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| **49577-1** | | | | | |
| **Vernon Registry** | | | | | |
| **In the Provincial Court of British Columbia** | | | | | |
| **(BEFORE THE HONOURABLE JUDGE TAKAHASHI)** | | | | | |
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| **Vernon, B.C.** | | | | | |
| **January 4, 2016** | | | | | |
| REGINA  v.  JIMMY KY MARCHAND | | | | | |
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|  | **PROCEEDINGS AT TRIAL** | | | |  |
| **COPY** | | | | | |
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| **Crown Counsel:** | | | **A. Janse** | | |
|  | | |  | | |
| **Appearing on his own behalf:** | | | **J. Marchand** | | |
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Vernon, B.C.

January 4, 2016

MS. JANSE: Your Honour, Janse, initial A. for the Provincial Crown.

I'm appearing on Number 4 on Your Honour's list, Jimmy Marchand; Court File Number 49577-1. Mr. Marchand is just standing behind me here in the maroon sweatshirt.

This matter was scheduled for trial. We've had some discussions this morning and he indicates he's agreeable to enter a plea to Count 2.

THE COURT: Okay.

MS. JANSE: He does not have a lawyer. I've explained to him that he is entitled to speak with one but he says he doesn't need to.

THE COURT: Come forward Mr. Marchand.

So what Ms. Janse tells me, is that ‑- is that accurate?

THE ACCUSED: Yes.

THE COURT: And you received the material as far as the basis for the Crown's case and I take it you probably talked to Ms. Janse about what you ‑- what she's going to ask as far as sentence is concerned?

THE ACCUSED: Yes.

THE COURT: Okay.

Let me just read this to you then, sir.

Sir, it says that ‑- the allegation is that between February 14 and April 24, 2014, near ‑- at or near Vernon in the Province of British Columbia, you caused an animal, or permitted an animal to be, or continue to be in distress, this being a dog.

Is it your wish to change your plea from not guilty to guilty on that charge, sir?

THE ACCUSED: Uh, yeah, it is.

THE COURT: No, you ‑-

THE ACCUSED: [Indiscernible].

THE COURT:  ‑- hesitated there for a bit. Did you ‑- are you ‑-

THE ACCUSED: Yeah.

THE COURT:  ‑- concerned about whether you should do this or not? Are you committed to this?

THE ACCUSED: Yes.

THE COURT: Okay.

THE COURT: Count 2 then, Madam Clerk, there will be a plea of guilty for the gentleman.

So I'll hear what Crown says occurred, sir, then I'll hear from you as to whether that's accurate or not, okay?

So have a seat right in that chair; right ‑- okay.

MS. JANSE: Your Honour, the circumstances are as follows.

# SUBMISSIONS FOR CROWN BY MS. JANSE:

MS. JANSE: On February 14, 2014, the BCSPCA animal cruelty hotline received a complaint regarding a black and tan Rottweiler type dog at an address on Westside Road in Vernon, B.C. The complaint was that the dog was always tethered "in a junk pile" and the complainant could not see if the animal had access to water or shelter. The complainant stated the dog was out day and night.

On February 19th, Special Provincial Constable Chapman attended the property, knocked but received no response; saw the dog tethered to what appeared to be truck tires, old vehicle parts and a mattress.

He re-attended on February 20th; once again no one was home. He posted his contact information for a second time. The dog was still outside on a tether, appearing to be tethered to old car parts, specifically a canopy of a truck.

February 25th he re-attended, knocked on the door. A female answered the door. She explained that she helps care for the dog. The owner is her step-son named Jim Marchand. The dog does live outside. She showed the dog to Constable Chapman. The dog was on a heavy chain and wire, and it was about eight to ten feet long. Constable Chapman explained the wire could cause injury to the dog and should be removed.

There was a frozen water bowl which contained a small amount of blood in it. Chapman explained that dogs need water immediately.

He also observed lots of feces where the dog was tethered and he explained that that needed to be cleaned up, and the dog required time off the chain. Now Ms. Gregoire agreed and said she doesn't know why Mr. Marchand owns the dog.

The dog's shelter was a canopy of a truck lying on freezing ground. There was ripped up bedding and so the dog was laying on the frozen ground.

Constable Chapman continued to attempt to get a hold of Mr. Marchand over the 26th, 27th. He gained the assistance of RCMP Constable Brooks who is the First Nation liaison officer, who attempted to obtain an insulated dog house and stated that the animal owners could have that, but throughout March Constable Chapman had no success contacting Mr. Marchand and on March 18th he attended again. He asked to see the dog. Mr. Marchand was present at this occasion. Constable Chapman asked to see the dog and that was complied with. There was feces all over the dog's shelter again. The water bowl was again empty and nothing had changed since his first attendance.

He was given an SPCA order with a number of items to rectify, and ultimately on March 20th when Constable Chapman attended to check for compliance, he was unable to confirm that anything had been complied with. Mr. Marchand was not home. Another individual showed him the dog and once again everything was in essentially the same conditions.

Ultimately Constable Chapman obtained a search warrant and the warrant was executed on April 24th. Dr. Sara Watt was in attendance, a veterinarian; they executed the search warrant, located the dog in the same ‑- same area. He was still on the same heavy chain and wire. There was a bowl with minimal amount of water, appearing to be rain water, and another pot with about one centimetre of water in it.

