

*Case Name:*

**R. v. Sadler**

**Between  
Genevieve C.A. Sadler, Appellant, and  
Her Majesty the Queen, Respondent**

[2010] S.J. No. 694

2010 SKQB 424

Docket: Q.B.C.A. 16/2009

Saskatchewan Court of Queen's Bench  
Judicial Centre of Saskatoon

**J.E. McMurtry J.**

November 15, 2010.

(26 paras.)

*Criminal law -- Regulatory offences -- Defences -- Appeal by accused from conviction for allowing an animal to be at large dismissed -- Appellant's horse got loose from its pen and created havoc on another property -- Appellant, 70, alleged she was hearing impaired which prevented her from hearing proceedings, that she was given inadequate disclosure of Crown's intent to seek restitution and had not been permitted to adduce a map into evidence -- Appellant did not take up opportunity given at trial to address her hearing impairment -- Appellant had proper notice of Crown's request for restitution -- Map would not have helped appellant establish her defence.*

Appeal by the accused from conviction for allowing an animal to be at large. The Crown alleged that the appellant's stallion got loose from its pen and found its way to another property where the stallion bred a mare, injured other horses and damaged four gates. The appellant, 70, alleged that she was hearing impaired which prevented her from hearing the proceedings and that she was given inadequate disclosure of the Crown's intent to seek a restitution order. She also alleged she had been discriminated against by the police force because of her sexual identity and that she had not been permitted to adduce a map into evidence. The appellant was represented by counsel during the trial.

HELD: Appeal dismissed. The court was not satisfied that the appellant did not hear the trial proceedings as alleged. When she raised her hearing impairment after the Crown's case, she was given

an opportunity to address the issue of her hearing impairment but did not take up that opportunity. The justice made no error in determining that the appellant had proper notice of the Crown's request for restitution. As the issue respecting discrimination was not raised at trial, there was no evidence on the record to support this claim. The map the appellant sought to introduce would not have helped the justice decide whether another horse provoked the stallion that day, the defence put forth by the appellant.

**Statutes, Regulations and Rules Cited:**

Criminal Code, R.S.C. 1985, c. C-46, s. 822 R

Stray Animals Act, R.S.S. 1978, c. S-60, s. 3

Summary Offences Procedure Act, 1990, S.S.1990-91, c. S-63.1, s. 4

**Counsel:**

Genevieve C.A. Sadler, self-represented.

Allan C. Hjelte, for the Crown.

JUDGMENT

**1 J.E. McMURTRY J.:**-- Genevieve Sadler appeals the decision of Justice of the Peace K. Dmytryshyn after conviction on a charge of allowing an animal to be at large, contrary to s. 3 of *The Stray Animals Act*, R.S.S. 1978, c. S-60.

**2** By s. 4 of *The Summary Offences Procedure Act, 1990*, S.S.1990-91, c. S-63.1, the appeal provisions of Part XXVII of the *Criminal Code*, R.S.C. 1985, c. C-46 are determined to apply to charges laid under *The Stray Animals Act*. Section 822 of the *Criminal Code* sets out the powers of the appeal court. Generally, s. 822 provides that an appeal from conviction will be allowed if:

- a) the verdict is unreasonable or cannot be supported by the evidence;
- b) the verdict was based on a wrong, or incorrect decision on a question of law;
- c) the verdict is a miscarriage of justice;

**Background**

**3** Ms. Sadler is 70. She lives on an acreage in Corman Park, Saskatchewan and teaches in Fond du Lac. Ms. Sadler is an experienced horse-woman.

**4** Ms. Sadler was charged with allowing an animal to be at large on June 6, 2006, contrary to s. 3 of *The Stray Animals Act*. The Crown alleged that Ms. Sadler's stallion got loose from its pen and found its way to property owned by the Beaudette/Gardner family. While there, the stallion wreaked havoc. He bred a mare, injured other horses and damaged four gates. It took three days before a cowboy hired by the R.M. of Corman Park could capture him and take him away to be sold by Saskatoon Livestock Sales.

5 The trial was held before Justice of the Peace K. Dmytryshyn on January 5, 2009 and adjourned to January 21, 2009 for decision. Ms. Sadler was found guilty and fined \$250.00. The trial was adjourned again to March 24, 2009, to deal further with the issue of restitution and damages. On that date, Ms. Sadler was ordered to pay restitution to the R.M. of Corman Park in the amount of \$322.03. Ms. Sadler takes no issue with the sentence ordered, except on the issue of disclosure.

### **Grounds of Appeal**

6 Ms. Sadler appealed the decision of Dmytryshyn J.P. on two grounds:

- i) that Ms. Sadler's hearing impairment prevented her from hearing the proceedings; and
- ii) that Ms. Sadler was given inadequate disclosure of the Crown's position on penalty.

7 At the hearing of her appeal, Ms. Sadler raised two new issues. First, she submitted that she had been discriminated against by the Corman Park police force because of her sexual identity. Additionally, Ms. Sadler raised a concern that she had not been able to prove her case adequately. She submitted that she had attempted to put a map before the justice showing that her horse could not have reached the Beaudette/Gardner farm on its own, but she had been prevented from doing so.

### **Issues**

8 Ms. Sadler has raised four issues;

- (a) her hearing impairment;
- (b) inadequate disclosure;
- (c) discrimination;
- (d) interference by the justice in the defence presentation of its case.

### **The Accused's Hearing Impairment**

9 Ms. Sadler was represented by counsel at the trial. She asserts that she did not understand her right to hear the proceedings. After conviction, she decided to represent herself.

10 The Crown submits that the court should take into account that her counsel made decisions on her behalf. In particular, the Crown asserts that the evidence heard by the justice before Ms. Sadler's counsel made her hearing impairment known was "more or less irrelevant" given the position Ms. Sadler took at the trial.

