

Indexed as:

R. v. Karolev

**Between
Regina, and
Phyllis Karolev**

[1992] Y.J. No. 186

Yukon Registry No. 92-02764

Yukon Territorial Court
Whitehorse, Yukon Territory

Faulkner Terr. Ct. J.

Judgment: September 23, 1992; filed October 14, 1992

(8 pp.)

Criminal law -- Cruelty to animals -- Sentencing -- Considerations -- Accused remorseful -- Loose dogs terrorizing accused's family -- Conditional discharge.

The accused pleaded guilty to two counts of causing unnecessary pain to animals. She put rubber bands around the testicles of two of her neighbours' dogs. The result was that the testicles became swollen and gangrenous and had to be removed. The family of the accused, especially her four young children, had been terrorized for some years by loose dogs in the neighbourhood. Several efforts by her family to have the neighbours or the police deal with the problem had failed. Since the acts complained of, the accused had paid the owners' vet bills and suffered considerably from the comments of the neighbours.

HELD: The accused was conditionally discharged. The discharge was subject to the accused's satisfactorily completing six months probation. The accused's conduct was an act of desperation following long and severe provocation. It was in the interest of the accused and not inconsistent with the public interest that she be discharged.

Counsel for the Crown: David A. McWhinnie.

Counsel for the Defence: Leigh F. Gower.

FAULKNER TERR. CT. J. (Orally):-- The accused has entered pleas of guilty to two charges of causing

unnecessary pain to animals.

What Mrs. Karolev did was to place rubber bands around the testicles of two of her neighbours' dogs. In each case the testicles became swollen, gangrenous, and painful, and both dogs required veterinary surgery to have the testicles removed. At first glance and without more it might be easily concluded that this was an act of great and, one might even say, twisted cruelty on her part. It may also be well at the outset to confess my own prejudices and say that I am a dog owner of some 25 years standing, and I consider any form of cruelty to dogs or other animals as despicable in the extreme. There is, however, a long background to this case which needs to be understood to put what happened into context.

Mrs. Karolev had lived in a rural subdivision at Marsh Lake for some four years with her husband and family who now number four young children. Throughout this time she and her husband have kept several animals including dogs, goats, and chickens. Clearly, on the evidence, the Karolevs were responsible animal owners who looked after their own stock well and kept their animals in general, and their dogs in particular, under strict control.

Throughout the whole time that they have lived at Marsh Lake there have been dog problems in the area caused by packs of loose dogs. Probably as a result of this, some of the dogs in the area started to disappear and these disappearances have included two dogs owned by the Karolevs.

During the last several years the Karolevs have had numerous problems on their own property caused by loose dogs. On a number of occasions their chicken coop was raided by dogs, and eventually in desperation Mrs. Karolev gave the chickens away. In 1991 dogs broke into their goat enclosure and killed all five goats the Karolevs owned. In early 1992 one of the children's pet dogs was killed in front of them by a neighbour dog.

Additionally, loose dogs began to frighten her children. One child had been bitten on the face and hands, and it had reached the point where Mrs. Karolev had become afraid to let her children play outside unless she was with them. In particular, one of the dogs involved in the incident before me, a malamute called Dusty, was constantly in her yard. It had jumped on her and bared its teeth at her children. It had fought with her dogs, and her 2 and a half-year-old daughter was having nightmares as a result of being menaced by this dog. She had tried chasing the dog away, to no effect. She had asked the owner to keep the dog under control, also to no effect. There had been discussions with the police about what to do about the dog problems in the neighbour, again to no effect.

On the date in question, the accused's own bitch was in heat, and the dog Dusty was there constantly throughout the day. At one point she went out and found Dusty breeding her dog. While Dusty was thus engaged, she was able to clip a chain onto the dog. She then decided to put elastic bands on the dog's scrotum, which she did, and then released it. That same day she did the same thing to another dog, a cockapoo cross owned by another neighbour. This dog was a much lesser problem than Dusty, but it did frequent their yard and fight with her male dog, and it seemed to act as a magnet in attracting other dogs onto her property. She had repeatedly asked the owner's sons to keep the dog away, again to no effect.

It is also very significant to note that on the date in question she also performed the same operation on her own male dog, feeling that this would also contribute to lessening the dog fights. Her own dog apparently suffered no ill effects from this procedure.

Since July when the acts complained of occurred, Mrs. Karolev has paid the owners' vet bills. She and her family have suffered considerably from the comments and actions of her neighbours, and she has been accused of committing many other acts wherein dogs have been hurt, including, I am told, being accused of being responsible for the aforementioned disappearances of dogs, a theory that conveniently loses sight of the fact that two of the dogs that disappeared were the Karolevs' own dogs.

