

*Case Name:*

**R. v. Turnbull**

**Between**

**Her Majesty the Queen, and  
Michael Turnbull**

[2005] O.J. No. 2473

Information No. 04-1805

Ontario Court of Justice  
Guelph, Ontario

**N.S. Douglas J.**

Heard: April 14, 2005.

Oral judgment: April 14, 2005.

(11 paras.)

*Criminal law -- Offences -- Property offences -- Cruelty to animals -- Evidence -- Burden and standard of proof -- Standard of proof -- Beyond a reasonable doubt.*

Trial of the accused, Turnbull, for three counts of cruelty to animals. A veterinarian testified that two dogs on the accused's property showed signs of lack of food and care. Another veterinarian testified that the autopsy on a third dog could not determine cause of death, but he thought it was probably starvation. A humane society inspector testified that he visited the accused's property and found the two dogs in bad conditions and the third dog dead. The accused told the inspector that one of the dogs had always been lean, that he had just cleaned the cage of the other and that the third dog had been poisoned. The accused told the inspector his stepson was looking after two of the dogs. The accused testified that the dogs had all been found on the property and that he was unhappy with the stepson for his failure to provide adequate care.

HELD: Turnbull was acquitted. The dogs were neglected. The accused was not credible. However, the court was left with a reasonable doubt about whether the accused was the owner of the dogs. The Crown only proved that the dogs were on the accused's property. There was no other evidence of the accused caring for, walking or registering the dogs.

**Statutes, Regulations and Rules Cited:**

Criminal Code, s. 466

s. 446(1)(c) P

Charges: Criminal Code of Canada -- Section 446(1)(c) - Cruelty to animals (x 3)

**Counsel:**

J. MacDonald, Counsel for the Crown

M. Turnbull, In Person

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**1 N.S. DOUGLAS J.** (orally):-- Originally Michael Turnbull was charged jointly with his wife, Kimberly Turnbull, with four counts. The information before me was sworn by a Guelph Humane Society Incorporated Inspector. The counts followed the language of Section 446(1)(c) of the Criminal Code of Canada. They were general and vague in nature, although they were valid counts, and at one point during the trial I asked Ms. Turner, for the Crown, to particularize what exactly she was alleging in each of the counts, what animal was being talked about. She particularized count one as referring to the Shepherd/cross dog that has been the subject of this trial. She particularized count two as the Shi Tzu dog, and counts three and four, she said, related to all three dogs, including the Rottweiler that was found deceased on the accused's property.

**2** It was apparent at the end of the Crown's case to everyone, including Ms. Turner, that there was no evidence against Kimberly Turnbull, and because both Michael and Kimberly Turnbull were acting on their own, as was my duty I suggested to the Crown that there should be a directed verdict against Kimberly Turnbull, and the Crown agreed. And so Kimberly Turnbull was found not guilty, there being no evidence at all against her on these four counts.

**3** With regard to Michael Turnbull, the Crown relies on the evidence of two medical experts, and the inspector, Daniel Usas of the Guelph Humane Society, and a statement ruled admissible during the trial that the accused, Michael Turnbull, uttered to Daniel Usas over the telephone. The Crown also points to the evidence of Mr. Turnbull himself, and because credibility has become an issue here I must charge myself with regard to the Supreme Court of Canada decision in Regina v. W.D., [1991] 1 S.C.R. 742, and I want to refer specifically to that decision because it is one of those cases wherein I have rejected the accused's evidence, but still must determine, even after rejecting his evidence, that there may be a reasonable doubt on the basis of the evidence that is accepted, and that is referring to the third part of Regina v. W.D. We start of course with the presumption of innocence, and the onus of proof and the burden of proof, and that is the Crown must prove his guilt beyond a reasonable doubt. He need not prove anything. It is up to the Crown to prove this case to that high standard.

**4** I am satisfied that Dr. Stec, the first witness, who has been a veterinarian since 1987, who runs the Victoria Road Animal Hospital, was correct and accurate, and truthful and credible. When she referred to the female Shepherd/cross, and she thought that that dog was about three years old, but as I recall the evidence from the accused I thought he had said that it had wandered onto his property some seven years ago, but I could be mistaken in that, there is nothing that turns on it. But Dr. Stec said, "This dog's teeth were extremely worn, skin incredibly irritated," I'm quoting her, "Incredibly irritated under the collar, that it was two to five percent dehydrated, extremely thin, and muscles quite wasted." She said that, "There was a lack of food obvious. It smelled of urine and feces, and a lack of normal stimulation." With regard to the female Shi Tzu, she referred to that dog as, "Emaciated, dehydrated, a discharge from both eyes, tartar on its teeth, abdomen extremely empty, very thin, coat matted, stained with urine and feces." She said that she felt that that dog had had inadequate cleaning or brushing, and had been confined and could not get away from its urine and feces.

**5** Dr. van Dreumel, who has been a veterinary pathologist, and has been a veterinarian since 1963, who works at the University of Guelph, was also a witness who was credible, an expert in this field, and whose evidence that I accept. He performed the autopsy on the Rottweiler and found that the carcass was covered in fecal material, that the body was

decomposed, no fat whatsoever on it, emaciated, and although no evidence of external or internal trauma, stomach basically empty, he could not determine a cause of death. He ruled out poison and believed that that dog, because of its shrunken liver and shrunken pancreas, was probably starved.

