

1 APRIL 13, 2016

2

3 MR. PITTS: Your Honour, if I could page my
4 client.

5 THE COURT: Absolutely. And who is your client,
6 Mr. Pitts?

7 MR. PITTS: Dorothy Mader.

8 THE COURT: Mader. There she is at number 4, 5,
9 6, 7.

10 UNIDENTIFIED PERSON: Who's that?

11 MR. PITTS: Dorothy Mader, please come to
12 courtroom C, please, Dorothy Mader.

13 THE COURT: All right. And have pleas already
14 been entered on this matter?

15 MR. PITTS: I don't believe so, no.

16 THE COURT: Okay. Madam Clerk, I'll just have
17 you check to see if there have been any elections or pleas
18 while we wait.

19 UNIDENTIFIED PERSON: Ms. Mader's right behind
20 me.

21 THE COURT: Okay, thank you, Mr. Jack.

22 Okay, Ms. Mader, good morning. Come on in,
23 please, and you can be seated over by your lawyer, Mr.
24 Pitts.

25 THE CLERK: There was a not guilty plea entered
26 on September 13th at number 5 on your docket.

27 THE COURT: Okay. What was, and it, oh, it's
28 strictly a summary matter. So there's been a not guilty
29 plea on that one?

30 THE CLERK: Yes.

31 THE COURT: Okay. And that's the only one?

32 THE CLERK: Yes, it is.

33 THE COURT: Okay. So only a plea on the one
34 count at this point.

1 So how is the Crown proceeding where it has an
2 election on the remaining matters?

3 MS. PESALJ: The Crown is proceeding summarily --

4 THE COURT: Table notes.

5 MS. PESALJ: -- Your Honour.

6 THE COURT: Summary proceedings on all matters
7 then.

8 MS. PESALJ: Barb Pesalj for the Crown and for
9 the record.

10 THE CLERK: Can I get the spelling of your last
11 name, please?

12 MS. PESALJ: It's P-E-S-A-L-J.

13 THE CLERK: Thank you.

14 MS. PESALJ: Now, a number of Informations were
15 laid, Your Honour --

16 THE COURT: Um-hum.

17 MS. PESALJ: -- due to wording and whatnot. What
18 we're intending to do is there's going to be a guilty plea
19 to one of them, and we're going to proceed to sentencing.

20 THE COURT: Okay. And which count is that?

21 MS. PESALJ: And that would be --

22 MR. PITTS: I think it's number (inaudible).

23 MS. PESALJ: It would be number 5.

24 THE COURT: The matter where there's already been
25 a not guilty plea. So she'll be applying to withdraw the
26 not guilty plea and enter a plea of guilty at five?

27 MR. PITTS: That's correct, Your Honour.

28 MS. PESALJ: Once that guilty plea has been
29 accepted, Your Honour, the Crown will enter a stay on all
30 the others.

31 THE COURT: Okay. So we'll go through the plea
32 inquiry then.

33 MR. PITTS: I'm just going to double-check with
34 my learned friend. There've been so many Informations.

1 MS. PESALJ: Yes. Trying to get the word. Yes.
2 Yes. (Inaudible).

3 MR. PITTS: I think I'll just read the
4 Information, Your Honour, to start with --

5 THE COURT: Okay --

6 MR. PITTS: -- if that's okay.

7 THE COURT: -- we'll do that. I think that's
8 wise in this case.

9 MR. PITTS: Yeah.

10 Your Honour, the Information to which Ms. Mader
11 now seeks to withdraw her plea and to, plea of not guilty
12 then for a plea of guilty is at number 5, and the
13 Information reads:

14

15 That Dorothy Florence Mader on or
16 about December 6th, 2012 and the
17 6th of May, 2013, both dates
18 inclusive, at or near the Town of
19 Wabowden, in the Province of
20 Manitoba, being the owner did
21 unlawfully and willfully cause or
22 permit to be caused unnecessary
23 pain, suffering and injury to an
24 animal by failing to expand a
25 chain around the dog's neck,
26 contrary to Section 446(1)(a) of
27 the Criminal Code.

28

29 And I'm just going to double-check that, too.

30 MS. PESALJ: No, it's actually the wrong section.

31 MR. PITTS: Yeah, I thought it was.

32 THE COURT: There was a note on the docket --

33 MR. PITTS: Yeah, I thought it was.

34 THE COURT: -- indicating that it --

1 MS. PESALJ: It is.

2 THE COURT: -- should be checked.

3 MS. PESALJ: It should be 445.1(1)(a).

4 THE COURT: Okay.

5 MR. PITTS: Yeah.

6 THE COURT: So can that be amended by consent
7 then?

8 MR. PITTS: That would be by consent.

9 THE COURT: Okay, so Madam Clerk if you can cross
10 out the section number that's currently there and we'll
11 change it to 445. And that was .1(1)(a); is that correct?

