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**R. v. Singh**

**Between**

**Her Majesty the Queen, respondent, and  
Kathy Singh, appellant**

[2001] O.J. No. 537

[2001] O.T.C. 98

Court File No. 3871/00

Ontario Superior Court of Justice

**MacKenzie J.**

Heard: December 15, 2001.

Judgment: January 31, 2001.

(24 paras.)

*Criminal law -- Wilful acts respecting property -- Animals -- Neglect -- Appeals -- Grounds of appeal -- Grounds, admission of evidence -- Confessions and voluntary statements -- Sentencing -- Appeals, variation of sentence -- Grounds for varying sentence imposed by trial judge -- Considerations -- Economic or family status of the accused.*

Appeal by Singh from her conviction and sentence for wilful neglect of a domestic cat in her care. Singh operated a pet shelter where animals could be brought for adoption. The shelter did not have a euthanasia policy. The cat was brought to the shelter. The Humane Society received a complaint about the condition of the cat. The Society delivered the cat to a veterinarian for treatment. The veterinarian was unable to cure the cat and had to euthanize it. He billed the Society \$860 for his services. Singh was fined \$1,000 and had to repay the Society \$860. Singh argued that the conviction should be set aside because of a statement she made to the Society inspector. She told the inspector that she owned the shelter. She argued that she made a statement to a person in authority, and that a voir dire should have been held to determine the voluntariness of this statement. However, in her initial testimony, she acknowledged that she owned the shelter. Singh appealed against the sentence because of her impecuniosity. She was unable to work because of poor health.

HELD: Appeal against conviction dismissed. Appeal against sentence allowed. The fine was set aside. Singh was required to make restitution for the \$860. Singh was not prejudiced by her statement to the inspector. The issue was not her ownership of the shelter. It was whether the Crown had proved the offence beyond a reasonable doubt. There was sufficient evidence to support this conclusion.

**Statutes, Regulations and Rules Cited:**

Criminal Code, s. 446(1)(c).

Ontario Society for the Prevention of Cruelty to Animals Act, s. 11(1).

**Appeal from:**

On appeal from the judgment of E. Ready, J.

**Counsel:**

J. Raftery, for the respondent.

G. Lafontaine, for the appellant.

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**MacKENZIE J.:--**

**Introduction**

**1** This is an appeal by Kathy Singh against her conviction and sentence imposed on the 29th of March, 2000 relating to a charge under s. 446(1)(c) of the Criminal Code. In sum, the information alleged that the appellant "being a person having custody or control of a domestic animal, to wit, one domestic cat, did wilfully neglect or fail to provide suitable and adequate care for such cat contrary to s. 446(1)(c) of the Criminal Code of Canada".

**2** The trial judge found the appellant guilty of the offence charged. She imposed a fine of \$1,000.00, made a restitution order of \$860.12 and a probation order for 2 years. One of the terms of the probation order was that the appellant should not own or have in her custody or control any animal or bird nor was she permitted to attend at or be involved with, directly or indirectly, any pet sanctuary in the Province of Ontario for a period of two years.

**Factual Background**

**3** Briefly, the appellant and her husband were at all material times either jointly or individually persons in occupancy of premises in Mississauga called the "Pet Sanctuary". The Pet Sanctuary was acknowledged by both the prosecution and the defence as a "no kill animal shelter", that is, a place where animals could be brought and placed for adoption, without time limits on the animals' stay at the shelter. In other words, this type of animal shelter did not have a euthanasia policy or procedure in place.

**4** The charge arose following a complaint received by an inspector with the local branch of the Ontario Humane Society. The complaint related to a sick cat at the Pet Sanctuary. The inspector was concerned about the cat's physical condition and, after following the removal procedures set out

in the Act, delivered the cat to a local veterinarian for treatment. The veterinarian treated the cat but was unable to restore the cat to health; the cat had to be euthanized. The costs of the treatment billed to the Ontario Humane Society was \$860.12.

5 In the result, the inspector swore an information charging the appellant with the offence described in paragraph [1], above.

#### Analysis

6 The appellant raises numerous grounds of appeal against her conviction, including the unreasonableness of the verdict, reasonable apprehension of bias on the part of the trial judge and the failure to hold a voir dire respecting common law voluntariness of a statement made by the appellant to the inspector.

7 I am not persuaded that the grounds of appeal are meritorious with the exception of the failure to hold a voir dire.

8 The appellant submits the following:

- (a) a voir dire into the issue of voluntariness is mandatory in respect of any statement by an accused person to a person in authority unless the requirement of a voir dire was expressly waived;
- (b) the investigator was "by any definition" a person in authority by reason of s. 11(1) of the Ontario Society for the Prevention of Cruelty to Animals Act which grants inspectors the powers of a police officer; and
- (c) by failing to hold a voir dire in relation to a statement made by the appellant to the inspector, the trial judge erred in admitting that statement as part of the prosecution's case.