Much was made of the fact that after Dusty's owner had discovered the elastics on his dog's scrotum and had asked Mrs. Karolev to assist in removing them, she did so but only removed one of the two elastic bands. She did not

tell the owner that she had put the elastics on the dog.

On the evidence I cannot find that her failure to remove the second elastic band was deliberate in the sense that she meant to conceal the fact that there was a second elastic there and thus cause the dog additional suffering.

It was also suggested that Mrs. Karolev should have done something else. This is true as far as it goes, but it was also suggested that she should have built a cage or a fence or some means of keeping dogs out. In my view, it is the responsibility of the dog owner to keep the dog under control, and not the responsibility of the owner's neighbour to put up barricades to keep the neighbouring dogs out.

Having regard to all the problems that Mrs. Karolev had had with dogs, including, as I have said, incidents involving her children, killing of her livestock and so forth, and considering that she was herself a careful and conscientious dog owner, I conclude that her actions, although clearly wrong and unacceptable, were acts not of cruelty but of desperation. This is an exceptional case calling, in my judgment, for an exceptional disposition.

It must also be noted that it is one of the nice moral and legal ironies of the situation that, had Mrs. Karolev encountered the dogs worrying her children or livestock on her property and killed them, she would have committed no offence.

To deal with the disposition; firstly there is nothing whatever in the evidence which would move me to prohibit Mrs. Karolev from owning or caring for animals. I am satisfied that she is a caring and competent animal keeper who poses no risk of harm whatever to animals under her care.

With respect to the remainder of the disposition, I have already said that this is an exceptional case. It was an act of desperation following long and severe provocation going into years. Other steps, as for example talking to the owners, to the police, or depending upon community action to deal with the problem had brought no results. The area has no animal control, and there was no dog catcher to call. It cannot be concluded that it was simply revenge against the dogs or their owners for she did the same thing to her own dog so as to neuter it and curb its aggressive tendencies. The procedure employed, although now considered cruel, is not unheard of in the past as a means of castrating animals. She has no record. She has paid substantially all of the veterinary bills that were incurred. She confessed immediately upon being confronted by the police. She has entered an early guilty plea.

In light of all that has happened, and in view of the evidence of character that was brought, it seems to me that there is really no issue of deterring Mrs. Karolev personally from re-offending, and in all of the circumstances consideration should be given to granting a discharge.

There is a danger, as Crown counsel says, that a discharge will send out the wrong message, a message that this kind of behaviour is acceptable, when clearly it is not. This danger unfortunately exists in every judgment the Court pronounces because the public is not necessarily informed of all the facts that were heard by the Court.

In this case, as I said at the outset, someone hearing the bare facts of what Mrs. Karolev did could well form a completely different impression of the accused and her actions. I am confident, however, that a fair-minded person, fully informed of the facts, would consider what she did, though unacceptable, to be very understandable in human terms. I do not believe that such a person would consider it necessary that Mrs. Karolev be branded as a criminal.

In all the circumstances, I consider it to be in Mrs. Karolev's best interests and not contrary to the public interest that she be discharged.

I also consider it appropriate that there be some public acknowledgment by Mrs. Karolev that what she did was wrong. Accordingly, the discharge will be conditional upon her satisfactory completion of 6 months probation.

The terms of the probation order will be that she will keep the peace and be of good behaviour. She will report

to the Court as and when required. She will report to and be under the supervision of an adult probation officer. She will pay the remainder of the veterinary bills incurred which I fix at the amount of \$100, and she will perform 40 hours of community work service. In my view it would be most appropriate that that community work service be performed in an animal control shelter or otherwise in the care of animals, but I leave that to the good offices of the probation officer and those agencies charged with responsibilities of that kind.

That will be the sentence on each charge, the sentences to be concurrent.

In addition there will be a victim impact surcharge of \$35, in default of payment I day on each count.

I must advise you, Mrs. Karolev, that if you are in breach of the probation order the discharge will not be made absolute. In addition to that, the probationary terms could be extended or modified. In addition to that you could be charged with breach of probation.

MR. GOWER:

forthwith. The surcharges, Your Honour, can be paid

THE COURT: Payable forthwith.

Anything further, counsel?

MR. McWHINNIE: No, sir. Those are all the matters I have before you today. I believe other counsel have matters before you later this morning.

MR. GOWER:

Thank you, Your Honour.

FAULKNER T.C.J.