The area surrounding the canopy was muddy, there was feces present. Inside the canopy was damp, wet and had a lone ‑- large piece of foam rubber.

The chain was found by Dr. Watt to be attached to a choke chain, a choke collar on the dog which was causing hair loss due to rubbing, and Dr. Watt provided the expert opinion that the animal was in distress and it was seized pursuant to the *Prevention of Cruelty to Animals Act*.

The height of the campony ‑- canopy was 26 and a half inches. The dog could not stand up in the canopy, and just reading from Dr. Watt's report, she states, [as read in]:

In summary, it is the conclusion of the attending veterinarian that the findings do indicate some neglect and improper shelter which threatens the overall health and well-being of the animal in question, and to provide the opinion that the animal was in distress.

She noted the chain that the dog was connected to was very heavy and pulled with difficulty by the young dog.

I do note though that the dog was found to be in reasonable health. She notes that, "She's in excellent body condition and no outstanding health issues." So this is a matter of inadequate shelter, Your Honour.

May I just provide the court with some photographs? They have been previously disclosed to Mr. Marchand, just showing the conditions of the shelter for the dog and the ‑- the chain and ‑- that she was attached to.

THE CLERK: Exhibit 1, Your Honour?

THE COURT: Exhibit 1.

MS. JANSE: Thank you.

EXHIBIT 1 (on Sentence): 9 full page colour photographs showing alleged living conditions of Rottweiler dog; first page showing a truck canopy with plastic tarp and two tires.

# SUBMISSIONS ON SENTENCE FOR CROWN BY MS. JANSE:

MS. JANSE: Prior to this, Your Honour, Mr. Marchand had no criminal record. He's since been convicted of a breach, a failing to report breach for which he received a $200 fine.

This is the first opportunity that I've had to speak with Mr. Marchand directly, so while it is a guilty plea on the day of trial, I think it's more of a matter of us not being able to sit down and discuss the matter, than him not taking responsibility at an early opportunity, so he does deserve some credit for that.

He advises me that he's 22 years old. He's not completed high school. He lives with his father at the same address. He's not on any form of government income, so he really has no income at this point. He has worked at a mill before and his plan is to move to Penticton to hopefully get employment there at the mill.

I advised him that Crown's position on this would be a $500 fine and a five year prohibition on owning animals, pursuant to s.24(3) of the *Prevention of Cruelty to Animals Act*, which I can provide to the court in a moment. He will need at least one year to pay that fine given his limited income at this time.

I'll just grab the *Act*, Your Honour; and so just at 24(3) is the wording of the prohibition should Your Honour deem that appropriate, and Mr. Marchand did advise me neither he nor his father have any animals on the property at this time, so he's agreeable to the prohibition.

Those are my submissions.

THE COURT: Before you sit ‑- stand ‑- stand down, what ‑- what is ‑- is *distress* defined somewhere?

MS. JANSE: Yes, it is. It's defined in s. 1 and it's on page three of the printout I've given you, and it's deprived of ‑- includes:

... (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment...

It also includes captioned:

... (a.1)...conditions that are unsanitary,  
  
 (a.2) not protected from excessive heat or cold...

In my submission there's multiple ways Mr. Marchand could be found guilty of permitting the animal to be in distress pursuant to that definition.

THE COURT: Okay, hold on. Which ‑-

MS. JANSE: Page three, sub two; it's sort of just under the middle.

THE COURT: Mm-hmm. Okay.

MS. JANSE: Does that assist?

THE COURT: Yes, thank you.

MS. JANSE: Thank you.

THE COURT: Stand up, Mr. Marchand.

Does that ‑- what Crown counsel has related, does that fairly set out what occurred in the last year?

THE ACCUSED: Yes.

THE COURT: Okay. Do you have anything you want to say about what this ‑- how the circumstances came about, or ‑-

THE ACCUSED: No.

THE COURT: And your ‑- your situation is as Ms. Janse says ‑- described, is it?

THE ACCUSED: [Inaudible response]

THE COURT: You're ‑- you're nodding yes?

THE ACCUSED: Yes.

THE COURT: Okay. What ‑- when do you plan to go to Penticton and deal with this, or get a job?

THE ACCUSED: Another month or so.

THE COURT: Okay; what kind of job is it?

THE ACCUSED: Sawmill.

THE COURT: How long have you been off work?

THE ACCUSED: Before last August.

THE COURT: Mm-hmm. As far as the penalty is concerned, do you ‑- do you think it's a fair penalty, or what do you think?

THE ACCUSED: Yeah.

THE COURT: Okay. I fine you $500 then, sir. I will give you 12 months to pay.

There will be a prohibition under s. 24(3), Madam Clerk, for five years.

Just ‑- just let me look at that.

MS. JANSE: Thank you, Your Honour, and Crown enters a stay of proceedings on Count 1.

THE COURT: Okay.

So this document you're going to have to ‑- it's a fine document you will have to sign at the registry at the end of the hall, sir, so Madam Clerk will give you a piece of paper and you can take it to the registry and they will tell you when you can ‑- when they can have the document for you to sign.

Thank you, sir.

THE ACCUSED: Okay.

(PROCEEDINGS CONCLUDED)

Transcriber: S. Stone