9 In the Crown's submission, there was no requirement to hold a voir dire with respect to the statement since the information contained in the statement was not garnered by the investigator in the course of the investigation leading to the present charge. The purported statement consist of the following exchange which occurred during the in-chief testimony of the inspector:

- Q. How would you know that Kathy Singh is the owner of the sanctuary?
- A. We had dealings with her before this complaint, and she identified to us that she was the owner of this ...
- Q. Alright. As the owner or operator? I didn't hear you.
- A. Owner.

(pages 4 and 5, lines 25, following; trial transcript).

10 There is no issue that the inspector here was a person in authority.

11 The appellant contends that by the Crown Attorney asking the inspector the above question and the inspector's answer to that question, the Crown was putting into evidence a statement made by an accused person to a person in authority, and, further, that in the absence of an express waiver, a voir dire must be held in order to determine the voluntariness and accordingly the admissibility of such statement. In addition, the appellant submits that notwithstanding the failure of the defence counsel at trial to require a voir dire for such statement, the admission of the statement relates to a material fact in the case, i.e. the ownership of the premises where the offence took place. Accord-

ingly, the appellant submits that in the absence of the voir dire and a ruling admitting such statement as a voluntary statement, the court has reached a verdict based on evidence that was not properly admitted at trial.

**12** The Crown contends, in effect, that information coming to the inspector as a person in authority with respect to the accused's ownership of the subject premises prior to the complaint which is the basis for the present charge cannot be considered as a statement by the accused for purposes of the present charge.

**13** I find no support in the case law for the Crown's contention. In my view, the time at which a statement is made is not determinative of its admissibility if that statement is made to a person in authority and is tendered by the Crown: see *Erven v. The Queen* (1978), 44 C.C.C. (2d) 76 (S.C.C.) and *Piche v. The Queen*, [1970] 4 C.C.C. 27 (S.C.C.).

**14** The effect of the failure to hold a voir dire must be examined from the viewpoint of the appellant's fair trial interests.

**15** A review of the above exchange between the Crown and the inspector indicates that the appellant was at the time of the inspector's previous "dealings", the owner of the premises known as the Pet Sanctuary. In this case, the issue before the trial court was not the ownership or operation of the Pet Sanctuary but rather whether the appellant had wilfully neglected to provide suitable and adequate care for the cat in her custody and control.

**16** The appellant gave evidence at trial. The first question and answer put to her in-chief were the following:

Q. Ms. Singh, what is your connection with a pet sanctuary that I understand was located at 283 Lakeshore Road East in Mississauga as of last summer?

A. I founded the Pet Sanctuary and I own it. (page 32, lines 8-12, trial transcript)

**17** No issue was taken by the appellant's counsel with her ownership and/or operation of the Pet Sanctuary, not only at the time of the present charge, but at any previous time during her ownership of the Pet Sanctuary. The statement of the appellant proffered by the Crown through the evidence of the inspector had no evidentiary value other than to establish the appellant's ownership of the Pet Sanctuary at some time prior to the circumstances giving rise to the present charge. Although the proffered statement required a voir dire to determine voluntariness at common law, the initial testimony of the appellant wherein she acknowledged ownership and operation of the Pet Sanctuary rendered moot the requirement of a voir dire as to voluntariness of the contents of the statement. In effect, the appellant's ownership and operation of the Pet Sanctuary was not a live issue at trial. The live issue was whether the Crown had proved beyond a reasonable doubt the essential elements of the defence of wilfully failing to provide suitable and adequate care for a domestic animal in the accused's custody.

**18** In the result, I find there was no prejudice to the appellant's fair trial interest that could be characterized as a miscarriage of justice by the admission of the appellant's statement as to ownership of the Pet Sanctuary to the inspector without the required voir dire.

**19** Upon the review of the trial evidence and the reasons of the trial judge I conclude that the trial judge's conviction of the accused is a reasonable verdict and accordingly the appeal against conviction is dismissed.

**20** I now turn to the appeal against sentence.

**21** Concurrently with the appeal against conviction, the appellant filed a motion to stay payment of the fine on the ground of the impecuniosity of the appellant arising in part from her ill-health. At the commencement of the appeal hearing, I granted the stay order on the consent of the Crown, pending the result of the appeal against conviction.

**22** The circumstances giving rise to the appellant's health problems and the resulting impecuniosity are fully set in the appellant's affidavit material filed in support of the stay motion. These circumstances are not challenged by the Crown.

**23** I am persuaded that the appellant's impecuniosity arising out of health problems justifies allowing the appeal in sentence but only with respect to the imposition of the fine of \$1,000.00; the provisions respecting the payment for the fine are accordingly vacated but the provisions of the sentence respecting to the restitution order and the probation terms are not dismissed and will continue.

Disposition

**24** Appeal against conviction is dismissed and the appeal against sentence is allowed in part, as set out in the previous paragraph.

MacKENZIE J.

cp/d/qlfwb

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