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R. v. Hollett

Between
Her Majesty The Queen, and
Nancy Hollett

[1988] A.J. No. 965

Alberta Provincial Court - Criminal Division
Judicial District of Edmonton

Liden A.C.J. Prov. Ct.

October 28, 1988

No counsel mentioned.

REASONS FOR JUDGMENT

LIDEN A.C.J. Prov. Ct.:-- The Accused, Nancy **Hollett**, is charged under Count No. 2 of an 11-count Information which is Docket No. C0360124530 that on or about the 26th day of January, A.D. 1988 at or near Sherwood Park, Alberta, being the person having the control of a domestic animal, a female Afghan dog, did wilfully neglect to provide suitable and adequate care for such animal, contrary to the provisions of the Criminal Code; she is similarly charged in Count No. 3 with respect to a male Lhasa Apso dog, in Count No. 4 with respect to a female Lhasa Apso puppy, in count No. 5 with respect to a female Lhasa Apso puppy, in Count No. 6 with respect to a female Lhasa Apso puppy, in Count No. 7 with respect to a male Lhasa Apso puppy, in Count No. 8 with respect to a male Lhasa Apso puppy, in Count No. 9 with respect to a male Lhasa Apso puppy, in Count No. 10 with respect to a male Lhasa Apso puppy, and in Count No. 11 with respect to a male Lhasa Apso puppy; the charge in Count No. 1 of the Information was withdrawn by the Crown.

The relevant provisions of the Criminal Code are s. 402 and s. 386(1), namely:

"402. (1) Every one commits an offence who

...

- (c) being the ... person having the custody or control of a domestic animal ... wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it, ...
- (2) Every one who commits an offence under subsection (1) is guilty of an offence punishable on summary conviction.

...

- (5) Where an accused is convicted of an offence under subsection (1), the court may, in addition to any other sentence that may be imposed for the offence, make an order prohibiting the accused from owning or having the custody or control of an animal ... during any period not exceeding two years."

"386. (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 purposes of this Part, wilfully to have caused the occurrence of the event."

I am satisfied, after reviewing the evidence in these proceedings, that the Crown has proved beyond a reasonable doubt that the accused, Nancy **Hollett**, was the person who, on or about the 26th day of January, A.D. 1988, at or near Sherwood Park, Alberta, had the custody and control of all and every of the dogs mentioned separately in Counts No. 2 through No. 11 of the said Information, and that she then failed to provide suitable and adequate care for them.

However, to paraphrase the words of Dickson J. (now Chief Justice Dickson) in *R. v. Sault Ste. Marie* "where the offence is criminal", as is the case here,

"the Crown must establish a mental element, namely, that the accused in committing the act did so intentionally or recklessly, with knowledge of the facts constituting the offence, or with wilful blindness toward them. Mere negligence is excluded from the concept of the mental element required for conviction."

In my opinion, the evidence herein supports, at best, mere negligence on the part of the accused, and I acquit her on all Counts.

---- End of Request ----

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