

Action No.: 140582719P1
E-File No.: ECP15MCPIKEDARR
Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

DARREN JOHN MCPIKE

Accused

T R I A L
EXCERPT

Edmonton, Alberta
April 30, 2015

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Edmonton, Alberta

2 _____
3 April 30, 2015 Afternoon Session

4
5 The Honourable The Provincial Court of Alberta
6 Judge S. Bilodeau

7
8 C.M.T. Lim For the Crown
9 R.A. Morin For the Accused
10 V. Parsons Court Clerk

11 _____

12

13 **Discussion**

14

15 THE COURT: Good afternoon.

16

17 MR. MORIN: Good afternoon, Sir.

18

19 MR. LIM: Good afternoon, Your Honour.

20

21 THE COURT: Mr. Lim, Mr. Morin. Good afternoon,
22 Mr. McPike.

23

24 THE ACCUSED: Good afternoon.

25

26 THE COURT: All right. I'm looking forward to hearing
27 arguments. I've reviewed the evidence. Mr. Morin, I received your submissions,
28 and I'm very grateful for them.

29

30 MR. MORIN: Thank you, Sir.

31

32 THE COURT: I found the transcript helpful, and your
33 argument, I thought, was very focused and very appropriate, so --

34

35 MR. MORIN: Thank you, Sir. I won't have much more to
36 say. I didn't include the officer's evidence, nor the final -- Keith Orr's evidence as
37 well, but that's very short. I didn't --

38

39 THE COURT: I had very good notes on the police officer's. It
40 was very brief. And Mr. Orr's, I should just listen to it.

41

1 MR. MORIN: Thank you.

2

3 THE COURT: Thank you.

4

5 Mr. Lim, what are the Crown's submissions?

6

7 **Submissions by Mr. Lim**

8

9 MR. LIM: Your Honour, obviously we have three
10 charges before this Honourable Court: we have a charge of assault on Benjamin
11 Roe; we have a weapon dangerous to the public -- to wit, a pole -- and we have a charge
12 of wilfully cause -- or being the owner, wilfully permit to be caused unnecessary
13 pain, suffering, or injury to an animal. The Crown's position, of course -- we don't
14 disagree with defence counsel -- we have an obligation to prove it beyond a reasonable
15 doubt. I would suggest to this Honourable Court that if I actually found from the
16 evidence that we had run the trial, I need to let you know right from the start of my
17 closing submissions whether there's an issue. In this particular case, Your Honour, I
18 don't find that at all here. Clearly, I would suggest, on the evidence -- now, it's not
19 a situation where we have the accused admitting he did it, but I believe, Your
20 Honour, when you look at the totality of the evidence like a jigsaw puzzle here,
21 that we have established each one beyond a reasonable doubt.

22

23 The first two charges, that being assault and causing a disturbance, I would suggest it
24 would be easier for the Court to find that the accused actually committed the offence
25 beyond a reasonable doubt, mainly -- I'm just summing up my position -- because
26 of the witness, the civilian witness, of Ms. Chiarina Rosen, who is, of course, the
27 neighbour.

28

29 In respect to the second one, Your Honour, here, I'm thinking -- it's my position, Your
30 Honour, that when you look at the evidence here, we have the dog, that being Bernard,
31 or Bernie, as he's known, the five-pound Yorkshire terrier, at the landing of this
32 residence. We have it from the evidence of both Mr. McPike, the accused, as well as
33 Mr. Roe, and even to a point, Kevin Orr, that the three were there, including the dog,
34 and the landing leads to the basement. I don't think it was really clear whether it was
35 eight, nine, or ten stairs, but clearly, I think, the Court accepted that there were
36 roughly eight to ten stairs, seven feet, and you also have the picture too, in Exhibit 2, to
37 look at. So you have the opportunity there. We have the motive. We know they were
38 mad, whether it be -- the accused was mad, whether it be because of the allegations
39 that Mr. Roe had sexual relations with another individual the night before, as well as
40 the things that were going on in the house that day. We know that he wanted him out of
41 the house for whatever reason. Again, we have all those motives there. We even have

1 the yelp heard by Kevin Orr, although it's from a distance. As you may recall the
2 evidence of Mr. Orr, he was in the back of the house, in the kitchen. He hears the yelp.
3 The only thing that we don't have with respect to supporting evidence to Mr. Roe's
4 evidence is the actual kick. I'm saying we have everything else there, Your Honour,
5 here except for that. And you know what? In a perfect world, the Crown would
6 submit, we would have the perfect DVD player or the video of everything; however,
7 this Honourable Court knows that's rarely the situation. We're left with individuals,
8 human beings, who have their perceptions as to what happened.

