

Action No.: 131341208P1
E-File No.: ECP14WABASCAC
Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

CLINTON NEIL WABASCA

Accused

P R O C E E D I N G S

Edmonton, Alberta
November 18, 2014

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EXHIBITS

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

2 _____
3 November 18, 2014 Morning Session

4
5 The Honourable Provincial Court
6 Judge Allen of Alberta

7
8 C. M. T. Lim For the Crown
9 S. J. Fix For the Accused
10 V. Parsons Court Clerk
11 S. Daniele Court Clerk

12 _____
13
14 MR. FIX: Sir, we're in a position (INDISCERNIBLE)
15 Mr. Wabasca, we can conclude that matter, if it pleases the Court.

16
17 THE COURT: Yes, let's do that.

18
19 **Pleas**

20
21 MR. FIX: Mr. Wabasca is before the Court, Sir. There's
22 a three-count Information before the Court and for efficiency and ease, we are
23 proposing -- he wishes to maintain his not guilty pleas, with respect to Count Number 1,
24 pursuant to Section 606(4) would enter a plea to the other offence of unlawful entry
25 pursuant to Section 72(1) of the *Criminal Code*. With res --

26
27 THE COURT: That's with Crown consent?

28
29 MR. LIM: That's with the consent of the Crown, Your
30 Honour, that's correct.

31
32 MR. FIX: With respect to Count Number 2, Sir, he would
33 enter a change of plea to guilty on the basis of a party, or aiding and abetting.

34
35 MR. LIM: That's correct, Your Honour, that's with
36 consent.

37
38 MR. FIX: And, finally, Sir, with respect to Count Number
39 3, he would maintain his not guilty plea, but again pursuant to 606(4) enter a plea to the
40 other offence of assault simpliciter.

41

1 THE COURT: Okay. So he's got -- he's entered a plea, guilty
2 plea to three offences. And you've explained Section 606 one --

3

4 MR. FIX: I have, Sir.

5

6 THE COURT: -- (1.1).

7

8 MR. FIX: And I'm confident the pleas are entered
9 appropriately. Additionally, I've shown this document to Mr. Wabasca and he
10 acknowledges it as a record of his convictions.

11

12 THE COURT: All right, S-1 will be the record.

13

14 **EXHIBIT S-1 - Criminal Record of the Accused**

15

16 **Particulars**

17

18 MR. LIM: Thank you, Your Honour. The facts are as
19 follows, Sir. In the City of Edmonton in the Province of Alberta on November the 12th,
20 2013 at approximately 6:15 in the evening the complainant, or one of the complainants,
21 that being a Ms. Raven Culver was at her residence located on 80th Street, 11707, then
22 Apartment 9. She was with her -- a couple of friends as well, Your Honour, as well as
23 her four-year-old pit bull named Mercy (phonetic). The accused, that being Clinton
24 Wabasca and three co-accused, Charlie Chalifoux, a youth and Dylan Machiskinic entered
25 the residence, which was opened by Ms. Morin. Originally the first individual was
26 allowed in and then the other individuals came in afterwards, unwelcome. They went into
27 the residence uninvited and were confronted by Raven Culver, who is the owner of the
28 residence, who knew them as acquaintances but said -- stated that, of course, they were
29 not welcome in the house.

30

31 Some kind of disagreement eventually occurred between Ms. Morin and the individuals.
32 She eventually went into the bathroom to get away from them and closed the door. At
33 one point the accused came to the bathroom door. She opened it and saw the accused.
34 They started talking. The -- I understand the discussion got louder and more
35 confrontational, at which point the accused, being larger in size, then struck the
36 complainant with his fist, closed fist, several times in the face, leading the complainant to
37 fall to the ground. She had some bruising, Your Honour, and swelling to her lip and to
38 her cheek, I understand, as a result of the accused, Mr. Wabasca, punching her several
39 times. We don't have the exact number of times, Sir, but it appears to be more than five
40 times, less than 10 times, Your Honour, certainly.

41

1 Meanwhile, Your Honour, Ms. -- the youth had entered the residence and all of them
2 appeared to be intoxicated, Your Honour, all the four accused. He has with him a
3 10-and-a-half inch blade machete. He attacks the pit bull who gets into the bathroom area
4 basically trying to defend the complainant. He -- the youth attacks the pit bull with the --
5 this is the youth, not the accused, the accused before the Court, Your Honour -- attacks
6 the pit bull with the machete, striking it several times and severing its spine, although the
7 dog did survive.

