In the Provincial Court of Alberta

Citation: R v Reid, 2022 ABPC 148

Date: 20220715
Docket: 201266780P1
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Andrico Devon Douglas Reid

Judgment of the Honourable Judge P.B. Barley

[1] The accused is charged that:

COUNT 1: Between February 13, 2019 and the 5th day of July, 2020, at or near Calgary, Alberta, being the owner of an animal or bird, to wit: A dog named Seiko, did unlawfully and wilfully permit to be caused unnecessary pain, suffering or injury to the said animal or bird, and did thereby commit an offence, contrary to Section 445.1(1)(a) of the *Criminal Code of Canada*.

COUNT 2: Between February 13, 2019 and the 5th day of July, 2020, at or near Calgary, Alberta, being the owner or the person having the custody or control of a domestic animal or bird or an animal or a bird wild by nature that is in captivity, to wit: A dog, did unlawfully abandon it in distress or wilfully neglect or fail to provide suitable and adequate food, water, shelter and care for it, and did thereby commit an offence, contrary to Section 446(1)(b) of the *Criminal Code of Canada*.

COUNT 3: Between February 13, 2019 and the 5th day of July, 2020, at or near Calgary, Alberta, did unlawfully cause or permit an animal of which the person is the owner or the person in charge to be or to continue to be in distress, and did thereby commit an offence, contrary to Section 2(1) of the *Animal Protection Act*.

[2] The charges arose out of a series of omissions in the care of his dog, Seiko. These omissions led to Seiko suffering from severe malnutrition and a chronic skin infection. She was apprehended in July, 2020 by the Humane Society, being very close to death and was euthanized that same month.

Trial

[3] At trial the Crown called Dr. Ian Chynoweth, an admitted expert in veterinary medicine and Dr. Margaret Doyle, an admitted expert in forensic veterinary medicine. Dr. Chynoweth treated Seiko in February 2019. Dr. Doyle saw Seiko after she was seized by the Calgary Humane Society in July 2020.

[4] The medical records, detailing their involvement as well as those from another veterinary practice that dealt with an unrelated matter were exhibited by consent.

[5] The Crown also called a civilian who had alerted the Humane Society to Seiko's condition. Both officers who seized Seiko testified about their dealings with the accused. His statement to them was admitted into evidence after a *voir dire*.

[6] The accused did not testify and called no evidence. In an Agreed Statement of Facts, he admitted being the owner and primary caretaker of Seiko.

History

[7] Seiko was a female Argento Dogu dog born October 30, 2015. The accused bought her shortly after her birth and was the primary caregiver until she was euthanized by the Humane Society on July 29, 2020.

[8] In June 2016 the accused took Seiko to a veterinarian (vet) for a routine examination. There were no issues found. Vaccinations were recommended, but the accused did not have the money. Those were never done.

[9] In November 2017, Seiko was struck by a car and suffered a broken leg. The accused's girlfriend took Seiko to a vet to have it treated. She reported that the accused had taken Seiko to another vet, but did not have sufficient funds for their prescribed treatment. He was trying to raise money through crowd sourcing. This second vet provided care, including a splint and medications. These seem to have been sufficient to solve the medical problem. It should be noted that Seiko weighed 32.3 kilograms when seen.

[10] On February 13, 2019, the accused took Seiko in to see Dr. Chynoweth, on a scheduled appointment. It was later learned that the accused had been instructed by an officer of the Humane Society to have Seiko checked.

[11] The obvious concern was that Seiko was covered with red patches on her skin. There was severe crusting with red scabs. She was scratching herself repeatedly.

[12] The accused told the vet that this had happened over the past two weeks. The vet described the condition as severe and chronic dermatitis, and that the condition was more than a month old.

[13] The vet presented a treatment plan to the accused who disagreed with it and said that the vet was only interested in money. This plan involved antibiotics twice daily for 28 days. The accused agreed to 14 days with a lower dose. He said that he had a degree in herbal medicine and was treating Seiko with Oregano Oil and Tea Tree Oil. He was also told that the diet of raw food was not proper.

