

Action No.: 111412094P1
E-File No.: ECP15CARDINALBOBB
Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

BOBBY JESSE CARDINAL

Accused

P R O C E E D I N G S

Edmonton, Alberta
April 16, 2012

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1 Proceedings taken in the Provincial Court of Alberta, Law Courts, Edmonton, Alberta

2

3 April 16, 2012

Morning Session

4

5 The Honourable

The Provincial Court of Alberta

6 Judge Henderson

7

8 C. M. T. Lim

For the Crown

9 D. L. Lightning

For the Accused

10 G. Matheson

Court Clerk

11 S. Daniele

Court Clerk

12

13

14 **Discussion**

15

16 MR. LIM:

Your Honour, if we could turn to the Bobby

17 Cardinal matter? Mr. Cardinal is in custody. We will have a joint submission for your

18 consideration, Sir.

19

20 MS. LIGHTNING:

That's correct, Sir.

21

22 MR. LIM:

And we thank our colleagues here because we

23 do not know who was supposed to go first.

24

25 I believe my friend will confirm that this is Bobby Cardinal.

26

27 MS. LIGHTNING:

This is Mr. Cardinal before the Court, Sir.

28

29 **Plea**

30

31 MR. LIM:

Your Honour, we are dealing with guilty pleas I

32 understand were changed to guilty pleas on counts 2 and 3. That is assault causing bodily

33 harm and causing unnecessary pain to an animal, to wit: two dogs.

34

35 MS. LIGHTNING:

That is correct, Sir. And I have canvassed

36 section 606 and received the appropriate response in the affirmative, Sir.

37

38 THE COURT:

Thank you.

39

40 **Particulars**

41

1 MR. LIM: Your Honour, the Crown is alleging the
2 following, Sir. In the City of Edmonton, in the Province of Alberta, on November the
3 26th, 2011, the accused and the complainant -- the complainant being Marissa Cardinal --
4 Marissa Cardinal is not related though, I should note, to Bobby Cardinal, they just have
5 the same last names -- they'd been in a boyfriend/girlfriend relationship for several years.
6 They, essentially, on this date, Your Honour, the accused had arrived -- and the
7 complainant had gotten into an argument at the accused's residence. There were several
8 other members of his family there, although some of them were intoxicated and appeared
9 to be passed out and really wanted nothing to do with the incident.

10

11 Anyways, there was an argument between the accused and complainant, at which point
12 the accused became more aggressive than the complainant and decided that she would
13 leave -- or the complainant wanted to leave. The accused did not take this well and
14 grabbed the complainant by the arms and started pushing and shoving her around. The
15 complainant did say several nasty things to her. The accused then continued to shove back
16 at her and began threatening her. He made it clear that she was not to leave and that he
17 would assault her if she tried. The accused who had grabbed onto the complainant and
18 pushed and shoved and hit her several times in the head. At one point he got mad and
19 grabbed a small dog carrier, which contained two small dogs, which were known as
20 Chihuahuas, they were about 2 pounds each is what I understand, Your Honour, they were
21 in this bag that the complainant commonly carried this sort of carrier -- dog carrier
22 around -- he grabbed it and tossed it against the wall, at which point the dogs yelped. The
23 complainant could hear the dogs yelping and crying in pain as this occurred.

24

25 During the melee she had been punched approximately five times in the head and then
26 grabbed around the throat, punched, and shoved all over her body, including the buttocks,
27 the arms. There -- at one point she describes that she had basically blacked out and she
28 was "seeing stars and blacking out for a bit". As the -- after the dogs had been thrown she
29 managed to flee from the apartment where the accused resided, goes down a hallway,
30 there was some people in the hallway who saw the incident -- or heard her running, and
31 at that point the assault stopped.

32

33 As a result of the assault, she did have bruising all over her face, including swelling that
34 occurred more a couple days later on and got larger around her forehead, around her eyes,
35 as well as cheekbones. She had a split lip, Your Honour. She had marks consistent with
36 being held down or bruising around her neck and as well as her arms. And also, shall we
37 say, small cuts around her buttocks and her hip area, Your Honour, from the melee. She
38 did try fighting -- fighting back. The accused had, I believe, one mark on his knuckle
39 area, Your Honour, but there was no other injuries noted by the police.