9
10 So that is my position, Your Honour, given -- outlining the three charges here, on
11 why all three charges should be convictions, and I make it very clear that it's not simply
12 because -- and it's not the rule the Crown -- or the obligation of the Crown to simply
13 proceed on all charges; it's based upon what the evidence is, and I -- it would have
14 been nice, as I said before, if we had a perfect videotape, but as is the usual case,
15 we don't have that.

16
17 I'm going to suggest, Your Honour -- first of all, I'm going to go through the
18 evidence and very briefly, Your Honour, as to how I came to my conclusions. First of
19 all, the evidence of Dr. Karen Lange. She is the animal veterinarian. I don't think
20 there's any actual issue that she specializes in companion animals, including dogs. She
21 testifies in a clear, concise, professional manner. She has no relationship with the
22 witnesses, and she clearly admitted she wasn't there in respect to the allegations of the
23 kick of the dog down the stairs. I suggest to you, Your Honour, her evidence really
24 comes in to play if the Court accepts beyond a reasonable doubt that the accused, Mr.
25 Darren McPike, kicked that dog. I think, actually, Your Honour, you don't even
26 need, with due respect, Dr. Lange, the evidence of her, that it was obvious that the
27 animal would be under some level of pain and suffering, that it would be more than de
28 minimis.

29
30 I'm saying that, Your Honour, here, because there was clear evidence, not only of
31 Kevin Orr, but specifically the complainant -- or the witness, I guess, in this particular
32 situation -- of Benjamin Roe, that the dog was yelping both from the kick from the
33 landing of the -- of the house, or the entranceway, and then upon landing on the bottom
34 ground of the level of the basement. His evidence was clear that it was a small dog and
35 that it had -- actually, he said it -- he didn't say it was booted; he said it was kicked,
36 and he made it very clear that it didn't take necessarily much, but it certainly was not
37 a huge windup or some dramatic thing. He called this what he saw, and he was very
38 clear about that. Probably, I would say to this Honourable Court, the one thing that's
39 most interesting or most significant about, I would suggest, this case is that while we
40 have corroborating evidence and clear evidence of a third party for the assault and the --
41 and the weapon charge, I would suggest to you, the -- in being fair and looking at the

1 evidence in its totality, in respect to Mr. Roe, although he's clear that some kind of
2 assault occurred and that it was some kind of weapon, whether it be a baseball bat or
3 some kind of pole, the clearest thing that seems to come from his evidence is that his
4 dog clearly got kicked and that it was not an accident; there was no reason because of
5 anything he did or the dog did. The quarter turn, the kick. It's very clear. And he yet,
6 at the same time, I would suggest, Your Honour, has no axe to grind.

7
8 And I was -- you know, I was noticing that he -- even by the evidence of Chiarina
9 Rosen, Ms. Rosen, if we look at her evidence here -- I'm talking about how
10 Dr. Lange's evidence applies here -- she even testifies essentially how the accused --
11 sorry, the complainant, Mr. Roe -- is protecting the dog constantly, or carrying the
12 dog and seems to be afraid. Now, I appreciate that's her interpretation, that's her
13 observations, and the Court has to weigh that, but I'm just suggesting, Your Honour --
14 and it's interesting, a few years ago -- actually, many years ago; tells you how long
15 I've been in this business -- I -- there was a sexual assault trial where the
16 complainant kept on saying, Where's my ferret? Who took my ferret? That's all she was
17 concerned about through the entire trial and in dealing with the police at the beginning.
18 It wasn't until a day later that she says, Okay, there's nothing you can do about my
19 ferret, but aren't you going to charge the accused with sexual assault because he raped
20 me? And the Court -- and it seemed very odd; it just seemed really odd that the
21 person was so concerned about the animal and so clear about what happened to her
22 ferret, but did not even mention anything about the sexual assault. And the Courts --
23 and, of course, it's up to this Court to decide that -- realized that, yes, some people
24 really would focus in on their animal, so that means a lot to them.

25
26 I'm suggesting in this case here that despite Mr. Roe's sometimes lack of clarity as to
27 exactly, for example, why they were arguing or what they were arguing about, he was
28 really clear particularly about the dog, and he didn't exaggerate about any injuries or
29 about the boot or anything like that. In fact, he said the animal wasn't harmed or
30 anything like that; it was just the yelp and -- the two yelps, if you want to say that,
31 and then if you want to call it some cowering, but certainly he did not try to
32 dramatize or traumatize it, which I think is very significant.

