R. v. Daly

Ontario Judgments

Ontario Court of Justice (Provincial Division)

Ottawa, Ontario

Hunter Prov. J.

Oral judgment: February 23, 1996.

Information No. 94-33251

[1996] O.J. No. 5292

Between Her Majesty the Queen, and Ernest Daly

(5 pp.)

Case Summary

Animals — Offences — Dogs — Cruelty to animals.

Trial of Daly for neglecting a dog. There was evidence that the dog lived outside. The dog lived to be nine or 10 years of age. It was ill when it died, and the state of its coat was not good.
HELD: Daly was acquitted.

The Crown failed to establish that the dog died due to neglect or abuse by Daly. The state of its coat and its illness could have been caused by the dog's advanced age. It was not abusive to keep the dog outside.

Statutes, Regulations and Rules Cited:

Criminal Code.

Counsel

M. Lindsay, for the Crown. T. McCann, for the accused.

HUNTER PROV. J. (orally)

1 I don't disagree with you, Mr. Lindsay, on a personal basis; but, then again, my dogs live inside. But I was raised in the country where dogs didn't live inside and all the dogs I had as a child didn't live inside, and they lived and died outside. I never once thought that any of the animals that we cared for were poorly cared for because they died outside. Maybe I'm wrong, but that was where they lived. That was their environment - when I was growing up at least, as a child, dealing with animals.

2 I think Dr. Caldwell has fairly put it that this dog, as much as we can tell from the evidence before the court, lived well beyond its expectation in terms of its age. And whereas I may have taken the dog in the last few months of its apparent illness into the home where it may be more comfortably spending its last few days, it's curious to

understand that the dog could quite legally and on recommendation, at least in part, I take it, suggested, have been put down much sooner but for the choice of the family not to do so apparently.

3 This is a criminal charge and it is a finding of criminality which, frankly, I would hate to put upon anyone without solid evidence that that is what occurred.

4 Miss Harris and Miss Ozarko had a legitimate concern for this animal. It would have been helpful had that concern been addressed to the Humane Society earlier - through August, July, September, whatever - and the whole matter may have been avoided if the medical history of the dog had been known and reviewed and canvassed with the family as well. I understand their concern.

5 I was somewhat surprised at the choice of methods used to remove the dog once it had died. I could understand, perhaps, removing the animal from an ongoing abusive situation if, through frustration or otherwise, resources weren't able to address that question. But once the animal had deceased, I was surprised at the steps taken to remove the animal and not to turn it over to the Humane Society and so on. However, I don't think anything really turns on that.

6 Dr. Caldwell has given his evidence and I accept that the manner in which the dog was examined really wasn't affected substantially. What was, however, affected was his ability to have available to him the history of the animal's care.

7 This animal was at least nine or ten years of age and obviously had gotten to that age in the care of the accused and his family. Frankly, on the evidence of Dr. Caldwell, I would be reluctant, without any evidence from the defence, to conclude that the accused had acted in a criminal manner with respect to this animal.

8 And as I said earlier, I have three members of my family who happen to be dogs; and I recently put a person in jail, Mr. Daly will be delighted to know, for six months for abusing a dog - actually, in that case it was a cat. I do believe it's an important section of the Code.

9 However, I am not satisfied that the Crown has established beyond a reasonable doubt, in law and on the facts, as I understand them, that the cause of this dog's demise was because of neglect or abuse at the hands of the owner. It would appear to me that it is equally consistent with the advanced age of this animal and the megacolon that the dog apparently suffered from that affected his nutritional abilities and caused him to deteriorate in his medical status. The only thing, I suppose, that troubles me in that is the state of his coat at the time of his death, which certainly suggests that he was not being properly groomed. There may be a number of reasons for that, but that in itself, in my view, would not advance or suggest to me that the dog had been neglected to the state that it would involve a finding of a criminal culpability on the part of the accused.

10 In the circumstances, the charges against the accused are dismissed for the reasons advanced.

HUNTER PROV. J.