8
9 Meanwhile the accused, that being Mr. Wabasca, does yell out -- yells out something to
10 the comment, kill the dog, kill the dog twice, Your Honour. He actually does not touch
11 the dog or ever hold the machete and eventually, Your Honour, the four accused do flee,
12 leaving the dog extremely injured. The complainant also had some cut marks not from
13 this accused, Your Honour, but from the machete which was being swung by the youth.
14 The only injuries that are attributable to this accused were minor injuries with respect to
15 swelling and bruising to her face, Your Honour.

16
17 Those are the allegations in respect to this incident.

18
19 MR. FIX: Your Honour, this is a relatively complex
20 matter fixed for trial today. On the basis of the joint submission, Mr. Wabasca has
21 instructed me to enter the pleas as you've seen before you and to admit the facts as
22 alleged by my friend.

23
24 THE COURT: Okay.

25
26 **Submissions by Mr. Lim (Sentence)**

27
28 MR. LIM: Your Honour, there is a criminal record you
29 will note before this honourable Court.

30
31 THE COURT: Yes.

32
33 MR. LIM: It does include crimes of violence. The last one
34 includes a conviction in 2009 for manslaughter. The accused had just been out of custody
35 in respect to the manslaughter charge for not very long when this incident occurs, Your
36 Honour.

37
38 I can inform this honourable Court, first of all, what the joint submission is and I will
39 explain in detail as to why we're proceeding in this manner. The joint submission, Your
40 Honour, would be on a global sentence for six months and three weeks, in other words six
41 months and 21 days, which would be time served. The accused has that in, Your Honour,

1 if you give enhanced credit he would clearly have that time in custody. We are
2 suggesting that.

3

4 We are suggesting the breakdown should be as follows: For the unlawful entry as well as
5 the assault, Your Honour, be for six months' incarceration. In respect to the wounding,
6 injuring or hurting an animal, which he's party to the crime by encouraging the assault by
7 the youth, we are suggesting three weeks' incarceration, Your Honour.

8

9 Your Honour, this considers the fact (INDISCERNIBLE) that the complainant and the
10 main civilian witness have been extremely leery about attending court. At one point it
11 appeared they would not be attending court. The Crown did locate them and have been
12 working with various organizations to ensure their attendance. They were going to come
13 because of the people we had working with them, however, they were still very leery
14 about testifying. My friend, and I just want to confirm this, we are agreeing to a very
15 simple basic probation order, I think. I'll just confirm that with my friend, and so I
16 haven't prepared it, Your Honour, because I just spoke to my friend briefly beforehand.

17

18 THE COURT: Sure. What's the --

19

20 MR. LIM: There will be the normal reporting conditions
21 for 12 months, Your Honour, just the very basics. The main thing here is that the
22 complainants, which I do not believe have filled out a victim impact statement, which
23 Madam Clerk can confirm, at least when I spoke to them. I spoke to Raven Culver as
24 well as Laurel Morin which are the -- I guess the main witnesses on this matter. They are
25 not interested in filling out a victim impact statement, but they were very fearful of the
26 accused and wanted nothing to do with him and to stay away. They have moved out of
27 that residence, but they're asking for a no contact. So I'm asking, Sir, for the basic terms
28 of a probation order, like the basic --

29

30 THE COURT: Report.

31

32 MR. LIM: Report, exactly, but the main term would be the
33 no contact provision and I will spell out the names, Laurel Morin, M-O-R-I-N, Laurel
34 Morin, as well as the complainant named in the Information, Raven Culver, C-U-L --

35

36 THE COURT CLERK: Okay, and how do you spell Laurel? How do
37 you spell Laurel?

38

39 MR. LIM: Laurel is L-A-U-R-E-L. Culver is C-U-L-V as
40 in Victor, E-R.

41

1 THE COURT: C-U-L-V-E-R, Culver.

2

3 MR. LIM: Sorry, Laurel -- Laurel Morin is -- Laurel
4 Morin is the first witness. That's M-O-R-I-N. And then the second individual is Raven,
5 R-A-V-E-N, Culver, C-U-L-V-E-R. Sorry about that.

6

7 THE COURT: Okay.

8

9 MR. LIM: Those are the two individuals, no contact
10 directly or indirectly. We do not need to name a residence, Sir. They have moved, so to
11 make it perfectly clear.

12

13 Your Honour, in respect to the animal cruelty charge, we are agreeing to three weeks,
14 Your Honour. Certainly, Your Honour, and this is basically on his role, in other words,
15 we're looking at what his culpability was.