12 MS. PESALJ: That's correct, Your Honour.

13 THE COURT: Okay, I'll give that to Madam Clerk
14 again when she's ready.

15 THE CLERK: I have it written in my log notes.

16 THE COURT: You've got it, okay.

17 THE CLERK: Thank you very much.

18 THE COURT: So that amendment can be made by
19 consent then. And to that amended plea she's seeking to
20 withdraw the not guilty plea?

21 MR. PITTS: That is correct, Your Honour. Ms. --

22 THE COURT: To that amended --

23 MR. PITTS: Would you stand up --

24 THE COURT: -- count I should say.

25 MR. PITTS: -- Ms. Mader.

26 Now, Ms. Mader, you, you're sitting there, you've
27 heard what's gone on. We've essentially withdrawn your not
28 guilty plea and you are, you heard me read the charge?

29 THE ACCUSED: Um-hum.

30 MR. PITTS: And you understand the charge. And
31 you are now pleading guilty to that charge; is that
32 correct?

33 THE ACCUSED: Yes.

34 MR. PITTS: Your answer is yes. If you --

1 THE ACCUSED: Yes.

2 MR. PITTS: -- could speak loudly.

3 THE COURT: Okay.

4 MR. PITTS: And you're pleading guilty to this
5 charge of your own choice?

6 THE ACCUSED: Yes.

7 MR. PITTS: You understand that although there is
8 a sentence proposal to be made to the court, that that's
9 going to be up to the judge what your sentence will be?

10 THE ACCUSED: Yes.

11 MR. PITTS: And you understand as well that by
12 entering this plea of guilty you have given up your right
13 to have a trial on the matter; do you understand that?

14 THE ACCUSED: Yes.

15 MR. PITTS: I'd ask the court to accept Ms.
16 Mader's plea of guilty, and my understanding is if you
17 accept --

18 THE COURT: Um-hum.

19 MR. PITTS: -- her plea, that the remaining
20 charges --

21 THE COURT: Okay.

22 MR. PITTS: -- are to be stayed.

23 THE COURT: And, Ms. Mader, I am prepared to
24 permit you to withdraw the not guilty plea, and I will
25 accept your guilty plea to that charge. You can have a
26 seat right beside your lawyer for now.

27 What's going to happen, Ms. Mader, is I'm going
28 to hear from the Crown attorney, and then I'll hear from
29 Mr. Pitts, then I'll give you a chance to tell me anything
30 that you would like to say. Once I've heard from
31 everybody, then I will decide what your sentence will be.
32 Okay?

33 So we'll start by entering a stay on the
34 remaining charges then, that's what Crown counsel indicated

1 they were going to do, and we'll proceed to the sentencing.

2 MS. PESALJ: Thank you, Your Honour.

3 There is a number of exhibits to be filed before
4 we begin.

5 THE COURT: Okay, we'll start with that.

6 MS. PESALJ: There has been an agreed statement
7 of facts that --

8 THE COURT: Um-hum.

9 MS. PESALJ: -- has been filed with the court?

10 THE COURT: Okay, I --

11 MS. PESALJ: All right then.

12 THE COURT: -- don't have that.

13 MS. PESALJ: Okay.

14 THE COURT: I'll need to get that. I imagine
15 it's on the file there, Madam Clerk. Okay, so --

16 MS. PESALJ: Those are --

17 THE CLERK: Exhibit S1.

18 MS. PESALJ: -- some of the facts. There's a few
19 additional facts that I'll be adding to that.

20 THE COURT: Okay, so this is, we'll start by
21 marking the agreed statement of facts as Exhibit 1 --

22 MS. PESALJ: Yes, please.

23 THE COURT: -- just so that it's clear that it
24 forms part of the record. I'll take one moment or two to
25 read through that, and then I'll let you continue.

26

27 **EXHIBIT S1: AGREED STATEMENT OF**
28 **FACTS**

29

30 THE COURT: Okay, I've finished reading the
31 agreed statement of facts.

32 MS. PESALJ: There are some additional facts, as
33 I said, Your Honour. Do you want me to get into those or
34 continue with the exhibits?