33
34 But if you accept that evidence, Your Honour, then Dr. Lange's evidence, if you
35 for some reason think that you cannot logically deduce -- which I think you can, and
36 there are cases to that -- deduce that the animal would have been in unnecessary
37 pain and suffering, from those facts -- it's clear that she says a smaller animal would be
38 more vulnerable to physical contact or a kick, because the contact would affect a
39 greater portion of that animal. The kick to the landing of a 5-pound dog would have pain
40 at both points of contact, from the landing, when it was kicked, and then when it
41 landed on the ground, even if -- she mentions even if it had been on the -- on the feet,

1 which is rather unlikely, but nevertheless, there would have been the impact on the
2 ground, that it would cause discomfort and pain, and that, in fact, an animal yelp
3 is a way of conveying that it is in pain, as well as the cowering. If it would assist
4 this Honourable Court, I do have case law, if you should need it, on the issue of
5 unnecessary pain and suffering. I can also summarize it in one sentence as well.

6

7 THE COURT: I'm all right.

8

9 MR. LIM: Okay. And basically, the test is the least
10 amount of physical discomfort, so essentially, it doesn't -- it's a very low test, is what
11 I'm saying, Your Honour, but the key thing is that the Crown realizes that what we're
12 going to have to establish here is that you should accept the evidence of Mr. -- Mr.
13 Roe, sorry, and I'm saying that not only should you accept the evidence because he
14 was very clear specifically on that, Your Honour -- he didn't seem to be quite so
15 worried about himself or had all the details necessarily of -- as how these
16 arguments that were occurring in the house -- he was extremely clear, Your Honour,
17 about what happened to his dog, Bernie, and it's somewhat consistent, Your
18 Honour, also and very consistent with what Kevin Orr saw as the location and the --
19 even hearing the yelp, and I would say it's also further supported by what Ms. Rosen
20 saw outside about the concern for the dog, the safety of the dog.

21

22 I will concede right off the bat, Your Honour, that the unnecessary pain and suffering
23 that I'm dealing with is in the house, on the landing. I know there were some comments
24 or evidence from Ms. Rosen outside about how she thought the dog may have been
25 hit. I'm not trying to suggest -- although there probably was some suffering, if you
26 want to call it, from the melee that was going on as the -- as Mr. Roe was being
27 attacked, I'm actually arguing that the section 445.1(1)(a), the unnecessary pain and
28 suffering, occurred on the landing.

29

30 THE COURT: Okay, so just the kick?

31

32 MR. LIM: Yes.

33

34 THE COURT: And if the dog was distressed about seeing
35 what was happening between these two fellows out in -- outside, that's not what you're
36 saying?

37

38 MR. LIM: No. I would suggest --

39

40 THE COURT: That's not the Crown's theory?

41

1 MR. LIM: No. And I would suggest that probably
2 logically you might deduce that, but I would suggest that we probably would need a
3 behaviourist, which I did not call for that.

4
5 THE COURT: No, I think that's a very fair position to
6 take.

7
8 MR. LIM: Right. So I just wanted to make it clear,
9 because I know that there was some evidence certainly that you could see that possibly
10 happening, Your Honour.

11
12 The next evidence -- piece of evidence I'll deal with is that of Detective Trevor
13 Willms. Very brief, Your Honour. This is an Edmonton police officer. He testified
14 in a very professional manner. As you may recall, I said the member
15 (INDISCERNIBLE) was not available. He's on a course. He had very limited
16 evidence to give. He was pretty well clear, Your Honour. I would suggest that
17 his evidence - I don't say coincidentally, but it does buttress Benjamin Roe's
18 testimony and Ms. Rosen's evidence, that he was tearful, upset, if not afraid.
19 It's consistent with the evidence that Ms. Rosen said, that she saw him crying or upset
20 and appeared to be fearful, with the dog, outside Darren McPike's residence and
21 consistent with an individual who had just been assaulted and whose dog had been
22 attacked by the accused, Your Honour.

23
24 The next witness that was presented to the Court was Chiarina Rosen. I may have
25 mispronounced the first name, Your Honour, I apologize. This is the next-door
26 neighbour who testified with no axe to grind. I don't think my friend really, actually, in
27 his submissions, had much of an issue with that. She saw what she saw, and she's
28 clear what she saw: the accused, Darren McPike, assault, by chasing after the
29 complainant outside the residence and hitting the complainant, Benjamin Roe, who for
30 most of the time was holding and protecting his small dog, cowering or trying to
31 essentially to cover his face from being hit. At all times, from what she saw, the
32 accused was the aggressor and Mr. Roe did not fight back, but only cowered, tried to
33 cover and protect himself and the dog. The accused at times hit Mr. Roe up to about
34 five times on the head -- I think she's talking about the first incident, as you might
35 recall -- and the back area and the torso or the body area and pushed the complainant
36 down. It appears, Your Honour, from her evidence here, she talks about two
37 incidents specifically, including one where he goes across the street, which I would
38 suggest is consistent with the mud. As you may recall, there was mud noticed -- I guess
39 I forgot this evidence in the police officer's evidence, but there was mud on the shirt.
40 It's consistent that there was mud on there, Your Honour, and the fact that, again, the
41 evidence seems to be consistent with hers, that she testifies how constantly the accused

