

In the Provincial Court of Alberta

Citation: R. v Labonte, 2014 ABPC 153

Date: 20140717
Docket: 121197859P10101
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Marc-Olivier Labonte

Sentencing Decision of the Honourable Judge S.L. Van de Veen

[1] The Agreed Statement of Facts recite the following:

1. Mr. Labonte is 20 years old. At the time of the offence he was 19 years old.
2. On September 22, 2012 Mr. Labonte worked at Chasin' Tails, a dog daycare in Calgary, Alberta. Mr. Labonte was responsible for taking care of the dogs who were kenneled at the facility.
3. One of the dogs being kenneled was a 5 month old boxer named Apollo. When his owner dropped him off at the kennel on September 21, 2012 he was healthy.
4. The following events were captured on CCTV between 5 a.m. and 6 a.m. on September 22, 2012:

Apollo is alone in a gated enclosure. Mr. Labonte enters through the gate with two other dogs. Apollo immediately jumps at and on one of the other dogs. Mr. Labonte grabs Apollo by the collar and separates him from the other dog. Mr. Labonte then releases Apollo who again runs at the other dog jumping at and on him.

Mr. Labonte then grabs Apollo by lifting him, one hand on his collar the other under Apollo's body, and forcefully puts him into a cubby hole in the enclosure.

Each time Apollo tries to stand up, Mr. Labonte pushes Apollo down with force. This happens four times.

When Mr. Labonte takes a step back, Apollo runs, tail wagging, to the other side of the enclosure where the other two dogs are standing. Apollo again attempts to jump onto one of the other dogs and Mr. Labonte walks towards him.

Mr. Labonte then grabs Apollo, picks him up around both haunches on Apollo's left side, and throws Apollo onto the floor. Apollo lands on his right side.

Apollo responds by biting Mr. Labonte's left hand. Mr. Labonte responds to the bite by immediately lifting Apollo up vertically by his shoulder/neck area. Apollo's head is roughly five feet in the air and his feet are roughly a foot in the air. Mr. Labonte then spins Apollo horizontally and forcefully pushes him into the ground. Apollo lands on his left side.

In an attempt to control Apollo, Mr. Labonte then holds Apollo on the ground, kneeling on Apollo; his right knee on Apollo's hip area, his left knee on Apollo's head/neck. He holds Apollo on the ground for a minute and twenty seconds. While Apollo is pinned to the ground Mr. Labonte forcefully pushes Apollo's head into the ground two times.

When Apollo gets up, he is wagging his tail and appears fine. Apollo then runs to the far side of the enclosure where the other dog is standing. Apollo then jumps at the other dog again. Mr. Labonte walks over to Apollo who then circles Mr. Labonte and jumps up at him multiple times in a playful manner.

Mr. Labonte corners Apollo and attempts to order Apollo to lay down. When Apollo does not respond, Mr. Labonte takes Apollo's head and pushes Apollo to the ground.

When Apollo tries to get up, Mr. Labonte grabs Apollo by the haunches and pulls Apollo onto his left side.

Apollo tries to run away and Mr. Labonte uses his leg to forcefully pin Apollo by his neck/shoulder area to the fence.

Apollo gets away from Mr. Labonte who then grabs Apollo by the collar and pulls him away from the fence. Mr. Labonte lifts Apollo up by the collar and pushes him down forcefully onto a rubber trampoline/hammock which is roughly six inches from the ground. Apollo lands on his back. Mr. Labonte holds Apollo on the trampoline/hammock by his collar for approximately 45 seconds. Twice Apollo tries to get up and each time Mr. Labonte pulls him back down by his collar.

Apollo stands up and appears fine. Mr. Labonte leaves the enclosure through the gate and Apollo follows him and jumps up onto the gate. Apollo then goes back to the other dogs.

Mr. Labonte and a co-worker enter the enclosure and separate Apollo from the other dogs. Mr. Labonte leashes Apollo with the assistance of the co-worker. At one point while Apollo is tied up, Mr. Labonte lifts Apollo off the ground by his collar and pulls him backwards out of the view of the camera.

Mr. Labonte then explains and demonstrates the events that just took place to his co-worker. Mr. Labonte points to various areas of the enclosure and demonstrates how he handled Apollo through body movements.

After some time being tied up, Mr. Labonte takes a fabric lead and ties it around Apollo's snout and neck, muzzling Apollo. Apollo remains muzzled for several minutes. It is apparent Apollo did not enjoy this. As Apollo attempts to remove the lanyard, Mr. Labonte approaches Apollo and pushes him over with both hands. Apollo falls on his left side. Mr. Labonte then pushes Apollo's head down to the ground and immediately lifts up on the leash, jerking Apollo's head upwards.