1 THE COURT: However you'd prefer to proceed.

2 MS. PESALJ: Perhaps I'll get all the exhibits
3 and then --

4 THE COURT: Okay.

5 MS. PESALJ: -- Your Honour, and then go with the
6 summary overview of the --

7 THE COURT: Okay.

8 MS. PESALJ: -- entire case. The next exhibit,
9 perhaps it can be S2 A and B is, the first one is the
10 autopsy or necropsy of the dog --

11 THE COURT: Okay.

12 MS. PESALJ: -- which was done by the Office of
13 the Chief Veterinarian, and then there is also the C.V. of
14 the veterinarian that performed --

15 THE COURT: Okay.

16 MS. PESALJ: -- the necropsy.

17 THE COURT: We can mark this as Exhibit 2 A and B
18 as requested.

19

20 **EXHIBIT S2 (A): NECROPSY REPORT**

21

22 **EXHIBIT S2 (B): CURRICULUM VITAE**
23 **OF VETERINARIAN WHO PERFORMED THE**
24 **NECROPSY**

25

26 THE COURT: Okay. I'll let you put them all in
27 and then I'll pause to read them.

28 MS. PESALJ: All right.

29 The next is an opinion letter from another
30 veterinarian in, from Cornell University in the States.
31 The veterinarian that did the necropsy contacted him for a
32 further opinion.

33 THE COURT: Um-hum.

34 MS. PESALJ: So there's a letter from him, along

1 with his C.V., which I'll tender as Exhibit S3 A and B.

2 THE COURT: Okay, that's fine.

3 THE CLERK: Exhibit S3.

4 THE COURT: Thank you.

5

6 **EXHIBIT S3(A): OPINION LETTER OF**
7 **VETERINARIAN FROM CORNELL**
8 **UNIVERSITY IN THE STATES**

9

10 **EXHIBIT S3(B): CURRICULUM VITAE**
11 **OF VETERINARIAN WHO PROVIDED**
12 **OPINION LETTER**

13

14 MS. PESALJ: Next, Your Honour, I have a series
15 of photographs of the dog that were taken at the time the
16 dog was euthanized.

17 THE COURT: Okay. These --

18 MS. PESALJ: That'll be Exhibit --

19 THE COURT: -- were by the RCMP, those photos?

20 MS. PESALJ: This was by the dog catcher.

21 THE COURT: The dog catcher, okay, they'll,
22 they'll be Exhibit 4, the photos from the dog --

23 MS. PESALJ: Yes.

24 THE COURT: -- catcher.

25 MS. PESALJ: And the euthanasian in Wabowden was
26 quite crude, Your Honour. He was taken to the dump and
27 shot.

28 THE COURT: Shot. I read that in the facts.

29 THE CLERK: Exhibit S4.

30 THE COURT: Okay, that will be S4.

31

32 **EXHIBIT S4: PHOTOS TAKEN BY DOG**
33 **CATCHER**

34

1 MS. PESALJ: Next is a series of photographs
2 taken by the veterinarian at the time of the necropsy,
3 there's a number here, so that'll be Exhibit 5, S5.

4 THE CLERK: Exhibit S5.

5 THE COURT: Okay, S5, thank you.
6

7 **EXHIBIT S5: PHOTOS TAKEN BY**
8 **VETERINARIAN AT TIME OF NECROPSY**
9

10 MS. PESALJ: All right, Your Honour, the facts
11 are essentially, and as indicated in the agreed statement
12 of facts that you read --

13 THE COURT: Um-hum.

14 MS. PESALJ: -- indicating that Ms. Mader called
15 the, the city, who then notified --

16 THE COURT: Um-hum.

17 MS. PESALJ: -- the dog catcher that she wanted
18 her dog put down. The dog catcher, when he went to
19 euthanize the dog, noticed a number of injuries on the dog,
20 and it was enough to concern him --

21 THE COURT: Um-hum.

22 MS. PESALJ: -- to contact the RCMP. As
23 indicated, he'd been doing the job for over 20 years, he'd
24 never seen anything like that, and so he, he believed that
25 RCMP should be involved, they were. They then proceeded to
26 hand the dog out for necropsy to, to get the necessary --

27 THE COURT: Um-hum.

28 MS. PESALJ: -- evidence of pain and suffering.

29 During the course of the investigation, the RCMP
30 also took some statements from some people that were
31 involved, one of them being --

32 THE COURT: Um-hum.

33 MS. PESALJ: -- Ms. Mader. She did not have a
34 lot to say to the RCMP in her statement, however, she did

1 indicate that the dog was hers, she'd had it since it was a
2 puppy, it was continually kept chained in the backyard, and
3 that she, despite the dog being hers and being on her
4 property, she did not actually take any steps to care for
5 the dog. She left him in the back. She told police that a
6 person who fed the dog from time to time had told her that
7 there was an issue with his neck and the chain sometime in
8 the winter, this came about in May, sometime in the winter,
9 so --

10 THE COURT: So she --

11 MS. PESALJ: -- some months --

12 THE COURT: -- wasn't even feeding the dog.
13 Someone else was feeding the dog --

14 MS. PESALJ: Yes.

15 THE COURT: -- from time to time?

16 MS. PESALJ: Yes. And so --

17 THE COURT: Like was this like a neighbour or a,
18 just ...

19 MS. PESALJ: It's a friend of hers.

20 THE COURT: Okay.

21 MS. PESALJ: I'll get to his statement and what
22 he has to say in --

23 THE COURT: So she --

24 MS. PESALJ: -- in a minute.

25 THE COURT: -- but this person told her when?

26 MS. PESALJ: That there was a problem with the
27 dog's neck. She's not clear as to what she was told about
28 that, aside from that there was a problem and it was too
29 tight. She told that person to, to loosen it, however, she
30 didn't really do anything else. This was in the wintertime
31 she said, so as I said, this was May, so it would have been
32 some months before that.