40

41 Those are the allegations. The dogs were fine. She is alleging that they seemed to be

1 reacting a little bit differently -- a little bit nervously afterwards, but, nevertheless, there
2 was no physical injuries to the two Chihuahua dogs. Those are the allegations.

3
4 MS. LIGHTNING: Your Honour, the facts are substantively
5 admitted. Both the complainant and the accused were very intoxicated at the time, so there
6 was some differing accounts as to exactly what happened, but Mr. Cardinal admits
7 assaulting her, that she had -- he had become angry. Sir, with respect to the dogs, yes, he
8 admits tossing those dogs, and that he was involved in an angry altercation at the time,
9 Sir. She did indicate -- and I think my friend will agree -- there had been no previous
10 violence in this relationship. They had been off and on for some time, but they are no
11 longer in a relationship, Sir.

12
13 THE COURT: Okay.

14
15 MR. LIM: The Crown would agree to that. She did go to
16 the hospital, Your Honour, and they dealt with the -- the bruising and such, but there was
17 no real, shall we say, stiches or anything. Other than ice and the normal pain killers.

18
19 THE COURT: Okay.

20
21 MR. LIM: The Crown is alleging a criminal record, which
22 I think my friend --

23
24 MS. LIGHTNING: It's admitted, Sir.

25
26 MR. LIM: -- has verified. The criminal record of
27 Mr. Cardinal will be entered as Exhibit S-1 for sentencing purposes.

28
29 THE COURT: That is S-1.

30
31 **EXHIBIT S-1 - Criminal Record of Bobby Jesse Cardinal**

32
33 **Speaking to Sentence by Mr. Lim**

34
35 MR. LIM: We do have a joint submission, Your Honour,
36 for your consideration. The assault that you will note in 2010 is not on the complainant, it
37 is not a domestic. Nevertheless, Your Honour, considering his criminal record, considering
38 we avoided a trial, Your Honour, which would also have prevented to having to put the
39 two expert witnesses -- a doctor and a veterinarian -- on the stand, and the complainant,
40 we are agreeing for a sentence which would amount to a global sentence of 4 months and
41 20 days, which is by time served, in other words, since he has been custody since

1 November 26th, to be followed by a 12 month probation period.

2
3 The terms which we have drafted, Your Honour, which my friend has gone over with her
4 client. However, they include the standard, shall we say, reporting condition within 2
5 days, remaining within the Province of Alberta, living at a designated address. When I say
6 the employment condition, in order to encourage an individual to keep on the straight and
7 narrow, maintain employment unless, of course, he's changed for schooling or -- and
8 notified the probation officer. We are looking at the assessment and treatment, which we
9 think is important, specifically psychiatric, psychological issues, alcohol and drug abuse,
10 domestic violence, and anger management. I have circled anger management. This Court
11 is well aware this is a domestic situation. You may recall though it's involving two
12 Chihuahuas. Essentially, we want to make sure we cover that issue in respect to animals
13 (INDISCERNIBLE) control and that. So we have anger management circled as well. Of
14 course, the officers can decide what is relevant or not.

15
16 That he waives such information to complete such assessment and treatment and that he
17 provide evidence of completing such programs if required to do so. There is to be no
18 contact. There is no children involved. So -- and I understand that Marissa Cardinal wants
19 nothing to do with the accused at this time, has had no contact, at least with the accused,
20 and would like that continued. So there will be a no direct or indirect contact with
21 Mr. Cardinal. That he shall not attend within 3 blocks of the address 11545 - 87th Street.
22 It's all written in here, Your Honour. I have circled number 37 with the agreement of my
23 friend. That's the one on the humanitarian grounds giving some flexibility to the probation
24 officer. This has been gone over with the police and specifically the complainant to ensure
25 it meets, shall we say, it covers also protecting her besides rehabilitation.

26
27 THE COURT: Okay.

28
29 MR. LIM: I'll provide that to madam clerk. Your Honour,
30 I can let you know that there are -- and I (INDISCERNIBLE) -- hopefully by completing
31 this here -- there's been some allegations that some family members have been having
32 contact with the complainant trying to get essentially the charges dropped. We can't
33 prove, obviously, we just hope that he will use his better judgment and realize to
34 encourage his family just to completely end this relationship. She wants nothing to do
35 with Mr. Cardinal.