[14] The vet told the accused that this was one of the worst cases of generalized dermatitis that he had ever seen, and recommended diagnostic tests to determine the cause. The accused declined. He mentioned a lack of funds.

[15] Seiko was noted to be thin with mild muscle loss. The vet described her as being a 3 on a scale of 1 to 9 prepared by Purina pet food. The ideal is 4 or 5. Seiko weighed 30 kilograms. She was bright and alert.

[16] The accused agreed to come back on February 27th. In the meantime, he purchased an appropriate shampoo to treat Seiko.

[17] On February 27, 2019, the accused brought Seiko back. There was a slight improvement in her skin and she weighed 30.5 kilograms. On both occasions the dog was in distress from the skin condition. It was described as similar to having scalding hot water poured over the body.

[18] A new appointment was scheduled for two weeks later on March 12. That appointment was not met, despite being rescheduled three times. On March 13, the accused asked for some medication on account but was rebuffed. He called in on April 18, 2019 and said that Seiko's skin issues had cleared up 85 – 90 percent.

[19] Seiko was then seen by a passing motorist on the accused's balcony on June 1st, 2020. She was alarmed at her state, describing her as skin and bones. She took photographs which support her description. She then called the Humane Society. She noticed that a man inside the residence saw her outside and took Seiko inside by picking her up. This was the second time in seven days that she had seen Seiko.

[20] Officers Gibson and Moore of the Humane Society went to the accused's residence on July 2, 2020. After receiving no response to bell ringing and knocking, they left a note on the door asking that they be called within 24 hours. They did not receive a reply, so they returned on July 4th. They noticed an emaciated dog on the accused's balcony. When they were observed, a man came out of the apartment and took the dog inside. Knocks on the door were not answered, so another warning note was left on the door. It was not answered. A second visit was made later that day, again with no response.

[21] The officers returned with a search warrant and locksmith on July 5. When the officers could open the door the accused came from the basement. He denied being Andrew Reid and denied having a dog. However, the officers found Seiko in a basement closet.

[22] Seiko was seized. The accused admitted seeing the warning notices but was afraid of losing Seiko. He showed the officers a freezer full of kangaroo meat. On July 10th the officer came back to work and found a message from the accused asking how Seiko was. He agreed to come in on July 12, 2020 and gave a detailed statement to the officers. This statement was introduced into evidence. Both Crown and defence relied upon it as the accused did not testify.

[23] Dr. Margaret Doyle was qualified as an expert in forensic veterinary medicine. On July 5th, 2020 she was asked by officer Gibson to examine Seiko. She did and noticed two obvious issues. Seiko was severely emaciated, being 1 out of 9 on the Purina Scale. She weighed 18.3 kilograms. Her expected muscle mass was entirely absent. It was so bad that the muscles holding the spine together were being consumed by Seiko's body as the last food source. She had a low heart rate and blood pressure and low body temperature. She had trouble walking and was physically depressed. She was very close to death.

[24] Seiko initially ate well at the Humane Society, putting on one kilogram of weight in six days. Unfortunately, the bacterial infection was so severe that she could not be saved and she was euthanized on July 29th.

[25] With respect to the emaciated condition, Dr. Doyle testified that there were other potential causes that were eliminated by testing and observation. Unwillingness to eat was discounted by Seiko's ravenous appetite once apprehended, and her weight gain within a short time. Organ failure was discounted by further testing.

[26] The diagnosis then was that Seiko was not getting enough to eat. The box holding the kangaroo meat that the accused fed Seiko said that two or three patties a day would be needed for a dog weighing 30 kilograms, which Seiko did weigh in February 2019. The accused told the officers that he gave her three patties daily. Unfortunately, Dr. Doyle testified that a dog like Seiko, who should have weighed around 37 kilograms, would need six or seven patties daily to keep a proper weight.