33 She went outside to see this dog at some point in
34 the winter once, and then advises the police that she

1 didn't see the dog at all until May when she called to have
2 it put down.

3 THE COURT: But she lives in this house with --

4 MS. PESALJ: And it's --

5 THE COURT: -- this yard in the back --

6 MS. PESALJ: -- her dog, yes.

7 THE COURT: -- and it's her dog.

8 MS. PESALJ: Yes. So there was some obvious lack
9 of care --

10 THE COURT: Um-hum.

11 MS. PESALJ: -- on her part or concern about this
12 dog at all.

13 In getting to the friend, her neighbour, Carl
14 (sic) Beattie (phonetic), Carlo Beattie (phonetic) is his
15 name, he indicates to the police that he used to walk by
16 and then see this dog, and it's a friendly dog, and he just
17 liked it, so whenever he was going by there, he, he'd get
18 scraps and stuff and then feed it to the dog. However,
19 when asked if he had any specific arrangements, whether Ms.
20 Mader had asked him to do any of this, he says no, he just
21 was doing it on his own, essentially 'cause he liked him,
22 that's pretty much what he said.

23 In, he indicates that the dog would get very
24 excited when he would come because the dog knew that he
25 would be going to feed him, this dog. He said that he
26 wasn't always around, though. He had a camp that he would
27 go out to for two weeks at a time, and so while he was
28 gone, he, he, he'd never feed the dog during that time or,
29 or do anything with it obviously. He doesn't mention
30 anything about saying anything to Ms. Mader about the
31 chain, so --

32 THE COURT: Um-hum.

33 MS. PESALJ: -- it's unsure --

34 THE COURT: Um-hum.

1 MS. PESALJ: -- or it's unclear, Your Honour, as
2 to whether or not that was something that she noticed when
3 she just happened to go outside or whether it was a thing
4 Mr. --

5 THE COURT: Um-hum.

6 MS. PESALJ: -- Beattie actually did tell her.

7 The report from Dr. Copeland (phonetic), who is
8 from the Chief Veterinarian, Veterinarian's Office here in
9 Manitoba, going through her report, she indicates that:

10

11 This chain that was around the
12 dog's neck wasn't, wasn't all that
13 visible, however, there were
14 three, because it had --

15

16 THE COURT: Um-hum.

17 MS. PESALJ:

18

19 -- grown so much around this neck,
20 the dog had ...

21

22 Her, her findings essentially is that this was,
23 this chain was put around the dog's neck when the dog was
24 still growing, so --

25 THE COURT: Um-hum.

26 MS. PESALJ: -- the dog continued to grow with
27 this tight chain. She indicated that there were three
28 links that had kind of fresh wounds and that two links were
29 actually completely fully embedded in the skin that had
30 grown over. She said there were several links that
31 couldn't be removed at all without cutting them off or
32 cutting through the skin, that the dog -- she gives a final
33 diagnosis here as to what the injuries are with the dog.
34 Number one obviously is euthanasia by gun shot.

1 THE COURT: Um-hum.

2 MS. PESALJ: She then goes on to say that there
3 is a lot of very large words, but basically saying that
4 there's multi-focal, severe chronic dermatitis and
5 panniculitis --

6 THE COURT: Um-hum.

7 MS. PESALJ: -- with ulcerations, strangulation,
8 so to me that's open wounds with infection, along with, she
9 goes on to say dehydration and no food in the
10 gastrointestinal tract.

11 THE COURT: Um-hum.

12 MS. PESALJ: That's explained in her comments,
13 which she says:

14

15 The gross findings are consistent
16 with this dog having a too small
17 chain collar around its neck for a
18 long period of time causing severe
19 ulceration and inflammation of the
20 underlying skin, and it had been
21 on long enough that the skin had
22 overgrown and completely entrapped
23 portions of the collar within the
24 tissue in four places.

25

26 She says that at minimum this had been like this
27 for 18 to 25 days, but she says due to the strength of the
28 tissue around the embedded links, her opinion is that it
29 was much longer than that.

30 She then goes on to say that:

31

32 There's inflammation of the skin
33 on the neck region, which causes
34 further inflammation in the nymph,

1 lymph nodes, and she notes that
2 the dog was underweight, it had
3 not eaten for some time, and this
4 is based on the fact that the
5 stomach was empty and only a
6 moderate amount of hair and some
7 grass was found in the colon.