1 is in not only demeanor as aggressor but is constantly, shall we say, in the position of
2 aggression, where he's above the complainant. She admits that sometimes she can't say
3 the complainant is actually sitting on the ground, but it's very clear from her evidence
4 that he's above her (sic) in, shall we say, the aggressive position. She even testifies in
5 respect to -- and again, I think she's very fair about it; she can't say whether it's
6 a baseball or not, but it's some kind of pole. She thinks it's wood. And she basically
7 describes that he's chasing after -- he being Mr. McPike -- chasing after the
8 complainant in a threatening manner, very clearly, and she says that she sees that, and
9 she's asked in cross-examination numerous times about that, and she's very clear.

10
11 Now, one of the things that the Court obviously looks at in respect to credibility and --
12 is the issue of relationships. This is a woman, a witness, with no axe to grind. I
13 think the Court would agree. This is a witness, Your Honour, I would respectfully
14 submit, that testified not only in a frank and forthwith manner, but also, Your Honour, I
15 stress that -- testified in a way that she was not trying to be on either side of the
16 accused or the complainant. My friend has provided the transcript, and if you turn to
17 page 21, Your Honour, the bottom of page 21, line 33 to 36 -- that's page 21, line 33
18 to 36 -- quote -- and this is the answer of the witness, Ms. Rosen: (as read)

19
20 I wasn't worried for Darren that he was going to be
21 physically harmed by this man. I was worried for Darren because
22 Darren is my neighbour. I care about Darren and Keith as my
23 neighbours, and I didn't want Darren to do something stupid and
24 end up where we are here today.

25
26 And I think that says a lot, Your Honour, here because -- and further in the evidence,
27 she did mention how she was afraid for the complainant, and as you may recall, she
28 even broke down, which she had done more. And again, Your Honour, here it's just
29 a woman reacting to what she saw, telling what she saw, again with no particular,
30 shall we say, trying to -- to phrase it in a way that was favourable to anyone. And
31 even though she described Darren McPike as clearly the aggressor throughout, and
32 even in cross-examination, she still didn't want him to get in trouble,
33 essentially, Your Honour, end up in court or trial today. I believe that's her evidence. A
34 little bit of an inference to that, but when she says, End up where we are here today, I
35 think it's pretty clear, Your Honour. And I would suggest even if you had trouble with
36 that, her demeanor or behaviour is clearly not someone trying to exaggerate or to, shall
37 we say, provoke one particular vantage, and that's, of course, what I'm suggesting,
38 Your Honour, based upon what I observed in the courtroom, Your Honour. They had
39 been obviously neighbours for about five years, Your Honour. She made it perfectly
40 clear, Your Honour, that there was no suggestion, from what she saw, that it was
41 self-defence or that it was a consensual fight. That was a (INDISCERNIBLE) by my

1 friend.

2

3 Your Honour, I note that when we're looking at the issue of self-defence or
4 consensual fight, the reason why the Crown would respectfully submit, when you look
5 at her evidence -- Ms. Rosen's in particular -- that the assault and the weapon charge --
6 which, arguably, the weapon charge could be not only a weapon dangerous to the
7 public, but it could also be seen as an assault in itself, but there's plenty of other
8 physical contact that would amount to assault. Her evidence, I suggest, not only should
9 be accepted because she is a third party and has no axe to grind here, Your Honour,
10 but when you look at what she has to testify and the fact that not only, as I said before,
11 she is a third-party witness, she -- what she sees, Your Honour -- she admits she doesn't
12 see what's inside the house -- so it's my position, Your Honour, and again, I'm
13 perhaps not being particularly fluent or articulate here -- whatever happened in the
14 house, maybe even by some bizarre scenario, which is not even suggested in the
15 evidence, you could say that the complainant, Mr. Roe, was the aggressor in the house,
16 there is no proximity, there is no nexus, there is no relationship close enough to
17 what happened outside to make it consensual fighting or self-defence. Now, I know
18 my friend made some comments in respect to while the complainant, who was very
19 honest about how she had a baby and turned around -- you know, she was looking after
20 the baby and such here --

21

22 THE COURT:

The witness, you mean.

