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**R. v. Fuller**

**Between**  
**Her Majesty the Queen, and**  
**George Fuller**

[1994] O.J. No. 4285

Court File No. 2823

Ontario Court of Justice (General Division)  
London, Ontario

**McGarry J.**

Oral judgment: November 9, 1994.

(8 pp.)

*Animals -- Cruelty to animals.*

Trial of Fuller on a charge that he wilfully injured cattle. Neaves owned a stallion that he had bought five years before for some \$38,000. He owned a variety store when he met Fuller. Neaves had been facing a lot of stress through his work and the increased boarding fees for his horse. He felt the horse had to be killed. The owners of the stable said that Neaves sought them out regarding killing the stallion and they refused. Fuller was a 42-year-old truck driver who transported live animals. Neaves claimed that he asked Fuller to assist him in killing the horse for \$1,000. Fuller joined him at the stable and Neaves put the saddle on the horse and led it out by its halter to a county road. Neaves claimed that prior to that, they left a sledge hammer by the railway tracks in anticipation of killing the horse. The horse was led down the tracks. Neaves said that Fuller joined them at the railway tracks, at which point Neaves turned his back because he could not stand seeing the horse hit. Over the course of three blows, the horse fell down three times. They agreed that it should stop. They returned to the stable and Neaves placed garbage bags over the head of the horse and ropes around its neck. When Foot approached, he said that he was going to finish what he had started and Foot, a former police officer, placed both Neaves and Fuller under citizen's arrest. While waiting for the police, Neaves concocted a story that a blue heron had surprised the horse and it shied, fell and injured itself. They subsequently told this story to the police. Some days later Fuller was arrested and told the police the truth. A veterinarian testified that the blows to the horse's head were consistent with that of a sledge hammer. Fuller said that he attended at the farm at Neaves' request to watch Neaves walk out with the horse. He walked 50 feet behind the horse because he was frightened of horses. He did not see the sledge hammer, but saw the horse fall three times. He was not involved with the injuries to the horse. Neaves was similarly charged with these offence.

HELD: Fuller was convicted. The Court had very grave difficulty accepting Fuller's version of the events and his credibility was not satisfactory. Neaves's evidence was accepted. The opinion of the veterinarian was considered. Both

Neaves and Fuller were involved with the injury to the horse, either through hitting the horse or holding it.

**Statutes, Regulations and Rules Cited:**

Criminal Code, s. 444(a).

Court Note:

Charge: S. 444(a), Criminal Code - Injuring or endangering cattle

**Counsel:**

G. Beasley, for the Crown.

R.A. Braiden, for the accused.

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**1 McGARRY J.** (orally):-- In this matter, the accused is charged that on or about the 31st day of July, 1993, at the Township of London, he did wilfully injure cattle, to wit: a horse, contrary to Section 444(a) of the Criminal Code.

**2** The Crown relies principally upon the evidence of one Gary Neaves, who is the owner of a stallion known as Travador, which was purchased by Mr. Neaves some five years ago for approximately \$38,000, which included various expenses, including the horse, of course.

**3** Mr. Neaves owned a variety store in Thamesford and it was at that location that he met the accused who had dropped in on a regular basis to enjoy his company and to drink coffee. Mr. Neaves moved to London and was employed in a similar store and occasionally the accused would drop by and did so on the 31st day of July, 1993.

**4** In his evidence Mr. Neaves explained that he had been working very long hours including 100 hour weeks and that he was a diabetic and that subsequent to the events which we heard yesterday, he received psychiatric assistance.

**5** In reviewing the evidence and the extremely bizarre events that occurred surrounding this horse, I think I have to take into consideration the fact that Mr. Neaves had been facing a great deal of stress in his life through his work and also this would have had to have been coupled with the increased boarding fees with respect to the horse and his failure to sell the stallion through the Fries as, clearly, he was most upset that they had told him they had carried out an extensive campaign to sell the horse but were unable to do so and his explanation in court yesterday was to the effect that none of this had taken place.

**6** In any event, he was left with a horse which he felt, for reasons that escape me, had to be killed. Mr. Neaves admitted that he had considered killing the horse by putting it into traffic, pushing it backwards into a gravel pit, and had taken a sledge hammer to its knees. One might be suspicious of the reason for causing this fully insured animal's death; however, it is clear that the insurance monies would not be paid if it came to the insurer's attention that Mr. Neaves had caused the death of the animal.

**7** This would have clearly come to the attention of the insurers because he apparently spoke to the owner of the stable who, he claims, suggested various techniques for killing the stallion which I referred to above. However, the owners were called by the defence and stated that, in fact, it was Neaves who had sought them out, particularly the male owner, with respect to killing the stallion and that they had refused. In fact, the female owner and her blacksmith were concerned enough that they had contact with the O.P.P. out of concern and also a fellow boarder - I believe it was Mrs. Foot - had taken a video of Mr. Neaves walking the stallion in the busy traffic nearby the stable.