8

9 THE COURT: Oh.

10 MS. PESALJ: These findings are consistent with
11 what Mr. Beattie said, that he was actually gone for two
12 weeks prior to the dog being euthanized and then why no one
13 would have fed him.

14 THE COURT: Would have fed it.

15 MS. PESALJ: She then goes on at the end of her
16 report to say that:

17

18 The dog was underweight and
19 hydrated (sic) and suggesting that
20 the dog wasn't offered food or
21 water or it could also be due to
22 the fact that the, that dog found
23 it too painful to swallow
24 because --

25

26 THE COURT: Oh.

27 MS. PESALJ:

28

29 -- of this chain or that he lost
30 his appetite due to the infection.

31

32 What we have then is the opinion from Dr.
33 McDonald (phonetic), who is the veterinarian from Cornell
34 University. He kind of gives a better timeframe as he's

1 more familiar with these types of injuries, and he goes on
2 to say that:

3

4 Incorporation of the chain links
5 between haired skin or skin that
6 has grown over is highly unusual.
7 (He says that) that would only
8 occur after a considerable period
9 of time, likely four to six months
10 after the initial open wound. (He
11 says that) a large body, foreign
12 body, such as a metal chain would
13 interfere with a wound healing and
14 predispose it to infection (which
15 is exactly what happened here.)

16

17 And in (a), his conclusion is that in his opinion
18 the dog suffered significant pain from both irritation by
19 the chain as well as a secondary infection.

20 So what we have here then, Your Honour, is a
21 timeframe of approximately --

22 THE COURT: Um-hum.

23 MS. PESALJ: -- four to six months, likely more,
24 that this dog was suffering. The pictures are not very
25 pretty to look at, and the ones taken at the time of
26 euthanasia are not as clear as the ones that are taken at
27 the time of the necropsy. Just, if you would look through,
28 you can actually see the depth of how hard this chain is
29 embedded in this dog's neck, it's not something that
30 happens overnight, and it's not something that wouldn't
31 have been visible had someone been --

32 THE COURT: Wow.

33 MS. PESALJ: -- viewing this dog regularly. You
34 can see that, going through some of the later photographs,

1 where the, where the hair is shaved, shows that it, there's
2 open, open wounds as well as, as wounds that, that appear
3 sort of healed somewhat with the skin growing over it, and
4 you can see how far it's actually in the skin.

5 THE COURT: Um-hum.

6 MS. PESALJ: You can also see that when the hair
7 is shaved and removed how skinny that dog actually is for a
8 big sized dog.

9 THE COURT: Um-hum.

10 MS. PESALJ: He's most definitely underweight,
11 all of this bearing credence to Dr. Copeland's findings.

12 Your Honour, I understand from discussions with
13 my friend that some of Ms. Mader's comments or her
14 counsel's comments on this will be that she had no intent
15 to do this, however, intent is not required. This was
16 willful neglect --

17 THE COURT: Um-hum.

18 MS. PESALJ: -- of this dog, just simple not
19 caring or understanding that an animal requires care. You
20 can't just get an animal and then not view it for months at
21 a time --

22 THE COURT: Um-hum.

23 MS. PESALJ: -- and have this dog suffer for an
24 extremely long period of time. In my opinion, Your Honour,
25 this is, cases like these are much worse than when an
26 animal suffers a very short period of pain and is then put
27 out of their misery. This is six months where this dog
28 continued to suffer.

29 And in arriving at a sentence recommendation,
30 Your Honour, I had considered and thought that a short
31 custodial sentence would be appropriate, not only for
32 general deterrence, but for specific deterrence here.
33 Although Ms. Mader has agreed to plead guilty and, and save
34 the time of a trial. The trial would have been lengthy --

1 THE COURT: Um-hum.

2 MS. PESALJ: -- bringing in the Chief --

3 THE COURT: Um-hum.

4 MS. PESALJ: -- Veterinarian from the Chief
5 Veterinarian's Office along with Dr. McDonald from the
6 States --

7 THE COURT: Um-hum.

8 MS. PESALJ: -- so in that case we've agreed to a
9 joint recommendation here of a large fine. Ms. Mader is on
10 social assistance and is of limited means, so a large fine
11 to her is a thousand dollars --

12 THE COURT: Okay.

13 MS. PESALJ: -- and that's what we've agreed to.

14 There is also, this is also to be followed by a
15 probationary period. My friend and I are not agreeing on
16 the length of that probationary --

17 THE COURT: Okay.

18 MS. PESALJ: -- period, and Mr. Pitts will make
19 submissions on that.

20 The Crown is requesting the maximum probation, a
21 three-year probationary period. This is in line with a
22 number of other cases that have discussed sort of these
23 neglect kind of things.

