

**R. v. Dodd**

Ontario Judgments

Ontario Court of Justice

Ottawa, Ontario

J.P. Wright J.

Heard: July 15, 2021.

Oral judgment: July 15, 2021.

Information No. 0411-998-19-7612-00

**[2021] O.J. No. 6083**

Between Her Majesty the Queen, and Ryan **Dodd**

(17 paras.)

## **Counsel**

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T. **Dobec**, Counsel for the Crown.

T. Bobrovitz, Counsel for Ryan **Dodd**.

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### **REASONS FOR JUDGEMENT**

**J.P. WRIGHT J. (orally)**

1 By way of background there is an Agreed Statement of Fact which has been filed as Exhibit 1, two reports from the Centre of Forensic Science photographs and then the videos, which have been played as well, will be the - I don't think we've entered them as Exhibits yet?

2 COURTROOM CLERK: Just a moment, Your Honour. I'm not sure if we formalized it on the record, but I have indicated on my - on my life that they were to be 5th Exhibit.

3 THE COURT: Very good. Okay. So, the matter was heard this afternoon. I think the issues are fairly clear, and are fresh in everyone's mind. Therefore, I don't intend to be lengthy.

4 I agree that the standard of proof whether evidence is direct evidence or circumstantial, as in this case, remains

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the same and that's proof beyond a reasonable doubt. The Crown bears the burden of proving all essential elements beyond a reasonable doubt.

5 If there is to be finding of guilt in a situation of a circumstantial case, then there must be no other reasonable inference than one of guilt.

6 Briefly then the accused, whose identity is not an issue, comes to the [text deleted by LexisNexis Canada] Stables, it's three in the morning, he is seen passing stalls containing full grown horses who are sticking their heads out of their stalls. He locates the stall of R., a miniature horse and a donkey.

7 He is seen with ropes. He goes into their stall -- in the meantime, the police have been called by the owners who had been alerted by motion detectors and an alarm system.

8 Both the Ottawa Police and the Ontario Provincial Police arrive, the accused is still in the stall, he's found there. His pants are off, he's standing behind the miniature horse. He has an erection. His penis appears shiny. In his possession is found a sex toy and a lubricant. There is lubricant as well on the horse. The horse has been tied by its back legs.

9 The case is circumstantial. The Crown is seeking a conviction for attempt, because there is no conclusive evidence one way or the other of penetration of the horse.

10 Defence says that it is a reasonable inference that he was only there to masturbate, to use his sex toy that was found in his pocket, and that perhaps he had tied the horse for protection.

11 When the police discover him the sex toy is still in his pocket.

12 Defence also argues that enough time had passed from the timestamp on the videos that if he was going to penetrate the horse, he would have already done so -- and this may well be so, we don't know one way or the other if there was penetration.

13 Certainly, it would seem reasonable that the presence of the police or someone would have been apparent given the flashlights proceeding down the stall, that are seen on one of the videos.

14 The Court has been referred to a number of cases. I was going to refer to the six-part passage in *Cline* on page seven, parts one, four, five and six.

15 I'm satisfied that in this case the *actus reus* and *mens rea* are both established in relation to the attempt. All that remained here was for the accused to complete the act of bestiality, it simply doesn't come any closer than the evidence here. It doesn't come any closer to the completion of the act. There is simply no other reasonable explanation beyond speculation.

16 I'm satisfied that the Crown has proved all essential elements of the attempt beyond a reasonable doubt.

17 The break and enter charge is likewise made out. The Crown hasn't specified the offence, but either the attempt bestiality or the mischief would support this charge. The smearing of the lubricant itself on the horse is a mischief and would support the underlying charge. I take it in relation to the loitering charge, from the outset the Crown was content that that charge be dismissed or -- I don't recall if it was withdrawn -- if it hasn't been it will be dismissed. So, there will be a finding of guilt then with respect to those two remaining counts.

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Tara Dobec

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