**8** Into this rather unusual background comes the accused. He is a 42 year old truck driver who trucks live animals and has had some farming experience and has a grade eight education. Neaves claims that he asked the accused to assist him in killing the horse for \$1,000. In Mr. Neaves' evidence, it seemed to me that the \$1,000 was not of crucial importance but, in any event, the accused joined him at the stable, at which point Mr. Neaves put the saddle on the stallion and led it out by its halter to a county road adjoining the stable. Prior to that, he and the accused left a sledge hammer by the railway tracks in anticipation of killing the stallion, so Mr. Neaves claimed.

**9** The horse was led to a point approximately 100 yards down the tracks from the side road and Mr. Neaves said the accused crossed the field and joined them at the railroad tracks, at which point Neaves said he turned his back because he couldn't stand seeing his horse hit, and over the course of three blows the stallion fell down on three occasions. At the end of the blows, Neaves says that both he and the accused agreed that this should stop. Now, Neaves saying that he could not look as these blows were struck on the horse is not consistent with his previous attempts of at least laming the horse, so I find difficulty in accepting this portion of his evidence.

**10** After they had decided to stop the blows, they returned to the stable and went into the stable area, the stall area, and Neaves went upstairs to obtain some green garbage bags and went back to the stalls where the accused was holding the lower portion of the stall door closed. Neaves placed green garbage bags over the head of the horse and ropes around its neck and when Mrs. Foot approached, he stated that he was going to finish what he had started, at which point Mrs. Foot, who is a former police officer, placed both Neaves and the accused under citizen's arrest and told them to sit in Mr. Neaves' van.

**11** While waiting for the police to arrive, Mr. Neaves concocted a story which involved a blue heron and that they were both to tell the police that a blue heron had surprised the horse and it shied. It fell and injured itself, which would explain the injuries. Both the accused and Neaves subsequently did tell this story to the police.

**12** Some days later, the accused was arrested. He advised the court that he at that point told the police the truth and claimed to be telling the truth in court yesterday.

**13** The Crown called Dr. Foot, who is a veterinarian, who also happened to be at the barn on July 31 and examined the stallion and took photographs. He described the state of the stallion, which he indicated was dazed, and that he found the blows to the head consistent with that of a sledge hammer and that there was a cut behind one ear which he had seen previously and is often caused by a halter when it's placed under stress and cuts into the skin and often happens when the horse is pulling away from the lead shank or when the halter is caught on another object.

**14** The accused gave evidence and stated that he had attended at the farm at the request of Mr. Neaves and he went there to basically watch Mr. Neaves walk out with the horse and he was going to be standing by and observing the horse, as he likes animals. He describes the scene whereby he walked some 50 feet or more behind the horse and he did so because he was frightened of horses as he had been kicked as a youth. He states that he, at no time, saw the sledge hammer but did see the horse fall on three different occasions and on the first occasion, saw a flash, which I think I can take it as his indication that there may have been something such as a sledge hammer being used.

**15** He, according to his evidence, was not involved in any way with the injuries to the horse and therefore was at a loss to explain to the court why he would tell a lie to the police concerning the blue heron and I think his words were to the effect he just couldn't explain why he had gone along with this concocted story.

**16** In considering the physical evidence and the demeanour of the accused, I have very grave difficulty in accepting his version of the events and, consequently, his credibility certainly was not satisfactory. In dealing with the defence evidence, I also listened to the evidence of character witnesses and I think it's fair to say I will place them in a neutral position as far as assisting the court.

**17** Plus, when considering the evidence of Neaves, who spoke very clearly and distinctly about what happened, I'm inclined to accept his evidence. However, as pointed out by the Crown, I don't have to accept it in its entirety and I do

not. one can wonder why he was attempting to kill this stallion. As I indicated earlier, the horse must have been worth some money. Clearly, I think he had become slightly unbalanced with respect to how to deal with this issue in his life, and that he involved the accused as just one of many people that he was trying to find who would assist him.

**18** As I have indicated, in listening to the accused's explanation, it is not believable, but at the same time I have to consider that Mr. Neaves has similarly been charged with these offences and I must be cautious with respect to his evidence. What assists me is the combination of the physical evidence and the opinion of the doctor with respect to how the blows and injuries resulted in the damage to the horse which, fortunately, still survives. That, plus the evidence of Mr. Neaves, indicates to me clearly and beyond a reasonable doubt that they were both involved with the injury to the horse, either through hitting the horse or holding it.

**19** As I have indicated, I would be inclined to believe the evidence of Mr. Neaves. However, pursuant to the Thatcher case - and I'll provide the cite later if required - I am not required to find who specifically struck the blows or who specifically held the horse, providing I am satisfied beyond a reasonable doubt that they were both participants in the allegations as charged. Accordingly, I am finding the accused guilty as charged with respect to the injuries to this horse, Travador.

qp/s/np/ala