Apollo is left leashed and muzzled to the corner for some time. Mr. Labonte tends to other dogs during this period. Apollo continues to bark and Mr. Labonte returns, picks up Apollo by the collar, lifts him off the ground and throws Apollo head-first into the ground. Again Mr. Labonte kneels on Apollo while he is on his side.

As Apollo is still laying on his side, Mr. Labonte, still kneeling, picks up Apollo under his haunches and throws him to the ground.

Mr. Labonte stands and lifts Apollo up off the ground by his collar as Apollo tries to resist.

Mr. Labonte again muzzles Apollo with the lead and pushes him with force onto the ground. When Apollo tries to get up, Mr. Labonte stomps on the leash pulling Apollo with it, picks Apollo up and flips him onto his back. Mr. Labonte then muzzles Apollo while his co-worker watches from inside the enclosure. The co-worker leaves the enclosure. Mr. Labonte then steps on Apollo's neck/shoulder while Apollo is squirming underneath him trying to escape. This goes on for approximately 8 seconds until Apollo manages to get free.

Mr. Labonte immediately grabs Apollo by the neck and buttock area and throws him into a cubbyhole. It is unclear what if anything occurs in the cubby as the camera view is blocked.

When Mr. Labonte walks away from Apollo, Apollo lays in the cubby for a number of minutes while Mr. Labonte tends to other responsibilities and dogs. The camera does not have a view of what Apollo is doing in the cubby.

Eventually Mr. Labonte returns, removes the muzzle and picks up Apollo by the collar, and walks him to the gate. Apollo is walking only on his rear legs during this time. Mr. Labonte opens the gate and directs Apollo into the other enclosure where Mr. Labonte's co-worker is tending to other animals.

Minutes later the owner of Chasin' Tails arrives to find Mr. Labonte cleaning bloody vomit from the floor. Apollo vomited five to ten times in the presence of the owner of Chasin' Tails. The owner viewed the CCTV footage and then took Apollo to McKnight 24 Hour Vet Clinic where he was seen by a veterinarian.

[2] At the veterinary clinic Apollo coughed and gagged on blood. He did not vomit blood at the clinic. Apollo was assessed and while the findings were generally unremarkable, they could represent pulmonary contusion or hemorrhage (bruising).

[3] Apollo was kept overnight and then released to his owner the next day. He was prescribed pain killers which he was given for the next few days. His owner reported that after a few days, Apollo was "back to his old self".

[4] Apollo suffered no lasting or permanent injuries.

[5] It is agreed that the CCTV footage to be tendered by the Crown is an accurate representation of what occurred on September 22, 2012.

Position of Crown and Defence

[6] The Crown seeks incarceration of 60 days duration, along with a ban prohibiting the accused from owning animals. I note the original ban on owning animals was varied earlier with

Crown consent in order to permit the accused to own his present pet, a cat. Defence seeks a Conditional Discharge or Probation. They have also provided cases relating to Conditional Sentence Orders.

Aggravating and Mitigating Factors

[7] The mitigating factors are as follows:

1. The accused has entered an early guilty plea.
2. The accused has no prior criminal record.
3. The accused was a youthful offender, being 19 at the time of the offence.
4. The accused is a low risk to re-offend.
5. The Presentence Report is positive as is the Psychiatric Report.
6. The offence is out of character for the accused.

[8] The aggravating factors are as follows:

1. The accused was in a position of trust as an employee of Chasin' Tails Dog Daycare. Dog owners entrust their pets to daycares specifically to ensure proper care is given to them. Owners are prepared to pay for these services to ensure and enhance their pet's quality of life while owners must be away from home for lengthy periods of time at work.
2. Duration of the abuse was lengthy. It was not one incident, but several incidents over the course of an hour.
3. The abuse was severe, causing the dog to vomit blood.
4. There were severe injuries from which the dog fortunately was able to recover within a few days.
5. The dog was a five month old pup, not an adult dog and therefore required care appropriate to his age.
6. The accused, though regretful, did not accept full responsibility for his actions. He advanced the submission that he was trying to apply disciplinary techniques with which he was only partly familiar from his training. In fact he was abusive to the dog under his care and I do not

accept that his actions were intended to be the faulty application of training techniques involving discipline. His frustration and anger with the animal throughout the use of the excessive force evident in the video are apparent.

Presentence Report and Psychiatric Report

[9] The Presentence Report states the accused had an unremarkable childhood, being raised in a loving environment by his mother and stepfather, with whom he remains close despite their separation. He is described as easygoing, responsible, quiet and sensitive. He is a person who does not like large groups of people. His friend describes him as a good person with a big heart who is very hard on himself and fears rejection. He struggles with self-esteem and self-confidence.