36
37 Your Honour, in respect to the section 445, we are in agreement that we do not need an
38 animal prohibition. The animal protection office in respect to the Edmonton Humane
39 Society have often encouraged us to have a discussion with the accused. We are in
40 agreement. So, in other words, if the Court agrees to what we have suggested to this
41 Honourable Court today in respect to the probation and the gaol sentence, I would suggest

1 to my friend that we can just do 30 days concurrent for the animal -- for the section 445.
2 So, in other words, he has got time served, but we can just do 30 days concurrent, so it
3 would be (INDISCERNIBLE). So, we are agreeing to 30 days concurrent if you would
4 accept it, Your Honour, in respect --

5

6 THE COURT: Well, I certainly agree to concurrent, but is not
7 30 a little steep for -- unless there is something in his record that relates to animals.

8

9 MR. LIM: It could be 15 to 30 days, Your Honour, I'm
10 suggesting here anyways, in respect to the animal charges. I guess as long as it's
11 concurrent. And then the probation we will deal with, as I said, with the assessment and
12 treatment issues that we will need to focus on.

13

14 THE COURT: Sure.

15

16 MR. LIM: We are in agreement afterwards, if the Court
17 agrees, that we can talk to the accused in the back room -- we have made arrangements
18 with security -- as I said, it's common with animal protection files, especially since we
19 aren't going for the prohibition, we are considering more of a situation that he was angry
20 and enraged with her, and the control issue, then took it out on the animals. He was very
21 familiar with these dogs. It's not like he's never seen them before and their dog carriers.
22 That's the reason why I'm not asking for the prohibition, Your Honour.

23

24 THE COURT: Okay.

25

26 MR. LIM: I think we can cover everything that way here.

27

28 THE COURT: Okay.

29

30 MR. LIM: I will be seeking a DNA sample. This is a
31 secondary designated offense. And considering the allegations, Your Honour, I think it's
32 appropriate here. He's got also a record for violence. You'll note two convictions within
33 the last -- 2010, in respect to assaulting a police officer and an assault, Your Honour. I
34 will leave it up to this Court whether a section 110 10 year weapons prohibition is
35 appropriate in this particular case, considering the allegations of violence in the past and
36 the allegations before this Honourable Court.

37

38 There is no, apparently, from what I understand, victim impact statement filed and the
39 complainant did not file one.

40

41 Those are my representations, Your Honour, unless you have any questions.

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THE COURT:

No. That is good. Thank you.

Speaking to Sentence by Ms. Lightning

MS. LIGHTNING:

Sir, Mr. Cardinal is 23 years old. He is Aboriginal. He is Metis, originally from Buffalo Lake but raised in Edmonton. He has been working at finishing his education. He was working on his Grade 10 but left and started working. He has been working since he was 17 years old. He worked as a general labourer since he was with an uncle and with an oilfield supply in Nisku. In August of 2011 he had some problems because he didn't have a ride, his -- he was catching a ride with someone else and eventually lost his job. So he's had some struggles with that being in Nisku, Sir.

He had been dating -- with respect to this offense -- he had been dating this woman off and on, but it was -- had been more off than on. He is in -- does have another relationship and has just become a father. His child was born while he was in custody. He indicated that he does want to change his life around. Being a parent has had -- has really -- has made him think. And that he does not want to repeat some of the -- some of the incidents that he was raised in.

He reported that there was drinking when he was being raised and there was violence in his home. He understands that sometimes there's an intergenerational effect, especially sometimes combined with some of the community aspects of it. He -- so he is agreeable, Sir, to take counselling and to -- it is his intention to get back to work once he gets out.

He did serve a significant amount of time, Sir. He has been in custody since this event happened. And I believe he has now served, by my count, I think it was 138 days in custody. For much of that, because of the nature of the charges, Sir, he reports that he was confined to his cell for 23 hours a day. Most recently he was in Calgary, and, again, locked down for a great -- so very difficult time, Sir, during that period.

THE COURT:

So, the proposal is 4 months 18 days then; is it?

MS. LIGHTNING:

That was my count.