[27] Dr. Doyle testified that it would have taken four to six weeks of complete starvation with no food at all for Seiko to be reduced to the state she was in on July 5th. The photos confirm Dr. Doyle's evidence that it would be impossible for a person in regular contact with the dog to not see that something was very wrong with Seiko's weight. She expected that a responsible dog owner would see a vet for advice.

[28] Seiko also suffered from chronic dermatitis with her entire body covered with small scabs. It was described as if her body was on fire. She was constantly scratching her skin.

[29] Skin scrapes showed that there were no parasites. A tape test showed bacterial over growth. The skin condition was extremely painful, compared to the body being on fire. It might have been treated following the February 2019 visits to Dr. Chynoweth but no follow-up had been done. This meant that the bacterial skin infection worsened, because Seiko's scratching increased the spread of bacteria. In addition, no pain medication had been given to Seiko to minimize her discomfort from the infection. The bacterial infection was secondary to the skin condition. Additionally, the refusal of the accused to agree to diagnostic tests in 2019 left the cause of the condition unknown. The provision of steroids had an 80% chance of solving the skin condition, but this was started only when in care of the Humane Society. Seiko was given pain medication at the Humane Society.

[30] Dr. Doyle testified that Tea Tree oil used by the accused to treat the skin would have made the condition worse. No homeopathic treatment would have helped the skin.

[31] In his statement to officers from the Calgary Humane Society on July 12, 2020, the accused set out the history of his care for Seiko and the reasons for the approach that he took. He admits very early on:

AR But I also want to state that, yeah, I do have reasonings but I'm not here to make excuses.

JG Ok

AR For why I didn't bring her vet care. In my mind it might seem like right but again I can share that with you but at the end of the day, me sharing that is just the experience of what I'm going in my head. It's not an excuse.

JG Ok

AR It's just not an excuse to why (inaudible) not given Seiko care.

JG Ok

AR So, I just wanna say that. But anything that I say is not an excuse.

JG Ok

AR Of why because again, the end of the day taking things into my own hands or not. I still neglected her veterinary care and she needed it so.

[32] He admits that he took Seiko to Dr. Chynoweth because another officer instructed him to because of red spots. He said that the antibiotics prescribed then made Seiko ill. He decided to stop antibiotics, switched her food and took a holistic approach. He claimed the change of food allowed her to get better but then the itching returned in May 2020. He then changed the food to kangaroo and the itching and scratching went away instantly.

[33] He described a strong dislike for some veterinarians because they seemed disinterested in the welfare of Seiko. He thought that the treatment of Seiko's broken leg in 2016 was not thorough enough. He also pointed out that Dr. Chynoweth's vet bills were $1,200.

[34] He advised out that he had lost work during Covid and that he was eventually paying close to $500 monthly for food for Seiko. He fed her three kangaroo patties a day. At times he had to defer paying rent to be able to care for Seiko.

[35] He repeatedly expressed a belief in holistic medicine, claiming to have a degree in herbal medicine. He told the officers that he had cured his diabetes with diet.

[36] He thought that herbal tea baths would help Seiko. When she started to become unwell in May 2020 he did not take her to a vet because he thought that he had cured her before by changing her diet and that he could again.

[37] He expressed a desire to get Seiko back from the Humane Society. He was looking into getting pet health insurance. He then said:

AR Because I do wanna like if I do get Seiko back, I don't want to just get her back. I want to show you guys that following up. I do like if a vet is saying next month that she needs to be on this allergy medicine every, for the rest of her life, I'm not gonna be happy with that. I'm gonna wanna try to find a way because there is ways, right? And for me it's about finding a vet that knows that about me and that I can work with holisticly. Because like I wanna be able to go into a vet and be able to have an experience with. The first thing she wants to do as a vet is get Seiko off the pills, right? But a lot of vets they'll just be like well this is her condition, here.

JG Yeah

AR But I don't want to be in a robatic state with a vet. Where it's just like she has this and because she has this, she needs to be on this for life. And then that's the only conversation. It's like but I wanna be able to go to a vet where I can have the conversations where it's like hey like can I try her off for 3 days and test her on this food to see if she needs, and like just try and like find a solution (inaudible).