**6** Inspector Usas, who had a complaint about this property and the dogs on it, found no owner present on April the 15th, 2004, but found the Shepherd tied up at the rear of the property, found the Shepherd chained to a shed, found the Shi Tzu confined in a small cage with urine and several piles of feces that it was forced to stand in. The property was strewn with garbage. There was no food anywhere, no water for the Shi Tzu. He went to the OPP to locate the owner, could not find the owner, apprehended the dogs, took them to the veterinarian, found a dead Rottweiler chained to a shipping crate, and took that dog to either the Humane Society or directly to the University of Guelph, but that dog ended up being examined by the veterinary pathologist Dr. van Dreumel. And then when he put water and food in front of the Shi Tzu and the Shepherd the Shi Tzu drank excessively, the Shepherd ate ravenously, three-and-a-half cups of dog food in less than a minute.

**7** He found Mr. and Mrs. Turnbull at the Forest Plaza Motel, room 19. Before that he had had a telephone conversation with the defendant, Michael Turnbull, who told him the Shepherd had always been lean, that they were unable to keep weight on him, that he had been to the property an hour before that phone call, and had cleaned the cage up regarding the Shi Tzu. An hour before the inspector had got there, not an hour before the phone call. He said the Rottweiler had been poisoned and had died in December, and that he was going to bury it the following day. Because there had been a recent fire at the home, that is why he was living at the Forest Plaza Motel, and because of other problems in his life, he said that the dogs had not been looked after properly, and he thought that his stepson was looking after the Rottweiler and the Shepherd, and he referred to that in his testimony that I will get to in a few minutes. He told the inspector he could not remember, on the phone, when the Rottweiler had died. He later testified about that, and I will get to that in a minute or two. After getting the tests from the medical people the inspector charged both Michael and Kimberly Turnbull with these four offences under Section 446, which is in the vernacular referred to as cruelty to animals section.

**8** Mr. Turnbull testified that both the Shepherd and the Shi Tzu had been found on his property. The Shepherd wandered onto his property and they kept him. He said that back in December his son had said to him that the Rottweiler died, and the son said that he had buried him under the snow, and it wasn't until the snow was gone in April, that was also when the fire happened on April the 9th, that he found the Rottweiler not buried but covered with boards, and that was a surprise to him. He thought that his stepson had buried the dog, and he was not exactly happy with his stepson for the manner in which the stepson had failed to provide suitable and adequate care for both the Rottweiler and the Shepherd. He said that his son had been involved in drugs and witchcraft. He said that he worked long hours and had some other family problems. He says he found the Shi Tzu on his property on April the 14th in a crate, that he took it onto his property, gave it some food and water, and that the crate was the one found by the inspector that was full of feces and urine. He said on the witness stand that the responsibility he had for the Shepherd was, "I'm guilty of trusting my son," to look after the Shepherd.

**9** The Crown argued that the accused has been proven to be the owner of these dogs, and if the Crown has not proved that that the Crown has at least proved that he was vicariously the owner because one cannot delegate, these are the words of Ms. Turner, to a sixteen-year-old son, the age of the son, the stepson, at the time the dogs, the time of the Shepherd coming onto the property, and that in law the accused is the owner of the dog, and in fact in his conversation with the inspector admitted when he said that they were unable to keep weight on him, and that I should infer from that whole conversation that he had accepted the responsibility of ownership.

**10** And so while the Crown is correct that it has proven in spades that these dogs were neglected, the issue is has the Crown proven beyond a reasonable doubt that Michael Turnbull was the owner in law of the animals in question. I agree with the Crown that this accused's story of the Rottweiler being poisoned and dying in April is not credible, particularly when the doctor ruled out any evidence of poisoning. The doctor did say, however, in answer to one of the defendant's questions, could he rule out that this dog had died in the winter, and because of the winter conditions, that

he did not die within the opinion expressed by the doctor, namely within, at first the doctor had testified that he thought the dog had died a week to ten days prior to the examination but he was not sure. The doctor did say in cross it is possible that the dog could have died December the 9th if it had been frozen since then. I am also of the view, and I am in agreement with the Crown, this story about the Shi Tzu being found in a cage at the end of his driveway and him taking it onto the property is not a credible story.

**11** I was not impressed with the accused in the witness stand. I did not find him to be a credible witness at all, and if I were asked on the street did I think that he neglected these dogs I would not have trouble answering that question at all. But the issue is has the Crown proven beyond a reasonable doubt that he was the owner, and I am in some doubt about that. There has been no other evidence about his care of the animal or his walking the animal, or his registering the animal, or no evidence from neighbours, no evidence from anyone really who can say yes, that man owned that dog, and I've seen him do whatever it is that owners do. The only thing the Crown has proven is that the dog was on his property and that this accused has said that it was his stepson who took care of the dog, and that while it is a stretch for the accused to say that he was not aware of the terrible conditions these dogs were in, and I flatly do not believe him when he says that, I am unable in conscience to conclude that the Crown has proven this case beyond a reasonable doubt, and therefore my duty is to find him not guilty of all counts. You are free to go Mr. Turnbull. Thank you.

qp/s/qlgxc/qlkjg