16

17 THE COURT: He was shouting and encouraging.

18

19 MR. LIM: It would be very different, Your Honour, as you
20 can appreciate with the changes in the law and I believe the Court -- this Court has been
21 familiar with some of the sentences that have occurred.

22

23 THE COURT: Yes.

24

25 MR. LIM: But for his role, he didn't actually hold the dog
26 down. He did do some words, kill the dog, kill the dog that encouraged the young person.
27 That's the only reason why we're agreeing to actual three weeks' incarceration. In no
28 way are we suggesting that it's not a significant and horrific crime and that this helpless
29 animal, who did survive though eventually has now passed on as a result of the injuries
30 and had a severed spine, Your Honour, but we're only accepting that based upon what we
31 can prove and what actually the facts are.

32

33 THE COURT: And the probation is for 12 months is what
34 you're talking about?

35

36 MR. LIM: The probation is for 12 months, Your Honour,
37 that's correct. I haven't spoken to my friend, but considering those particular allegations
38 of facts and the criminal history of the accused, it would also be the Crown's application
39 for a DNA sample and a weapon prohibition. Although the accused certainly should
40 probably have provided that and be (INDISCERNIBLE) weapon prohibition in respect to
41 his last charge, it is the Crown's request considering the facts here, Your Honour, noting

1 that, as I said, there is no victim impact statement, but certainly there was the fear factor
2 that they do not wish to testify and do not wish to have contact with this particular
3 accused.

4
5 THE COURT: Okay.

6
7 MR. LIM: I'm making no comments, Your Honour, in
8 respect to the animal prohibition simply because of the facts in this particular case here,
9 Your Honour, obviously, but certainly we are still considering it a very serious incident
10 indeed.

11
12 THE COURT CLERK: And what is the section number for Count 2?

13
14 MR. LIM: Count 2 is 445.1. It should be on the
15 Information.

16
17 THE COURT: It's on the Information, a plea of guilty to the
18 actual charge.

19
20 MR. LIM: Yes.

21
22 THE COURT: As opposed to an included offence or other
23 offence. Okay.

24
25 MR. FIX: If it assists Madam Clerk, I think 463/445
26 would be part of your --

27
28 **Submissions by Mr. Fix (Sentence)**

29
30 MR. FIX: Sir, he's 33 years of age as he sits before you.
31 With respect to the joint submission, I can advise that this is the culmination of several
32 offers made by the Crown. Mr. Wabasca fixed the matter for trial. All of the others had
33 resolved and at some point he couldn't -- couldn't decline the offer put forward.

34
35 He, Sir, has been out of trouble but for this incident and working steadily since his release
36 from the last conviction you see on his record. About three months ago he was struck,
37 Sir, in a hit and run. He was working at the time for a firm named Macor (phonetic)
38 Moving as a furniture mover. As a result of that -- he was a pedestrian, he broke his
39 elbow, so he's been off work and doing physio since that accident, Sir.

40
41 THE COURT: Okay.

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MR. FIX: I am joining my friend. He is prepared, certainly, to abide by a no contact condition. Subject to any questions, Sir, those would be my submissions.

THE COURT: No. Mr. Wabasca, please stand up.

MR. LIM: Oh, Your Honour, I just wanted to clarify one thing just so that -- didn't think that we were misleading the Court. The other three accused, two of them, the adults pled, all we could prove, which was unlawful entry. The youth, which is quite different, Your Honour, pled to the assault with the machete, assault on the dog -- or assault on the dog. His sentence I can't really tell you because it was in a global with other charges and it's very different, as you know, in youth court, but he received 18 months globally, but that included several other factors.

THE COURT: Okay. Mr. Wabasca, anything you want to tell me before I sentence you?

THE ACCUSED: I would just like to say -- thank the Court for their patience in trying to deal with this matter.

Sentence

THE COURT: Okay, well, it was a chaotic and not very wise thing to get involved in. The sentence suggested is appropriate and I'll impose it. So six months in relation to the unlawfully -- an unlawful entry. Six months concurrent in relation to the second charge. Sorry, in relation to the second charge, 21 days consecutive. In relation to the third charge, six months concurrent. Grand total of six months and 21 days, which I understand you have served and therefore the actual sentence will be time served.

Crown has proceeded by Indictment, therefore there's a \$200 victim surcharge in relation to each of these offences, in default two days. All times to be consecutive if not paid. We'll talk about time to pay in a moment.