23

24 MR. LIM:

25 The witness, sorry. The witness, sorry. I
26 apologize, Your Honour. I'm sorry. That Ms. Rosen had the baby and, you know, was
27 not watching the entire time outside there, but what she did see, Your Honour, I'm
28 suggesting here, the nexus in respect to even what she saw outside would not allow for
29 self-defence. Even if you said, well, perhaps some parts of it somehow -- and I don't
30 know how the Court would come to that -- would be self-defence or consensual, what
31 she saw most of the other parts, there was no -- nothing there to show that the accused
32 was in danger or, for that matter, that the complainant was not still in the position of
33 being the victim or the complainant, Your Honour. So I'm suggesting that -- and again, I
34 think it would be a huge stretch -- because we all know that while we would love,
35 again, the DVD player running -- camera running, you know, twenty-four seven and
36 everything here, sometimes it's unfortunate the Court -- we have -- all we have is a bit
37 of a (INDISCERNIBLE) here, but it's clear enough, Your Honour, that even if you
38 considered the worst scenario here, that, oh, hey, maybe we'll give the benefit of the
39 doubt -- not maybe -- you always should give the benefit of the doubt to the accused --
40 that there's still much of the time here where it would not amount to self-defence or
41 consensual fighting, by the length of time and the period of time, especially across the
street, the hitting that appeared on the property when the complainant was crouched

1 down, and with the weapon, Your Honour, there's just -- again, that would not amount
2 to consensual fighting or self-defence in any form.

3
4 The next witness, Your Honour, that was presented to the Court is Benjamin Roe, of
5 course, the complainant. Again, as I said before, it would be perfect if he was a human
6 DVD player, but he testified in an honest, frank manner and admitted which he --
7 when he couldn't recall things or details, and I would say specifically I noted things
8 about the fight, the argument, exactly. It's interesting to note, Your Honour, he
9 clearly admitted that he had done four to five lines of cocaine. He didn't hide that. He
10 mentioned that he had some intimate relationship or sex -- sexual activity with the
11 accused. Again, he was very open and frank about that. He didn't try to exaggerate his
12 injuries and especially, as I mentioned earlier, the injuries or what happened to the
13 dog and how the dog ended up down the stairs, although he was very -- again, the only
14 thing that he was clear about was the dog doing the quarter turn, the kick, where they
15 were located to the door, to the stairs leading to the basement. That was the only thing
16 that was perfectly clear, in the reaction of the dog.

17
18 He admits, Your Honour, as you recall, that he had said some nasty things, including
19 swearing and -- and such, to the accused. There was no issue about that. And I would
20 suggest to Your Honour that he doesn't even suggest, really, Your Honour, that he was
21 assaulted, necessarily, in the house. He talks more about how they were basically going
22 at it in respect to yelling and how the accused wanted him out of the house.
23 And interestingly, Your Honour, when you look at the details that he gives about, as
24 I said, admitting what he does recall about how he had been intimate with the
25 accused and then there was the comment later on -- he mentioned something how the
26 accused makes a comment how he, quote, fucked him, quote and unquote, Your
27 Honour. And again, it's possible someone could make that up, but again, these type of
28 details are not normally to -- to make up, that they would remember or recall things
29 like that, Your Honour, or the fact that, Your Honour, that he was asked to leave
30 through the back door, that he was not good enough for some -- for the front door.
31 Details like that will -- I guess anything is possible, Your Honour, but just from his
32 demeanor and behaviour before this Court, he clearly was, I would suggest, not
33 trying to make up anything like that at all here.

34
35 And, Your Honour, as I said before, there was evidence to buttress, support,
36 corroborate, what happened outside, clearly. Now, there's no disagreement that the
37 number of times that the accused came running out -- Mr. McPike came out -- whether
38 it be two or three times, it's possible the complainant -- sorry, not complainant -- the
39 witness, next-door neighbour, Ms. Rosen -- didn't see it all the times here, but she saw
40 enough, as I said, now, that there's no nexus or proximity for self-defence or issues of
41 consensual fighting, as least what she saw. But I'm saying that you don't have to

1 necessarily just rely upon his evidence.

2

3 As for the situation with the dog, Bernie, again, we have his evidence, which is very
4 clear, Your Honour, the clearest thing. We also do have evidence from Kevin Orr,
5 Your Honour, who while didn't have a lot and really couldn't see everything there,
6 because he was in the kitchen area, he knows that they were at least -- saw them on
7 the landing, they being McPike, Roe, and the dog, Bernie. He heard the yelp later on
8 afterwards, as well, when he was further away in the kitchen or the back of the
9 house area, Your Honour.

