1987 CarswellBC 1729
British Columbia County Court

R. v. Cretney

1987 CarswellBC 1729, 1 W.C.B. (2d) 373

Regina vs Edward Cretney

Cooper J.

Judgment: February 23, 1987
Docket: 130262

Counsel: M. Petrie, Esq., for Crown
L.A. Best, Esq., for Appellant

Subject: Criminal
Headnote
Criminal law

***Cooper J.*:**

1 This is an appeal from conviction before His Honour Judge Lunn at Kimberley, British Columbia, on September 30, 1986 on two counts of wilfully neglecting or failing to provide suitable and adequate food and care, and one count of wilfully neglecting or failing to provide adequate food, water, shelter and care, for a number of horses in the appellant's care or custody, contrary to S. 402(1)(c) of the *Criminal Code of Canada*. The offences relate to the winter months of December, 1984 to January, 1985. One of the horses was found to have died of starvation in a corral, and another horse was required to be destroyed. A herd of some 19 horses were located by helicopter in the bush and a number of them were found to be suffering from severe malnutrition. Hay that had been provided for the horses was found to be of very poor quality.

2 The learned trial Judge had before him the evidence of two veterinarians and also an agronomist, heard the testimony of two S.P.C.A. officers, and a police officer. In addition, the appellant and two witnesses who supplied hay to him, gave evidence at trial.

3 Counsel for the appellant says that there was no evidence that the appellant had abandoned the horses without food or that they were unattended. Indeed, he says, the appellant had purchased a considerable quantity of hay for the animals although some had been analyzed and found to be unsuitable. It is submitted that in his reasons for judgment the learned trial Judge disregarded completely the element of "mens rea" although it was incumbent on the Crown to prove that the offences were committed "wilfully".

4 In delivering his reasons, the learned Judge reviewed the evidence and then at P. 126 of the transcript said:

> For whatever reason, the accused was in charge of these animals, and I find that on all three counts, he neglected and failed to provide suitable and adequate food and care for these animals, and on all three counts, therefore, I find you guilty as charged.

5 Nowhere in his reasons does the learned Judge appear to address the issue of "wilfulness". That failure, says appellant's counsel, amounts to misdirection and for that reason the convictions should be set aside. In support of this proposition, he cites *R v McHugh* (1966) 1 C.C.C. 170, a decision of the Nova Scotia Supreme Court, In that case an owner of a race horse had been charged with wilfully causing unnecessary pain to his horse by omitting to give it proper care and attention whilst in a suffering state. The trial Judge had dealt with the question of whether what was done was done wilfully but in doing so he said

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that wilfully meant "purposefully, with an evil intention, corruptly". He then went on to find that the accused was not guilty of the offence in that sense. The Supreme Court did not agree. It found that the learned trial Judge had not applied the definition of "wilful" as found in S. 371(1) (now S. 386(1)) of the *Code* which provided as follows:

> 371(1) 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 purpose of this Part, wilfully to have caused the occurrence of the event.

6 The Supreme Court there found that the trial Judge, had apparently not considered and applied S. 371(1) in his decision and his failure to do so was a non-direction amounting to a misdirection and accordingly it directed a new trial.

7 The question here is whether there is evidence on the record to show that the learned trial Judge failed to direct himself on the issue of wilfulness, an essential ingredient of the offences, and thereby a misdirection occurred.

8 In *R v Bush* (1938) 31 C.C.C. 269 the Court of Appeal of this province said:

> Nor can it be presumed that (the trial Judge) has fallen into error and misdirected himself unless that error is made manifest, as e.g., it has been in some appeals that have come before us wherein the reasons assigned themselves disclosed the self-misdirection.

9 The Court there held there was nothing to warrant such a conclusion and therefore "the assumption of a proper self-direction must prevail in this Court as heretofore".

10 Again, in *R v Twist* (1980) 16 C.R. (3d) 94 the Court of Appeal held that the County Court Judge had lost sight of the requirements imposed upon him by the Supreme Court of Canada in *Corbett v R* (1975) 2 S.C.R. 275 where the latter court held that he might allow an appeal where he found the verdict was unreasonable or could not be supported by the evidence. The learned County Court Judge was found to be in error in allowing the appeal on the ground that the trial Judge had not directed his mind to an issue of fact that was essential to sustaining a conviction.

11 While in the appeal before me and on reading the reasons for judgment of His Honour Judge Lunn, I am unable to find any reference to the issue of "wilfulness", nevertheless I am not able to conclude from the record that he either failed to direct himself properly or that he misdirected himself. Clearly, the misdirection which was evident on the record in the *McHugh* case is not present here.

12 On the evidence before the learned trial Judge, I find that the verdict was not unreasonable and could be supported by the evidence.

13 The appeal is accordingly dismissed.

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