JG Well and a lot of that has to do with the relationship you have with your vet.

AR With your vet.

JG So if you have a vet that's prescribing medication and you've been a loyal customer and you've been a trusted customer that comes back for re-checks and does the diagnostics that they want. They may say yeah sure try it off for a few weeks but come back or let me know as soon as it doesn't work. The problem here is that we don't have that sort of history with a vet.

AR Yeah with the vet.

JG The diagnostics have been declined which likely would have probably helped in this case. Appointments were missed. You know, so there's no trust there.

AR Yeah, I know.

Legal Issues

[38] Section 445.1(a) provides that a person commits an offence who

> (a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird.

[39] Subsection (3) provides:

> 445.1(3) For the purposes of proceedings under paragraph (1)(a), evidence that a person failed to exercise reasonable care or supervision of an animal or a bird thereby causing it pain, suffering or injury is, in the absence of any evidence to the contrary, proof that the pain, suffering or injury was caused or was permitted to be caused wilfully, as the case may be.

[40] Section 446(1)(b) provides:

> Being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.

[41] Both sections are governed by Section 429(1) which provides:

> Every one who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.

[42] Authorities differ on the foresight about resulting harm that must be established before a person can be said to be acting wilfully as required in both Section 445(1)(a) and 446(1)(b).

[43] In ***R v Gerling***, 2016 BCCA 72, an appeal was taken by a dog breeder against convictions on Sections 445(1)(a) and 446(1)(b).

[44] The trial judge noted that the acts were conducted 'knowing that suffering was a likely result or that a reasonable person would realize that it was a likely result'. This meant that both objective and subjective foreseeability was proven.

[45] The Court of Appeal upheld the convictions. It found:

> [27] In my view, where there is no evidence to the contrary, the test under s. 445.1(1)(a) is objective. Determining whether there is an absence of reasonable care or supervision is an objective exercise. Where there is evidence to the contrary, the Crown must prove wilful conduct and s. 429(1) of the *Criminal Code* applies. It engages a subjective element, "knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not".

[46] This position was criticized by Professor Peter Sankoff of the Faculty of Law, University of Alberta 26 Crown (7^{th}) 267.

[47] He argues that subjective foresight of the prohibited consequences must be established by the Crown as in any other criminal offence.

[48] He argues that the Crown has established the *mens rea* for the offences upon providing evidence that a person failed to exercise reasonable care or supervision leading to pain, suffering or injury, unless there is evidence to the contrary.

[49] In ***R v Picco***, 2022 NLSC 79 (***Picco***), Justice P.A. O'Flaherty J., considered a Crown appeal from acquittals on charges under Sections 445.1(a) and 446(1)(b).

[50] The trial judge found that the accused had failed to provide adequate food and water for the dogs. She also found that the neglect was a marked departure from the norm.

[51] However, she found that the Crown had not proven that the failure to provide was wilful. She found that the accused had over estimated his ability to restore the dogs' health because of family and legal issues.

[52] Based on the facts she found, the trial judge held she did not believe the Respondent subjectively intended to neglect the dogs. The trial judge concluded that she must still consider whether, under s. 429 of the *Code*, the Respondent "wilfully" failed to provide adequate food and water to the dogs, which she found required that she consider whether the Respondent had acted "recklessly".

[53] The trial judge adopted a definition of recklessness equating it to a "conscious disregard of a substantial and unjustified risk that one's conduct will result in prohibited consequences". She found that the Respondent had owned and cared for beagles for many years, and had sought help to care for the dogs, but the stresses of his life overtook him and he had failed to provide adequate dare. Based on the facts, she concluded that the Respondent had overestimated his ability to bring the dogs back to health but his behavior did not amount to "recklessness" within

the meaning of s. 429(1) in the sense of a conscious disregard of a substantial and unjustified risk.

[54] She found that the accused had rebutted the evidentiary presumption under Section 445.1(3) and had created a reasonable doubt that he had wilfully caused unnecessary pain or suffering, either on a subjective or an objective basis.