10

11 Your Honour, in respect to Mr. Orr -- sorry, Mr. McPike, who testified here, of course,
12 he is the accused. Now, I agree, Your Honour, credibility is an issue. That's always an
13 issue when you have the accused take the stand, and it's actually an issue no matter
14 what. It should be always an issue in any trial. Your Honour, in looking at
15 Mr. McPike's evidence here, the Crown never likes to say or suggest or believe that
16 anyone would lie or try to mislead the Court here, but there's certainly an issue
17 of reliability, and the Court may have -- should probably have some concerns about
18 some of the things that the accused testified to, as to whether or not he should be
19 believed.

20

21 Now, we know what the *W.(D.)* test is. My position is even if you believe some of his
22 evidence here, that it would not be enough to deal with the assault or the weapon
23 dangerous to the public and that his evidence, Your Honour, should not be believed in
24 respect to the issue of kicking the dog. Like I say, we have everything there; he even
25 admits to being in that area; it's just the actual kick, Your Honour.

26

27 And when I talk about reliability, Your Honour, it would be wrong for the Crown, I'm
28 going to suggest -- but it has some role, but I want to make it very clear: I'm not resting
29 my case upon this, on the credibility of the accused, and I first of all start off with the
30 issue, of course, of the criminal record of the accused. There were a couple of crimes
31 of dishonesty here. I'll be quite honest with you: that's not what I would actually rest
32 my hat on as to why I don't believe the accused reliable. It's more the evidence, Your
33 Honour, that he gave himself and, Your Honour, how initially the amount of liquor he
34 drank increased over a period of time. I meant in the cross-examination and
35 direct-examination, Your Honour. The fact that -- we have the alcohol factor; he
36 admits he's intoxicated, under the influence. We admit -- he admits that it affects his
37 perception and memory. He then admits that he's further affected, obviously not in a
38 positive way, by the fact of the hot tub. He had been in the hot tub for over an hour.
39 We also -- he admits that, yes, he had a lack of sleep, as you may recall. On the 26th of
40 May, 2014, he worked, so he had to get up early for work. He then went later to the
41 Lady Gaga concert and continued on, shall we say, for lack of words -- actually, he

1 admitted partying, basically, which included drinking and more drinks in the hot tub
2 with the individuals named -- known as Tim and Chris from Banff and, of course, the
3 complainant, Mr. Roe. So he was affected by that, Your Honour.
4

5 I would suggest he was also further affected, of course, by the anger, trying to get the
6 complainant out of the house, dealing with the fact that the complainant, according to
7 him, was rubbing it in the face that he had a relationship -- which was obviously meant
8 to hurt him, because they were boyfriends, although they had their issues, Your
9 Honour. So his perception certainly was affected as to what had happened, Your
10 Honour.
11

12 I also note, Your Honour, when we deal with the -- focusing on the issue --- what I
13 think the Crown really needs to look at is the issue of -- with respect to the dog, Your
14 Honour, is that he testifies, I believe on page 79 of the transcript, Your Honour, the
15 bottom of page 79 -- he talks about -- on line 37 to page 80, line 4 -- he talks about
16 how essentially he was scuffling with the complainant on the landing, with the dog
17 nearby, and how -- well, he's not sure how the dog exactly went down the stairs, but
18 maybe, then, suggests that it went down during the scuffle, but then he states, I didn't
19 even notice at the time, to be honest, in respect to the dog going down the stairs. And
20 then he says he sent Keith to go to the kitchen, sit in the kitchen. Well, Your
21 Honour, the evidence of Mr. Orr was that he heard the yelp while he was in the kitchen,
22 Your Honour, so I would suggest that the fact none -- that that further suggests that he
23 may not be lying, but his reliability was just off, Your Honour, or that he was
24 affected by the alcohol, the lack of sleep, the fact that he also had been in the hot tub,
25 Your Honour, not to mention, Your Honour, I strongly suspect, especially since the
26 honesty of the complainant admitting about the use of cocaine, that he probably was
27 under the influence of cocaine, but regardless, the Crown doesn't need to establish,
28 actually, beyond a reasonable doubt he was on cocaine. It was clear, he even admits,
29 that he was affected by those things.
30

31 So, Your Honour, we don't necessarily have to say he was a liar or anything like that
32 here, but certainly, Your Honour, his reliability as to his recollection of events should be
33 in question. But there are some other things, Your Honour, that would question not
34 just his reliability but whether he was intentionally or because of a lie misleading the
35 Court, and one of the things, Your Honour, in respect to the evidence that we have is
36 that the accused claims he didn't take cocaine and hasn't for some time, though it's
37 later contradicted by his friend or acquaintance, as he calls it, Kevin Orr. He also
38 claims he was scared, as you may recall, in respect to the complainant and that he was
39 trying to protect his property, Your Honour, and in respect to the -- as you recall,
40 the complainant even admitted that he kicked the fence, or some parts of the fence,
41 as you recall, Sir, which is consistent even with the next-door neighbour's

1 evidence about hearing a bang, although, again, it may not show it beyond a reasonable
2 doubt, but it certainly follows that.

