

Indexed as:

R. v. Randell

**Between
Her Majesty The Queen, and
Robert Francis Randell**

[1989] A.J. No. 260

96 A.R. 237

7 W.C.B. (2d) 164

Docket No. C0141637661 A01-02

**Alberta Provincial Court
Calgary, Alberta**

McMeekin Prov. Ct. J.

Heard: January 13, 1989

Judgment: March 2, 1989

A.H. Channer, for the Crown.
No counsel for the Accused.

REASONS FOR JUDGMENT

McMEEKIN Prov. Ct. J.:-- Thank you. The accused is charged with two counts; under Count 1 with unlawfully killing a dog under the former Section 401(a) of the Criminal Code, that's now Section 445. And the second count, causing unnecessary pain and suffering to a dog under Section 402(1), the former Section 402(1) of the Criminal Code. That is now Section 446(1)(a).

Firstly, I have no hesitation whatsoever in accepting the evidence of Miss Redford and her mother, Mrs. Redford. On the strength of that testimony it's quite clear that the accused was kicking and beating his dog with a hockey stick. From the noise made by the dog I'm satisfied also beyond reasonable doubt that it was being caused unnecessary pain and suffering.

I accept the defence evidence that the dog had attacked his son. But in my view the accused's actions went far far beyond animal. I'm also of the view that Sections 495 and 946 must be read together. I'm satisfied as well that with a lawful excuse anybody may destroy their own animal. And I'm also inclined to the view that an animal which attacks children in most circumstances provides a lawful excuse. Having said that, I'm satisfied that the dog or whatever animal, must be put down in a humane fashion. If it is not put down in such a fashion the individual involved then may be charged under Section now 446(1)(a).

In the case at bar I'm satisfied on all the evidence led that the dog is dead. As I stated earlier, I'm also satisfied it was caused unnecessary pain and suffering by the accused. Accordingly, I have no hesitation in finding the accused guilty of Count 1 -- I should say of Count 2.

Respecting Count 1, I need not decide whether the accused had a lawful excuse or in fact killed the dog. As the Crown has very fairly submitted, the evidence is unclear whether this accused or somebody else in fact killed the dog. It is clear from the other evidence that there were other people around at the time that the dog was destroyed. Accordingly, the accused is found not guilty of Count 1.

What is to be said about penalty on Count 2?.

MR. CHANNER: The Crown doesn't allege a record against Mr. Randell. The Crown is asking for a term of intermittent imprisonment on the following basis. Whilst there is some tempering in this case because of the initial attack by the dog and the facts speak for themselves, the cases in this jurisdiction are relatively well-known and relatively recent. The destruction of a cat by fire ignition, resulted on appeal in a sentence of 30 days. There have been other cases where lengthier terms of three to four months have been imposed. But in the circumstances of this case I'm asking for intermittent incarceration.

THE COURT: Is there anything Mr. Randell, that you wish to say before I pass sentence?

THE ACCUSED: Not that I can think of right now, Sir.

THE COURT: Yes, All right.

Under all the circumstances of this case I'm not of the view that a gaol sentence is required. I agree with the Crown that deterrence to everybody who would treat animals cruelly is the principle of sentencing to be emphasized. I'm also satisfied, however, that that can be emphasized by a substantial fine and I'm sure has been at this point in time by community sanctions which I haveno doubt have been imposed upon the accused.

In all the circumstances the accused is fined \$1,000 and in default 30 days.

Do you require time to pay that fine?

THE ACCUSED: Sir, I'm going to need at least a couple of months, Sir.

THE COURT: March 31st, 1989, to pay.

MR. CHANNER: Oh, yes, I'm also instructed to draw to the Court's attention there is a provision in that section indicating that there is discretion in the Court to make an order prohibiting the accused from possessing an animal. That's a discretionary matter and I'm instructed by the representative of the Humane Society to make that application. I accept those instructions.

THE COURT: What are the -- what are the parameters? I have not read the section completely.

MR. CHANNER:

"Where an accused is convicted of an offence under subsection (1), the court may, in addition to any other sentence that may be imposed for the offence, make an order prohibiting the accused from owning or having the custody or control of an animal or bird during any period not exceeding two years."

THE COURT: I think under all the circumstances the fine that I have imposed, the community sanctions which will -- which have no doubt been imposed, I'm not -- and bearing in mind the -- the accused's own family, I'm not of the view that a prohibitory order is required in the circumstances.

MR. CHANNER: very well, Sir. Thank you very much, Your Honour, that concludes that matter.

---- End of Request ----

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Time Of Request: Friday, April 10, 2015 12:34:40