24 THE COURT: Um-hum.

25 MS. PESALJ: There's quite a few that, that are
26 viewed. They all seem to be followed by a period of
27 probation. One court, the Alberta court, was, was
28 specifically quoted in a bunch of cases in, in giving a
29 rationale for this and saying, it was the case of R v.
30 Piasentin, it was a 2008 case. The court said that --

31 THE COURT: Sorry, how do you spell that name of
32 the case?

33 MS. PESALJ: P-I-A --

34 THE COURT: Um-hum.

1 MS. PESALJ: -- S-T --

2 THE COURT: Um-hum.

3 MS. PESALJ: -- E-N --

4 THE COURT: Um-hum.

5 MS. PESALJ: -- T-I-N.

6 THE COURT: And this is Alberta, what level
7 court?

8 MS. PESALJ: Provincial Court.

9 THE COURT: Alberta Provincial Court, okay.

10 MS. PESALJ: Yeah, 2008.

11 To be quite honest, Your Honour, these animal
12 cases don't really go to the Court of Appeal --

13 THE COURT: No.

14 MS. PESALJ: -- so there wasn't --

15 THE COURT: Um-hum.

16 MS. PESALJ: -- any real case law there.

17 But at the end of the day, that, the, the court
18 stated that:

19

20 "...the dilemma in sentencing
21 becomes: how best to express
22 society's stern denunciation of
23 the conduct without wreaking
24 vengeance on the offender;
25 because, as with all sentencing
26 cases, the ultimate objective is
27 to have the offender re-integrated
28 into the community as a law-
29 abiding ... (citizen), a full
30 participant in the life of the
31 community."

32

33 Ultimately the court then went on to say:

34

1 "Balancing all considerations,
2 then, I conclude that a jail
3 sentence is required as a proper
4 reflection of societal
5 condemnation of abusive treatment
6 of animals...(and) the need to
7 provide for rehabilitation and
8 reparations will be met by the
9 lengthy probation order."

10

11 THE COURT: Um-hum.

12 MS. PESALJ: So as indicated, I'm not seeking a
13 custodial sentence here --

14 THE COURT: Um-hum.

15 MS. PESALJ: -- based on the guilty plea, however
16 I do think that a lengthy probation order is in, is
17 required. We also have to take into consideration, Your
18 Honour, the fact that we live in the north.

19 THE COURT: Um-hum.

20 MS. PESALJ: Cases like these are not uncommon.

21 THE COURT: Unfortunately they're not.

22 MS. PESALJ: People often put a chain around the
23 dog, tie it up, leave it, forget it, and these chains get
24 embedded and cause a great amount of suffering to animals,
25 so not only is, is specific deterrence important here,
26 general deterrence is, and by giving a hefty fine and a
27 lengthy probationary period, that would send a message out
28 that, that this just simply can't be done.

29 THE COURT: What sorts of conditions were you
30 recommending?

31 MS. PESALJ: The conditions that I'd be asking
32 for, Your Honour, would be essentially that Ms. Mader
33 attend, participate and complete any counselling --

34 THE COURT: Okay.

1 MS. PESALJ: -- as required by Probation
2 Services. I don't know that any other usual criminal
3 conditions --

4 THE COURT: No.

5 MS. PESALJ: -- would apply. There was no
6 alcohol involved, no weapons --

7 THE COURT: No.

8 MS. PESALJ: -- or anything like that, so I think
9 I would leave it in Probation's hands as to --

10 THE COURT: Were you seeking a condition that she
11 not be allowed to own a --

12 MS. PESALJ: I'm actually getting to that, Your
13 Honour. There is a section of the Code --

14 THE COURT: Okay.

15 MS. PESALJ: -- find the paper -- there is a
16 section of the Code allowing for bans --

17 THE COURT: Okay.

18 MS. PESALJ: -- on owning animals.

19 THE COURT: Do you know the section number? I
20 have to confess I'm not familiar with it.

21 MS. PESALJ: I did write it down, and I managed
22 to lose the paper. I think it's 447.

23 THE COURT: Four forty-seven, let's have a look
24 here.

25 MS. PESALJ: Yeah, 447.1(1), it's an order of
26 prohibition, and allows the court to make an order
27 prohibiting a person from essentially having an animal for
28 any period that the court considers appropriate. My friend
29 and I have actually agreed to --