11 The Crown submits that its evidence established two things: that Ms. Sadler owned the horse that got into the Beaudette/Gardner yard and the amount of the damage caused to the Beaudette/Gardners as a result. The Crown submits that Ms. Sadler took no issue with the ownership of the horse and, in the final analysis, it put forward no claim for restitution on behalf of the Beaudettes.

12 A fundamental element of a fair judicial proceeding is that an accused know the case against her. Clearly, Ms. Sadler was entitled to hear the witnesses for the Crown. However, I do not accept Ms. Sadler's representations that she could not hear them. Ms. Sadler represented herself at the appeal and it is apparent that she has a forceful personality. I do not accept that she believed she could say nothing about her inability to hear the witnesses until the close of the Crown's case.

**13** More significantly, after hearing about Ms. Sadler's impairment, the justice invited Ms. Sadler to discuss with her counsel what she might have missed in the testimony. Nothing further was said by Ms. Sadler or her counsel. At the appeal, Ms. Sadler did not advise of any part of the proceedings that she missed.

**14** Ms. Sadler was given an opportunity at the trial to address the issue of her hearing impairment. She did not take up that opportunity. I do not find the justice made any error in proceeding in the manner she did.

### **Disclosure**

**15** Ms. Sadler claims that she did not receive disclosure of the Crown's representations on restitution until the day of sentencing. On January 21, 2010, the justice gave her decision finding Ms. Sadler guilty. She fined Ms. Sadler \$250.00 and ordered restitution. However, she was of the view that the Crown's restitution request was not in compliance with *The Stray Animals Act* regulations. Therefore, she ordered the Crown to re-do its calculations. She set March 24, 2010 as the date to speak to damages and restitution. On March 24, 2010, the Crown put forward a restitution claim for the R.M. of Corman Park only. It amounted to \$322.03. Ms. Sadler received the restitution claim from the Crown on that date. The Crown had sent a copy to her counsel previously, but Ms. Sadler had dismissed him that morning. When asked to comment, Ms. Sadler stated only, "I'd like to point out that had this been properly done in the first place I wouldn't have had to fly down here today and I'm wondering about my expenses in having to come down ... for this appearance." She said nothing about having insufficient time to review the claim.

**16** The justice determined that she was now satisfied that the Crown had complied with the regulations and she made the requested order for restitution.

**17** At the appeal hearing, Ms. Sadler did not assert that there was anything out of order with the restitution requested by the Crown. The justice was satisfied that Ms. Sadler had proper notice of the Crown's request for restitution and I do not find she made any error.

### **Discrimination**

**18** Ms. Sadler alleges discrimination against the Corman Park police. She did not raise this issue at trial, so there is no evidence on the record to support her claim. Accordingly, I need not deal with the allegation further.

### **Interference by the Justice**

**19** Ms. Sadler submits that she was prevented by the justice from putting into evidence a map of the properties in issue. She wanted to illustrate, by use of the map, that her horse could not get from her property to the Beaudette/Gardner property on its own.

**20** During examination-in-chief, Ms. Sadler made a request to use a map while explaining about a previous occasion when her stallion had escaped. The justice expressed concern that Ms. Sadler was testifying about an incident that she did not personally have any knowledge about, so she interrupted to tell counsel that Ms. Sadler should "give testimony as to what did occur, not what she's again speculating occurred." Nothing further was said about the request to use a map, by the justice or anyone else.

**21** Ms. Sadler was charged with allowing an animal to be at large. The charge under *The Stray Animals Act* is a strict liability offence requiring the Crown to prove only that the accused allowed

an animal to be at large. To avoid conviction, the defence must show, on a balance of probabilities, that Ms. Sadler exercised all reasonable care to prevent the commission of the offence. (See: *R. v. Lamb* 2010 SKPC 106, [2010] S.J. No. 443 (QL); *R. v. Westfair Foods Ltd.* 2006 SKQB 87, 277 Sask.R. 288)

**22** While the justice does not properly describe the offence as a strict liability offence, it is clear from her decision that she accepted the defence argument that Ms. Sadler could raise a defence of due diligence. However, the justice did not accept the evidence presented by the defence.

**23** The sole witness called by the defence was Ms. Sadler. The defence theory was that the stallion's trespass was involuntary and may have been caused by the provocation of a horse owned by a third party. Ms. Sadler testified that when the stallion escaped from its pen she was in Fond du Lac teaching school. In her absence, she arranged for her daughter to visit the acreage a couple of times a week to water the horses and for a neighbour to pick up the mail. Other than that, no one was watching the animals. She also testified that she had last inspected the fences holding the stallion, and other horses, in April, two months before the incident.

**24** In her decision, the justice deals with Ms. Sadler's theory that her stallion was at large as a result of the actions of other horses. She determined that there was "no tangible evidence of third party involvement" and she dismissed the notion that the stallion travelled involuntarily to the Beaudette/Gardner property. Thus it is clear that the justice was fully aware of the defence theory. She further determined that Ms. Sadler had not established due diligence and convicted her of the charge.

**25** Ms. Sadler has submitted on the appeal that had she been permitted to use a map, she could have illustrated "how preposterous it was for the stallion to get to the [Beaudette/Gardner property] on his own." The difficulty with her argument is that the map is only a method of illustrating the defence theory, it offers no proof of the defence theory. The map would not have helped the justice decide whether another horse provoked the stallion that day.

**26** In summary, Ms. Sadler has not shown that the justice erred. The appeal is denied.

J.E. McMURTRY J.

cp/e/qlcct/qlvxw

---- End of Request ----

Download Request: Current Document: 3

Time Of Request: Friday, April 10, 2015 13:09:31