3
4 But, Your Honour, here again, this is an individual who is supposed to be scared, has a
5 door that can lock; he goes outside several times. I would suggest to you what was really
6 going on most logically is he was angry, he was mad, and that made sense that he
7 kicked the dog, and that made sense that he would assault or try to hurt Mr. Roe. It
8 also makes sense, Your Honour, in power issues here, too, that the dog is seen as part
9 of Mr. Roe. We don't have to show that as a motive, Your Honour, here, but certainly
10 that the dog was there, and, Your Honour, I'm suggesting that that was all part of the
11 anger and the hurt because of the relationship that the witness -- or, sorry, complainant,
12 Mr. Roe -- had the night before.

13
14 We also have the evidence, Your Honour, from the accused, Mr. McPike, that, While
15 under the influence of alcohol, my perception was affected by lack of sleep and not --
16 and being in a hot tub as well that day, the combination of everything, as well as
17 being hurt or angered by Mr. Roe by cheating on him and such and the argument that
18 they were having that was obviously quite wild and loud, and despite allegedly
19 getting into a physical confrontation with Mr. Roe in the house, he somehow, despite
20 all that's going on and all that he has supposedly taken and that, at around 6 or 7 in the
21 morning, remembers to return a steam cleaner in the closet. And, Your Honour, I'm
22 just saying to you, think about this logically here. Not only is he under the influence of
23 all these things we've talked about here -- and he's admitted that here too -- but he's
24 clearly mad and angry at the person here, so even if the Court wants to somehow
25 believe he remembered at 6 or 7 in the morning, after having no sleep -- because he'd
26 been working the day before and that -- that, Oh, well, I'll just pick up this steam
27 cleaner after I've been arguing with this man -- his significant other, or former significant
28 other, if you want to word it that way -- and brings that out, Your Honour -- although
29 you will note in the evidence -- and I don't know why Ms. Rosen would lie about this,
30 that it was used in a threatening manner -- so even if the Court wants to accept,
31 Well, it's possible, Mr. Lim, Crown, that somehow he did remember he wants to
32 return this particular item -- although there seemed to be some other items, too, in the
33 house as well -- that happens to be in the closet and brings it out. I'm suggesting, Your
34 Honour, he used it in a weapon-type fashion, Your Honour, but I also think that goes
35 to his credibility, Your Honour. It just doesn't make a lot of logical sense at all that that
36 happened, Your Honour. I'm just saying it's more logical that he was mad and
37 angry and just overreacted. And it happened, Your Honour. That's just logical, that
38 the evidence suggests.

39
40 THE COURT:

Well, I think on everybody's version, everyone
41 was upset, and so, you know, I can see Mr. McPike standing in the front entrance --

1 he's mad, angry at Mr. Roe -- and while he's there, he looks, the closet door is open
2 and he sees Mr. Roe's steam cleaner, and at that point, he says, Get your damn cleaner
3 out of my house too, and picks it up. So I can -- I can see that. That one isn't as
4 far-fetched as, you know, if he said, And take your coffee table too. That would be
5 far-fetched, but I can see the -- I can see the steam cleaner, or at least I can see
6 where there was room for that to have happened.

7

8 MR. LIM: The only difficulty that I see, Your
9 Honour -- again, this is from what I see -- is that he goes after Mr. Roe afterwards. It's
10 not right away with the steam cleaner, so --

11

12 THE COURT: I don't get that.

13

14 MR. LIM: -- some time outside --

15

16 THE COURT: I didn't get that. I -- you mentioned that
17 earlier on, and so I took another look through my notes with respect to Ms. Rosen's
18 evidence and also Mr. Roe's evidence, and I don't have a note that they say anything
19 more than he was standing at the front entrance with -- with the object, whether it's a
20 bat -- she says it was a bat -- no, she says it was a pole, looked like wood --

21

22 MR. LIM: Yes.

23

24 THE COURT: -- and she described it in her evidence, I
25 guess, as sort of being lifted up, because when she talked about it, she had her hand
26 gestured up this way.