[55] Justice O'Flaherty upheld the trial judge. He agreed with an early decision of Green J. in ***R v Higgins*** (1996) 144 Nfld PEIR 295, that the *mens rea* of the offence under Section 446(1)(a) of the *Code* was determined on the standard of subjective foreseeability, not on the objective standard of reasonableness.

[56] He then said:

> [64] Based on these authorities I conclude that the *mens rea* of the offences under s. 445.1(a) and s. 446(1)(b) of the *Code* is subjective, and requires that the Crown prove that the accused intended the consequences of his acts, or that knowing of the probable consequences of those acts, the accused proceeded recklessly in the face of the risk. ...

[57] He concluded:

> [71] I conclude that "evidence to the contrary" under s. 445.1(3) includes any properly admissible evidence that tends to show that the Respondent did not "wilfully" cause unnecessary pain, suffering or injury to the dogs and "evidence to the contrary" is not limited to evidence tending to show the Respondent acted reasonably. In the context of s. 429(1), which extends "wilfulness" to include "recklessness", I conclude that "evidence to the contrary" includes evidence that the Respondent did not act recklessly, but was merely careless. As evidence tending to show that the Respondent was merely careless would not amount to evidence of his reasonable care and supervision of the animals if follows that I also reject the argument of the Crown that only evidence of reasonable care or supervision of an animal can amount to "evidence to the contrary" under s. 445.1(3) and rebut the presumption.

[58] The difference between subjective and objective *mens rea* is set out in ***R v Creighton***, [1993] 3 SCR 3:

> [22] In writing for the majority in ***R v Creighton*** 1993 CanlII 61 (SCC), [1993] 3 SCR 3, McLachlin J. restated her views as to the distinction between the two standards. They are clearly expressed, at p. 58, as follows:
>
> By way of background, it may be useful to restate what I understand the jurisprudence to date to have established regarding crimes of negligence and the objective test. The *mens rea* of a criminal offence may be either subjective or objective, subject to the principle of fundamental justice that the moral fault of the offence must be proportionate to its gravity and penalty. Subjective *mens rea* requires that the accused have intended the consequences of his or her acts, or that knowing of the probable consequence of those acts, the accused have proceeded recklessly in the face of the risk. The requisite intent or knowledge may be inferred directly from what the accused said or says about his or her mental state, or indirectly from the act and its circumstances. Even in the latter case, however,

> it is concerned with "what was actually going on in the mind of this particular accused at the time in question". L'Heureux-Dube J. in ***R v Martineau***, supra at p. 655, quoting Stuart, *Canadian Criminal Law*, (2nd ed. 1987), at p. 121.
>
> Objective *mens rea*, on the other hand, is not concerned with what the accused intended or knew. Rather, the mental fault lies in failure to direct the mind to a risk which the reasonable person would have appreciated. Objective *mens rea* is not concerned with what was actually in the accused's mind, but with what should have been there, had the accused proceeded reasonably.

Evidence to the Contrary

[59] Section 445.1(3) provides that proof of the act is proof of wilfulness 'in the absence of any evidence to the contrary'.

[60] That expression is used in multiple places in the *Criminal Code*. It is not defined in the *Code*, but the Ontario Court of Appeal in ***R v Nagy***, 45 CCC (3d) 350 dealing with the similar wording on a charge of unlawfully entering a dwelling house stated:

> Secondly, "evidence to the contrary" means any evidence, in either the prosecution's or the accused's case, which is not disbelieved by the trier of fact and which gives rise to a reasonable doubt with respect to the existence of the intent to commit an indictable offence on the part of the accused: ***R v Proudlock***, *supra*, at pp. 325-7.
>
> Finally, "... when there is evidence to the contrary, in the sense of evidence tending to negative the existence of the necessary intent, the onus is then upon the prosecution to prove the existence of the necessary intent beyond a reasonable doubt": ***R v Campbell*** (1974), 17 CCC (2d) 320 at p. 322 (Ont. CA).

Analysis

[61] In the present case, the accused did not testify, but his statement to the Humane Society officers sets out his explanation of events.