There will also be a DNA sample ordered for -- on the assault charge for -- you will give a sample of your DNA for the purpose of the DNA databank. I understand that you have given it previously and it may be that the authorities will not require you to give it, but this gives them the authority to take it should they need to do so. Can they still take it in the courtroom? I've -- every time I go away they change.

1 MR. LIM: They can downstairs, I believe, you know, but
2 there's --
3
4 MR. FIX: I don't know. Last time I was down there, --
5
6 MR. LIM: But they tell us to go back to the station, --
7
8 MR. LIM: -- I don't think they can anymore.
9
10 MR. LIM: -- yeah.
11
12 THE COURT: Well, let's try downstairs.
13
14 MR. FIX: No. Yes, they can.
15
16 THE COURT: And if it doesn't work out, come back up and
17 see me, okay?
18
19 MR. FIX: Thank you, Sir.
20
21 THE COURT: All right. And there's nothing to forfeit, is
22 there, particularly? Did --
23
24 MR. FIX: No, Sir.
25
26 THE COURT: No.
27
28 MR. FIX: I don't think so.
29
30 MR. LIM: Crown applied for a weapon prohibition as
31 well.
32
33 MR. FIX: With respect to time --
34
35 THE COURT: Does he have one or he must -- he must have
36 one in this.
37
38 MR. LIM: He probably has --
39
40 MR. FIX: Yes, I would assume he has one, Sir.
41

1 MR. LIM: -- he has one, in respect to the manslaughter he
2 should have one.

3
4 THE COURT: He should have one for that. It's a mandatory
5 prohibition. I don't think another one is necessary. He's already got one. Okay. Thank
6 you very much. And --

7
8 MR. LIM: Crown applies to withdraw the other charges.

9
10 THE COURT: -- in relation to the -- all three charges, there
11 will be a probation order of 12 months with really two, three conditions. Keep the peace
12 and be of good behavior. Report to the court when required to do so. Report any change
13 of name, address or employment. You will report to a probation officer within two
14 working days and to report as directed. But most importantly, which is the reason for this
15 probation order, not to have any contact with Laurel Morin and Raven Culver.

16
17 So you can abide by that, sir?

18
19 THE ACCUSED: Yes, Sir.

20
21 THE COURT: Okay.

22
23 MR. FIX: Sir, I'm wondering if the Court would consider
24 with respect to reporting after is reporting thereafter monthly? As directed, their policy is
25 every two weeks and when he gets employment, it's difficult to --

26
27 THE COURT: Okay. How about this? Report monthly. I'll
28 put monthly. All right. You go the first time and then monthly thereafter. Okay. No
29 contact with Raven Culver, Laurel Morin. Okay.

30
31 MR. FIX: With respect to time to pay, Sir, for the victim
32 fine surcharges, as you heard, Sir, he's on now a medical disability.

33
34 THE COURT: Yes.

35
36 MR. FIX: Doesn't have a lot of money, so perhaps four
37 months?

38
39 THE COURT: Sure. We'll give you to -- how about this?
40 May 1st or May -- yeah, May 1st is a Friday. May 1st, 2015 to pay. Okay. Thank you.

41

1 MR. FIX:

Thank you, Sir.

2

3 MR. LIM:

The other charges are withdrawn, Your Honour.

4

5 THE COURT:

All right.

6

7

8 PROCEEDINGS CONCLUDED

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1 Certificate of Record

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3 I, Samantha Daniele, certify that this recording is the record made of the evidence in the
4 proceedings in Provincial Court held in courtroom 355, at Edmonton, Alberta on the 18th
5 day of November, 2014, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, J. Cassidy, certify that

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

8

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

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Digitally Certified: 2014-12-08 17:01:46
Joan Cassidy, Transcriber
Order No. 51277-14-1

35 Pages: 14

36 Lines: 544

37 Characters: 15339

39 File Locator: 32f6206c7f3511e4b8310017a4770810

40 Digital Fingerprint: f4a4245ed88e39a2cddc47cac5d022ca9642929b312bc0550784ece38e6a2574

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Transcript Pages:	12
Total Pages:	14
Line Statistics	
Title Page Lines:	50
ToC Lines:	9
Transcript Lines:	485
Total Lines:	544
Visible Character Count Statistics	
Title Page Characters:	492
ToC Characters:	192
Transcript Characters:	14655
Total Billable Characters:	15339
Multi-Take Adjustment: (-) <small>Duplicated Title Page Characters</small>	14847