S.E. 935, 937 (1896). Another aspect for consideration is the human health factor. We eat the animals that are transported. The law, even at its inception 136 years ago, was seen as delivering "mercy to the people who eat the flesh of these animals, which, when improperly transported is unhealthy at its place of destination, and almost or quite unfit for food." Cong. Globe, 42nd Cong., 2d Sess. 4227-28 (1872). It is not lost on the Court that these spent hens are now going to feed the youth of this country in the schools, and that the Twenty-Eight Hour Law may be the single federal barrier to the spread of some tragic infection among our children.

The Court also notes with some curiosity the absence of any comment, by intervention or amicus brief, on the part of the federal agency most heavily involved in enforcement and regulation of this issue. In contrast, the federal agencies, Congress, and the courts have previously argued that chickens are not animals under two other significant "animal protection" laws, the Humane Methods of Slaughter Act and the Animal Welfare Act. *See, e.g., Animal Legal Defense Fund v. Espy*, 23 F.3d 496, 498 (D.C. Cir. 1994) (Animal Welfare Act). Other than a concession that trucking operations are clearly within the purview of the Twenty-Eight

Hour Law, the USDA has not taken a position, suggesting to the Court its additional concession that chicken transport must be covered by the law.

Given these inconsistencies and unknowns, the Court finds that the language of the Twenty-Eight Hour Law and deference to rules of statutory construction tip the balance in favor of a finding that chickens are animals.

C. The Twenty-Eight Hour Law Does Not Preempt the Floridina Anti-Cruelty Statute.

Having determined that Williams is transporting "animals" under the Twenty-Eight Hour Law, I must now determine whether the Supremacy Clause of the U.S. Constitution dictates that Williams' conviction be vacated under federal preemption doctrine.

The parties have stipulated that all of Williams' trips are less than twenty-four hours in length, and all involve travel in more than one state. Thus, facially, Williams is in compliance with the federal law, and there is no claim to the contrary. The State contends only that Williams has violated the *state* anti-cruelty law.

The Supremacy Clause establishes a constitutional rule for choosing applicable law. Federal law is paramount, and Congress has the power to preempt state law. U.S. Const., art. VI, cl. 2; *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Courts are reluctant to infer preemption, and it is the burden of the party claiming that Congress intended to preempt state law to prove it.

There is a presumption against federal preemption in those areas traditionally regulated by the states: "[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *accord Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (citing *Rice*). In every preemption analysis, congressional intent is the "ultimate touchstone," *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485

(1996), and the statutory text is the best indicator of that intent. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 62-63 (2002). There are four types of federal preemption: express, conflict, obstacle, and field.

Express preemption arises when Congress explicitly instructs the states not to legislate in the same area or enact laws on the same subject. *English v. General Electric Co.*, 496 U.S. 72, 78-79 (1990). The Court finds no such statement in the Twenty-Eight Hour Law, and thus this doctrine is inapplicable.

If state and federal law cannot both be applied, conflict preemption exists. *Hillsborough County v. Automated Medical Labs.*, 471 U.S. 707, 713 (1985). The Court is of the opinion that if Williams made a trip that lasted twenty-nine hours, he could be sued by the federal government for violation of the Twenty-Eight Hour Law, while a state prosecution could be had simultaneously for violation of any of the provisions of the Floridina anti-cruelty criminal code. Conflict preemption therefore does not apply.

If the application of a state law in a given case would stand as a barrier to carrying out the Congressional policies and purposes behind a law, then obstacle preemption exists. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000). There is nothing in the text of the Twenty-Eight Hour Law that evinces a legislative desire or need for preemption. The underlying policies the Court has identified include humane treatment of animals and protection of the food supply. Williams says the law's intent was to prevent cruel treatment of animals in transport, and that Congress set an exclusive federal standard for that mistreatment, just as it has done with slaughter facilities under the Humane Methods of Slaughter Act. What Williams cannot explain is how a state anti-cruelty law with specific requirements prevents the realization of these policies.