30 THE COURT: Sorry, what was, I don't --

31 MS. PESALJ: Sorry, 447.1 --

32 THE COURT: Oh, there it is, .1.

33 MS. PESALJ: -- yeah, (1)(a).

34 THE COURT: Okay.

1 MS. PESALJ: So my friend and I have agreed to
2 actually a lifetime --

3 THE COURT: Lifetime.

4 MS. PESALJ: -- prohibition. Ms. Mader has
5 indicated that she suffers from arthritis and would have
6 trouble --

7 THE COURT: Okay.

8 MS. PESALJ: -- caring for animals in any event,
9 so given --

10 THE COURT: Good.

11 MS. PESALJ: -- the circumstances and her
12 particular --

13 THE COURT: Um-hum.

14 MS. PESALJ: -- illness --

15 THE COURT: Um-hum.

16 MS. PESALJ: -- may, a lifetime ban would be
17 appropriate. There's --

18 THE COURT: Okay.

19 MS. PESALJ: -- no reason to put another animal
20 in this position.

21 Subject to any questions, Your Honour, those
22 would be my submissions.

23 THE COURT: No, I don't have any questions.
24 Thank you. Okay.

25 MR. PITTS: Thank you, Your Honour.

26 Ms. Mader is 55 years of age. She was born on
27 June 4th, 1960. She's a member of the Bunibonibee Cree
28 Nation of Oxford House, although she's not been a resident
29 in Oxford House, but has, still has close family ties
30 there. She was actually born in Thicket Portage and she's
31 one of 11 children, the fourth youngest. Her father worked
32 on the railway and her mother stayed at home.

33 She tells me in terms of Gladue factors, I guess,
34 she did experience some happiness and unhappiness in the

1 home when she was a --

2 THE COURT: Um-hum.

3 MR. PITTS: -- child, and there was drinking --

4 THE COURT: Um-hum.

5 MR. PITTS: -- excessive drinking and that lead
6 to neglect and she herself, amongst her siblings as well,
7 was placed in foster care at a very young age, and
8 eventually she was returned to her family, and they moved
9 to Wabowden and that's where she's been living ever --

10 THE COURT: Um-hum.

11 MR. PITTS: -- since she was about 11 or 12.
12 Things got a little better for the family there.

13 She tells me she has a grade 10 education. She
14 was married, is married, I guess, has five children, but
15 she's been separated for seven years. I note that her
16 daughter was here earlier, but I'm not sure where she went.
17 She was outside with her mother, but went out during, we
18 were waiting for court and --

19 THE COURT: Um-hum.

20 MR. PITTS: -- I went out, and I haven't seen her
21 since, but in any event she does have four children still
22 in Wabowden and one child at --

23 THE COURT: Um-hum.

24 MR. PITTS: -- Cross Lake. They're all grown, of
25 course.

26 She has 14 grandchildren and most of them are in
27 Wabowden. She's not employed. She's on social assistance,
28 but she does provide daily child care to one or the other
29 of --

30 THE COURT: Um-hum.

31 MR. PITTS: -- her grandchildren, it's pretty
32 well a daily event.

33 She suffers from rheumatoid arthritis and that's
34 focussed largely in the joints in her knees and --

1 THE COURT: Um-hum.

2 MR. PITTS: -- her elbows. It does make it
3 difficult for her to get around.

4 THE COURT: Um-hum.

5 MR. PITTS: It's generally, even coming into
6 court this morning, she limps hard and it's, it's painful
7 and sometimes difficult to move. I can relate to that a
8 little bit within more recent months as I've seemed to
9 develop a similar condition that's given me aggravation --

10 THE COURT: Um-hum.

11 MR. PITTS: -- and I --

12 THE COURT: -- Um-hum.

13 MR. PITTS: -- know what it's like.

14 She does not have a criminal record, as far as I
15 know, I didn't see one, and she's never, as far as I know,
16 been involved with the law.

17 With respect to this dog, the dog came to her as
18 was indicated as a puppy from her son, and she adopted the
19 dog as her own. And what happened is she originally kept
20 the dog at her home, but as it grew, it became evident the
21 dog was a runner. It was constantly getting out and
22 getting into the community, and Ms. Mader could not easily
23 just go running after it or go looking for it, could not
24 easily drive for it, she doesn't have a vehicle and, but
25 eventually the dog would be returned to her by someone from
26 community council or sometimes --

27 THE COURT: Um-hum.

28 MR. PITTS: -- her neighbours, but eventually she
29 was fined for the --

30 THE COURT: Um-hum.

31 MR. PITTS: -- dog's being in the community
32 loose, it was \$80 to get the dog back. That was when she
33 was told, she tells me, to chain the dog up or, or, you
34 know, get rid of it, one or the other, so she did chain it

1 up, it was behind the house. It, as many dogs in the
2 north, it was kept outside, but it had its own little --

3 THE COURT: Um-hum.

4 MR. PITTS: -- dwelling that was insulated with
5 straw and everything. And because of Ms. Mader's condition
6 and just her life in general, the care of the dog was often
7 left to others, and she, she often would look at the dog
8 from out the back window. The dog seemed okay, but she
9 actually didn't always go down to check on the animal.