[62] With respect to the weight loss, he points out that he was feeding Seiko three patties of kangaroo meat daily, which was the recommended amount for a dog that size, according to the label on the box in his freezer. He said that the weight loss started with the kangaroo meat, which was in May 2020. I note that Seiko weighed just over 30 kilograms in February 2019 when seen by Dr. Chynoweth. He rated her weight as 3 on the Purina scale; just under the ideal 4 or 5. This vet told the accused that raw food was not satisfactory.

[63] Seventeen months later when seen by Dr. Doyle, Seiko was extremely emaciated. She weighed 18 kilograms. A photo of her shows a dog so thin that anyone seeing her would know that the dog was close to death. In fact, the witness, Kimberly Grouette knew something was wrong just by seeing Seiko in passing. It is also significant that the accused carried Seiko inside as soon as he knew that the witness was seeing Seiko, and did the same when the officers were there.

[64] He told the officers that she started to lose weight when he put her on kangaroo meat, which he describes as being 'in that month period'. He admitted that he had thought of going to

a vet when he noticed the weight loss, but that, “I did, but again in my head I’m like or I healed her before. I can do it again” page 36.

[65] He told the officers, while discussing the allergy that he switched to kangaroo meat at the end of May. Dr. Doyle saw Seiko in early July. She testified that if would take 4 to 6 weeks of complete starvation, being no food at all, for Seiko to go from a proper weight to the state she was at in early July. Since there is no suggestion that the accused was no feeding Seiko at all, it is clear that underfeeding had gone on much longer.

[66] The accused knew that he should take Seiko to a vet to deal with her weight loss, but chose not to. He would have had weeks, if not months, to witness her decline. While he might have been entitled at the outset to think that he could cure the weight loss by his own methods, there was no basis for believing that as time went on and Seiko approached death. He had been warned by Dr. Chynoweth that raw food was not satisfactory, yet he fed Seiko Lamb and Kangaroo meats even when witnessing her significant decline. He seemed more interested in not losing possession of her than he was in ensuring proper care. This was a conscious disregard of a substantial and unjustified risk as set out in ***Picco***. It was at least reckless. As such, even on a subjective basis, the wilfulness of the accused’s behaviour has been proven beyond a reasonable doubt.

[67] The skin condition was extremely painful. Both Dr. Chynoweth and Dr. Doyle described it as similar to the skin being on fire. The accused had noted constant scratching by Seiko. It is inevitable that he would know that this was because of discomfort.

[68] Dr. Chynoweth had recommended antibiotics to combat the infection. The accused refused to follow the recommended duration and dosage because of the cost and his dislike of traditional medicine, according to Dr. Chynoweth. He was entitled to have this opinion, but the persistence of the skin problem would clearly alert the accused to the obvious fact that his way of treating the skin ailment, using oils, was not working.

[69] However, there is no evidence that the prescribed treatment would have solved the issue. Neither vet could explain the source of the problem. Dr. Doyle thought that steroids had an 80% chance of working, but could not be sure that it would. Diagnostic tests might have shown the answer, but that is not certain. Accordingly, I cannot find that the Crown has proven beyond a reasonable doubt that the accused’s refusal to follow a plan caused the ailment to continue.

[70] However, the ailment could have had less effect on the pain level for Seiko if pain medication had been given to an obviously suffering dog. The accused had no explanation for failing to address that obvious problem. As such, I find that he wilfully allowed the pain to continue, even as measured on a subjective basis.

[71] In summary, I find the accused is responsible for the malnutrition and extensive pain suffered by Seiko. As such, he is guilty of all three charges. Counsel may discuss the result of ***R v Kienapple,*** [1995] 1 SCR 729.

Dated at the City of Calgary, Alberta this 15th day of July, 2022.

P.B. Barley
A Judge of the Provincial Court of Alberta

Appearances:

Rosalind Greenwood
and
Jo-Ann Munn Gafuik
for the Crown

Parbinder S. Bhangu
for the Defence