THE COURT:

If he has been in custody -- I mean, it is applying his time served essentially; is it not?

MR. LIM:

Yes.

1 MS. LIGHTNING: Sir, there were -- because there were differing
2 accounts he has admitted the assaultive nature. He -- he did not -- there had been some
3 discussions with my friend over -- over the time. In any event, Sir, he has come forward
4 and he wants to change his life with respect to the violence and certainly does want to
5 work. He is capable of doing it. And he is hoping to start a new life, Sir, once he is
6 released.

7
8 THE COURT: Okay. And have you reviewed the terms of the
9 proposed probation order with the accused?

10
11 MS. LIGHTNING: I have, Sir.

12
13 THE COURT: And he is content with those terms?

14
15 MS. LIGHTNING: He is.

16
17 THE COURT: Okay. Good.

18
19 Do you have anything you would like to say, sir?

20
21 THE ACCUSED: (NO AUDIBLE RESPONSE)

22
23 THE COURT: Okay. Good. Thank you.

24
25 **Sentence**

26
27 THE COURT: The accused has pled guilty to two counts; one
28 assault causing bodily harm and, secondly, causing harm to an animal, contrary to section
29 445.1(1)(a) of the *Criminal Code*. The events occurred on November 26th, 2011.

30
31 This was, unfortunately, a situation where the accused and his then girlfriend were
32 drinking and they were obviously heavily intoxicated and they got into firstly a verbal
33 argument. It turned into a rather significant bout of violence. The accused grabbed the
34 complainant's arm and shoved her and punched her multiple times in the arms and the
35 buttocks and then grabbed her around the neck. The -- it did result in some what I would
36 describe as reasonably minor injuries; bruising around the face and the forehead, a split
37 lip, bruising around the neck as well. During the course of the altercation, the accused
38 grabbed a bag that contained -- was a carrier that contained two small dogs. He threw the
39 dogs against the wall. That is -- those are the facts that support count 3. And, fortunately,
40 the dogs were not injured.

41

1 The accused does have a fairly lengthy criminal record and, indeed, a recent record with
2 respect to violence. So, the joint submission, which is, essentially, 4 and a half months, is
3 what we are at, I think; is it not?
4

5 MS. LIGHTNING: Yes.

6
7 THE COURT: 4 and a half months seems to be appropriate
8 with respect to the assault causing bodily harm, so that is the sentence I impose. I will
9 waive the victim charge on the basis of hardship.
10

11 Now, with respect to the causing pain to the dog, that would be 15 days to be served
12 concurrently. And I will waive the victim charge on that one as well.
13

14 You have been in custody for 138 days, I am told, which is just slightly more than the
15 amount of time I have sentence you to. So I give you credit for those 138 days on a
16 one-for-one basis. So the net sentence would, therefore, be 1 day.
17

18 In addition to that, on the assault causing bodily harm, there will be a period of 12
19 months' probation on the terms which the Crown outlined and which is contained in the
20 formal order. There will also be a requirement for a DNA sample. And, given the nature
21 of the violence, I would impose say a 10 year weapons prohibition under section 110 of
22 the *Criminal Code*.
23

24 MR. LIM: Crown applies to withdraw count 1, Sir.

25
26 THE COURT: Fine. Count 1 is withdrawn.
27

28 MS. LIGHTNING: Thank you, Sir.

29
30 THE COURT: Is there anything else?
31

32 MR. LIM: And we are just arranging to bring him into the
33 anteroom at this time.
34

35 THE COURT: Yes.
36

37 MR. LIM: Thank you, Sir.
38

39 THE COURT: You bet. Thank you very much.
40

41 MR. LIM: I thank my friend. I thank this Court.

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MS. LIGHTNING:

Thank you.

THE COURT:

The record was S-1, if we have not said that.

THE COURT CLERK:

Thank you, Your Honour.

PROCEEDINGS CONCLUDED

1 Certificate of Record

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I, Grace Matheson, certify that this recording is a record made of the evidence in proceedings in Provincial Court held in Courtroom 355 at Edmonton, Alberta on the 16th day of April, 2012, and that myself and Samantha Daniele were the court officials in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2

3 I, Stephanie Johnson, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in the transcript.

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Detailed Transcript Statistics	
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