Congress has set an absolute limit (subject to irrelevant exceptions), in the Twenty-Eight

Hour Law, on the amount of time animals can be transported without rest, food, and water. The underlying policies are not in any way impacted by the Floridina legislature's determination that certain conduct constitutes cruelty under state law. The history of state anti-cruelty doctrine standing side by side with minimal federal protections does not establish any compelling reason to bar state regulation of cruelty during transport. Nor is there any indication that this sovereign partnership in animal protection has changed at any point in time. The Court finds that the state law is no obstacle to the federal policy, and therefore obstacle preemption does not apply.

Field preemption exists if Congress intended to prevent *any and every* state law application in a particular area, that is, if the federal scheme is so broad that a court can reasonably infer that Congress left no room for state regulation. *Hillsborough County*, 471 U.S. at 713. Although this is the closest claim for preemption, it too must ultimately fail.

First, at its broadest application, this notion would eliminate state regulation of animal cruelty. This is antithetical to the history of American anti-cruelty law. *See generally* David Favre and Vivien Tsang, *The Development of Anti-Cruelty laws During the 1800s*, 1993 Det. C. L. Rev. 1 (Spring 1993).

Second, Williams' field preemption argument ignores the fact that animal cruelty has always been a local matter, with only minimal federal intervention in select areas like animal slaughter and transport. *See, e.g.*, *DeHart v. Town of Austin, Ind.*, 39 F.3d 718, 722 (7th Cir. 1994) ("The regulation of animals has long been recognized as part of the historic police power of the States."). Courts across the country routinely recognize that states have an important interest in animal welfare. *See, e.g.*, *Kerr v. Kimmell*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (states have a legitimate interest in the humane treatment of animals). This state interest applies to all types of animals. *Cresenzi Bird Importers, Inc. v. State of New York*, 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987) (recognizing that "[t]he State has an interest in cleansing its markets of

commerce which the Legislature finds to be unethical").

Finally, the Court rejects Williams' invitation to adopt the holding in *People v. Southern Pacific Co.*, 208 Cal. App. 2d 745 (1962), where the court held that a prosecution under California Penal Code section 597, that state's anticruelty law, was barred by 45 U.S.C. sections 71-74, the predecessor to the Twenty-Eight Hour Law. Both the facts and the applicable state law in that case are distinguishable. Even if that were not the case, this Court is not bound by California precedent and disagrees with the conclusions reached by that court, especially the central conclusion that the law leaves "no room for the States to supplement it." *Southern Pacific Co.*, 208 Cal. App. 2d at 751 (internal quotation and citation omitted). Other courts have issued holdings doctrinally, if not directly, in conflict with *Southern Pacific Co.* *See*, *e.g.*, *Lynn v. Mellon*, 131 So. 458, 460 (Ala. Ct. App. 1930) ("It can be readily seen that this statute does not change the common-law duty of the carrier with reference to the livestock, but fixes a period of confinement, beyond which is negligence, and makes certain when and where the common-law duty of the carrier for the preservation and comfort of its stock should be exercised."); *Hogg v. Louisville & N.R. Co.*, 127 S.E. 830, 832 (Ga. Ct. App. 1925) (proof of compliance with Twenty-Eight Hour Law is defense against government's enforcement action, but "proof of such compliance cannot ordinarily be taken as absolutely conclusive . . . where there is testimony [that] the sickness or death of the animals resulted from acts of negligence or omissions of duty by the carrier in feeding, watering, or resting the stock").

Williams has provided no reason to upset the balance that has been observed and approved by federal and state governments for years. The Court holds that none of the preemption doctrines apply to bar Williams' indictment or prosecution.

IV. DISPOSITION

There being no factual dispute with respect to the conduct of Jeffrey Williams, and there

being no preemption, I find the defendant guilty as charged, based on the stipulated facts presented to the Court. A sentencing memorandum will follow after further briefing.

SO ORDERED.

November 11, 2008

_____/s/_____
Judge Jamie Burrito

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