[10] There is no indication of alcohol or drug abuse and the accused suffers from spontaneous pneumothorax, a condition causing his lungs to collapse. This collapse has happened three times and there are no medical explanations for these occurrences.

[11] Doctor Yacoub is of the opinion that there may be an adjustment disorder with anxiety in the accused's case. There was no evidence of a major mental disorder but the accused appeared overwhelmed by the legal issues before the Court. A recent trip to Hawaii appears to have been helpful to the accused in terms of his ability to maintain a positive outlook. The Psychiatric Report confirms there are no alcohol abuse issues or other drug issues. Doctor Yacoub states the following regarding the question of remorse:

Mr. Labonte regretted his offending behavior. There was no evidence to suggest that he had any plans to hurt the animal. He stated he did not have enough training to do his job. However, he acknowledged that he did wrong and expressed regrets and appeared remorseful regarding his offending behavior. He agreed with the contents of the agreed statement of facts.

[12] The Psychiatric Report also relates the accused's remarks about the offence. The accused agreed with the content of the Agreed Statement of Facts and stated "I do not feel good about what happened, but I do not feel I deserve the charges." The accused went on to tell Dr. Yacoub that he made a mistake and that he was trying to separate the two dogs from getting into a fight. My assessment of the video is that the five month old pup was wagging his tail as he approached the other dogs and that his approach was playful as can be expected from a pup. I saw no sign of aggression toward the other dog when the incident began or afterwards.

Analysis

[13] Legal authorities were presented by both Crown and Defence. The cases where offenders have been incarcerated generally involve death of the animal or deliberate cruelty to the animal to get back at another person, notably in domestic conflicts. Such cases involve severe beatings and the death of the animal. On the other hand, the cases where probationary sentences have been handed down, generally involve offenders being fearful of the animal because of present or past behaviour on the part of the animal before the violence occurs. Such things as prior biting for example caused a response involving fear in one case where excessive force caused the death of the animal.

[14] In the case before me I find the facts to be that the accused's use of excessive force was driven largely by frustration, anger and retaliation. He misread the pup's behaviour from the beginning. When the dog first approached the other dogs his tail was wagging and when he contacted them he was a pup trying to play. The pup was not aggressive throughout the incident but was curious and playful, except when he was wrongly mistreated by the accused. As the accused told the psychiatrist, he thought the dogs were going to be getting into a fight initially. As to the accused's use of techniques taught by the daycare personnel, this may have played a small part in what he did, but it was not the main motivation. Nor can his actions be described as training techniques misapplied. The accused was not trying to control the pup, but disciplining it out of frustration and anger in a manner that was clearly retaliatory at times. His Counsel is right to say he was not properly trained for his job, but his violence upon the pup is not accounted for by this fact. This is not a case where the pup created fear or had been violent before the abuse. It was a puppy trying to play and happy to see other dogs. His owners had entrusted the daycare with the care of their pet and the trust they placed in doing so was severely violated. The dog was so brutally treated that he vomited blood five times when his owner of the daycare was present. The dog was taken to the veterinarian's where it was thought he experienced pulmonary contusion or hemorrhage bruising. He was given painkillers for a few days, after which he appeared fine.

[15] The case requires a denunciatory sentence and one which reflects general deterrence. Specific deterrence is not a pressing concern in this case and therefore is not a primary sentencing objective. I am satisfied the accused genuinely regrets his behaviour and I note he and his family have endured media attention to this case which in itself has been more than unpleasant for them.

Conclusion

[16] Considering the aggravating and mitigating factors in this case gaol is appropriate. The severity of the cruelty causing the dog to vomit blood, its duration, the position of trust the accused occupied, and the age of the dog call for a gaol sentence. However, the age of the accused, his guilty plea, regret and lack of training call for a community-based gaol sentence. I sentence the accused to gaol sentence of 60 days which I will allow him to serve in the

community subject to certain conditions, contained within a Conditional Sentence Order. I will hear from Counsel as to the appropriate conditions in the Order. I anticipate a restriction on the accused's liberty for 60 days along with conditions requiring him to report and reside where approved. The question of an animal ban must be addressed. I lean toward prohibiting him from owning animals except the cat he presently owns, but I will hear from Counsel with respect to this aspect of the case. I will hear submissions on the duration of the prohibition against owning animals and whether probation is also sought following the Conditional Sentence Order.

Dated at the City of Calgary, in the Province of Alberta this 17th day of July, 2014.

S.L. Van de Veen
A Judge of the Provincial Court of Alberta

Appearances:

R. K. Greenwood
for the Crown

C. Wilson
for the Accused