

Case Name:
R. v. Peters

Between
Her Majesty the Queen, and
John-Patrick David Peters, accused

[2005] A.J. No. 1084

Docket No.: 040288185P1

Alberta Provincial Court
Criminal, Division
Calgary, Alberta

De Veen Prov. Ct. J.

Oral judgment: June 23, 2005.

(10 paras.)

Criminal law -- Offences -- Property offences -- Cruelty to animals.

Trial of the accused, Peters, who was charged with cruelty to an animal, specifically a kitten. There was evidence that Peters sometimes left the door open and the kitten could have left the building during the timeframe in which he was alone with the kitten. Further, the cause of the kitten's injuries was not clear and they could have been caused by a bicycle or car. There was also evidence that the owner of the kitten still trusted Peters with cats.

HELD: Peters was acquitted of the charge. Although the court did not necessarily find that Peters was innocent, he was not found guilty. The court was not satisfied beyond a reasonable doubt that Peters was the only person who had the opportunity to perpetrate the injuries that were found on the kitten.

Counsel:

D. Chow, Esq. For the Crown

B. Warrington, Esq. For the Accused

J. Isaac Court Clerk

1 VEEN PROV. CT. J. (orally):-- I want to say at the outset that I have rarely seen as complete a brief as I have seen from you, Mr. Chow, on this case, and I congratulate you for that. You have not missed a point that could be made with respect to the Crown's case, and I rarely see the kind of effort and intelligent approach to a case that you have taken, and I congratulate you on that, and I thank you for that assistance.

2 I have, however, from the outset of this trial been directing my mind to the issue of exclusive opportunity, and in order for there to be a conviction I have to be satisfied beyond a reasonable doubt that the accused is the only person who would have had an opportunity to perpetrate the injuries that were found on this kitten. I do have some doubt with regard to his being the only person who had that opportunity, and it arises from the evidence of Ms. Sass, who says that the accused had a habit of leaving the door open, and I believe the tone of her evidence was that she was always after him to not leave that door open.

3 She also testified that the cat had a habit of running to the door, whenever she came home. And while she testified that the cat -- she never saw the cat try to get out, she also testified that she quickly would close the door, and the reason she would do that is to prevent the cat from getting out. So, I am left in a position of wondering whether that kitten got out when Mr. Peters left the door open, during those time frames when he was alone with the cat.

4 I have evidence of the doctors that is less than clear with regard to the cause of these injuries. They leave open the possibility that a car could have harmed this kitten, even though there was no road abrasion.

5 THE ACCUSED: (UNREPORTABLE) --

6 THE COURT: There is clear evidence that this

7 house is on a very busy street --

8 MR. WARRINGTON: I'm sorry, Your Honour. I think Mr. Peters is just nervous, and forgot to turn it off.

9 THE COURT: There is clear evidence this house is located on a very busy street, and as I watched the video, several cars went by that home in a very short matter of seconds. In my mind there is the possibility that this kitten could have been injured by a car or a bicycle, given the totality of the evidence that is before me. There is also evidence before me that the accused is now completely trusted with cats by the owner of this kitten, and there has been some highly complimentary evidence given as to the care and concern this accused takes with animals.

10 This is not the kind of case where I can say that I believe the accused to be innocent. It is not that kind of case; if it were I would say so. But it is the kind of case where I am left with some doubt concerning his guilt, and in that kind of case, sir, you are entitled to be acquitted, and I find you not guilty of the charge.

VEEN PROV. CT. J.

cp/e/qw/qlscw