10 There was a person mentioned, a Mr. Beattie, who
11 often fed, fed the dog, but would be away at times, but she
12 also relied on her grandchildren to go down and they would
13 take food scraps and the dog had a dish there. To, to her
14 knowledge the dog always had water, although I know from
15 owning dogs, if they are kept in a confined space, they'll
16 often kick their water over, so that's not an unusual
17 thing, but she does recognize that she could have been more
18 vigilant and should have been more vigilant in seeing that
19 the dog was properly cared for.

20 When it did become evident that there was an
21 issue with respect to the collar, again like these are not
22 people that could just go to a vet --

23 THE COURT: Um-hum.

24 MR. PITTS: -- and 'cause I know what vet fees
25 are, having paid them, and I, I'm not sure how or if the
26 collar at some point could have been cut out, but whatever
27 happened she started with help from someone else treating
28 the condition with Polysporin, and then as it became
29 evident that wasn't working, that's when she decided the
30 dog had to be put down --

31 THE COURT: Um-hum.

32 MR. PITTS: -- and she called the, the community
33 council which does that. I think typically they do it with
34 the fumes from a vehicle actually --

1 THE COURT: Um-hum.

2 MR. PITTS: -- and in this case the dog was put
3 down my friend mentioned by the dog catcher, but I, as I
4 read it was actually the police shot the dog at the dump,
5 as I understood it, but that doesn't really matter. The
6 point is when she called them they came, they saw the state
7 of the dog and then reported it to the police.

8 All I can say, Your Honour, is it's, it's a very
9 unfortunate tragedy. Ms. Mader doesn't strike me as a
10 vicious or cruel person. I think it's just a case of a
11 situation that she just didn't or wasn't able to keep
12 control of and let it go, and let it go too long, and
13 clearly you see it in the pictures which are self-evident.
14 She is truly sorry that things led, were led to go as they
15 did. She, as I say, her illness is what kept her more
16 confined in terms of the way she cared for the dog. It's
17 not an excuse, but it is somewhat of an explanation.

18 I submit that a fine in this case, a thousand
19 dollar --

20 THE COURT: Um-hum.

21 MR. PITTS: -- fine, which we've talked about, is
22 a serious hardship in and of itself.

23 THE COURT: Um-hum.

24 MR. PITTS: The probation issue, you know, I'm
25 not quoting case law and that. I, I, my understanding of
26 probation is generally it's not there to be punitive as
27 much as --

28 THE COURT: Um-hum.

29 MR. PITTS: -- it's there to be rehabilitative.
30 This woman is 55 years old now. I'm not sure what lengthy
31 probation is going to do. I was going to suggest two years
32 at the most, and, you know, the ban I think is key --

33 THE COURT: It is.

34 MR. PITTS: -- here, not as much the probation.

1 I think she already knows whatever she might learn through
2 probation --

3 THE COURT: Um-hum.

4 MR. PITTS: -- but I leave that to the court.

5 THE COURT: Um-hum.

6 MR. PITTS: In any event this, this is a, is a
7 plea bargain. This was --

8 THE COURT: Um-hum.

9 MR. PITTS: -- originally set for trial. There,
10 there were in my opinion triable issues, but ultimately we
11 found a window through which --

12 THE COURT: Um-hum.

13 MR. PITTS: -- we could resolve it, and it's
14 resolved, and I, I pray to the court that the court will
15 accept the recommendations --

16 THE COURT: Um-hum.

17 MR. PITTS: -- and as far as the probation, I
18 leave it with your discretion, Your Honour.

19 THE COURT: Okay.

20 MR. PITTS: Those are my remarks.

21 THE COURT: Thank you, Mr. Pitts.

22 Okay, Ms. Mader, please stand up. Is there
23 anything that you would like to tell me?

24 THE ACCUSED: I'd just like to say I'm sorry,
25 sorry.

26 THE COURT: Okay. All right, thank you for that.

27

28 (REASONS FOR SENTENCE DELIVERED)

29

30 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 26, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill and ability.

KARI SHORT
COURT TRANSCRIBER

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DOROTHY FLORENCE MADER,

Accused.

TRANSCRIPT OF PROCEEDINGS, before The Honourable Judge Hembroff, held at the Provincial Court, 59 Elizabeth Road, in the City of Thompson, Province of Manitoba, on the 13th day of April, 2016.

APPEARANCES:

MS. B. PESALJ, for the Crown

MR. H. PITTS, for the Accused

INDEX

| | Page |
|---------------------------|-------------|
| PROCEEDINGS | 1 |
| SUBMISSIONS BY MS. PESALJ | 6 |
| SUBMISSIONS BY MR. PITTS | 21 |
| | |
| <u>EXHIBITS</u> | |
| S1 | 6 |
| S2(a) | 7 |
| S2(b) | 7 |
| S3(a) | 8 |
| S3(b) | 8 |
| S4 | 8 |
| S5 | 9 |