27

28 MR. LIM: Right.

29

30 THE COURT: When Mr. Roe talked about it, he's the one
31 that said it was a bat, and he said that it was at the accused's side: (as read)

32

33 Q What did he do?

34 A Shook it, maybe. I don't recall it being raised.

35

36 So -- but I didn't get from either of them that he pursued with this weapon.

37

38 MR. LIM: What my understanding from the evidence
39 was -- is that he had been outside already once; he had gone -- he, Mr. McPike, had
40 chased after Mr. Roe, so Mr. Roe had not been back in the house, so when he came
41 with the pole, it would have been afterwards, Your Honour, so my argument is that --

1 or logical is that unless he still -- was still holding that in his mind, Your Honour --
2 there had been some time period already gone before the complainant had left that
3 house. He may have been on the property, but he had not been inside the house, so I'm
4 saying the accused would then have to come out. But regardless of whether the Court
5 accepts that here, he was using it, I would suggest, from the evidence of
6 Ms. Rosen, still in a way that would be -- equate to a pole in a fashion that would be
7 dangerous to the public, a weapon. Even if you don't accept the evidence of
8 Mr. Roe, there's no question it comes down to that here, Your Honour.

9

10 THE COURT:

Okay.

11

12 MR. LIM:

And, Your Honour, I've referred to the
13 evidence of Kevin Orr throughout my arguments here. So, I mean, he admits that he
14 didn't actually see -- couldn't see a lot because he was in the kitchen. He -- as I said,
15 the only thing he heard was with respect to the yelp, which is consistent with the --
16 what Mr. Roe testifies to.

17

18 Now, Your Honour, I would like to briefly deal with my friend's comments or
19 arguments that he's presented, although I think I somewhat have done that. Crown takes
20 no position, of course, and agrees, actually, fully that *W.(D.)* from the Supreme Court of
21 Canada is very important to this particular case and is relevant. We have no doubt
22 and don't disagree, of course -- I've admitted that -- that all three charges rely upon
23 the Crown proving it beyond a reasonable doubt. The Crown agrees with the -- generally
24 with the -- my friend's position on Ms. Rosen's evidence. We even agree that she
25 didn't see anything in the house, because she didn't. She wasn't able to do that.
26 However, clearly what she observed outside was in a sober state, as a person who
27 had concern for both the complainant and the accused, so she was definitely not
28 biased or anything like that. She was very clear about what she observed, that the
29 physical attacks were led by the aggressor, that being the accused, and that even there
30 were threatening gestures with the pole being used, which she describes as -- as
31 wooden. That's, I would suggest -- is very clear evidence that she gave.

32

33 And, Your Honour, actually, I note that this is actually the same, basically, what I'm
34 arguing here, is that what she didn't see, Your Honour, possibly may not have seen here,
35 in what -- the defence would have to show that there was a proximity or nexus for
36 whatever actions supposedly Mr. Roe did for doing a consensual fight, and I'm
37 suggesting, Your Honour, there was nothing to do with -- even if the Court thinks,
38 Well, maybe it's possible in the house, Your Honour, the stuff outside there, there
39 was enough time that what Ms. Rosen observed would not amount to -- because there
40 was not enough time, nexus-wise, to show the hitting of the body, hitting of the head,
41 then eventually there's shoving on the ground, Your Honour, or even going out after

1 with the pole, Your Honour, that's sort of being held up and being sort of swung in a,
2 quote, threatening manner. None of that, Your Honour, has anything else that would
3 suggest that the complainant had done something to make it a consensual fight or that it
4 be self-defence.

5
6 My friend mentions -- deals with section 88, the weapon dangerous to the public.
7 Whatever the accused held in his hand, he went after -- chased or came out of the house
8 with some form of pole, is the position of the Crown. It wasn't just a momentary
9 thing. That's the evidence of Mr. Roe and the neighbour, Ms. Rosen. I don't think there's
10 any real issue. Whether it be a baseball bat, pipe, or part of a steam cleaner, it's clear
11 that it was -- can be described as some kind of pole, Your Honour. I don't think
12 there's really an issue, if you accept that evidence. And it seems pretty clear, Your
13 Honour, from Ms. Rosen, who, again, is a third-party witness, that it was being used in
14 a threatening manner on the complainant.

15
16 In respect to the assault -- I'm just referring to my friend's arguments here -- the
17 Crown, of course, agrees with the definition pursuant to 265 of the *Criminal Code*. No
18 issue with that. The Crown still takes the position, even if the Court accepts there was
19 no assault in the house or it was consensual, that what happened outside, as I said
20 before, was not consensual or was not self-defence.

21
22 My friend argues section 446 -- and I'm pretty sure he meant 445.1(1)(a) of the
23 *Criminal Code* -- and, again, I'm not -- you know, maybe, it's just -- I don't want to
24 harp on this, but just to make it perfectly clear, the charge reads, Wilfully cause
25 unnecessary pain, suffering, or injury to an animal, and the way my friend presented it
26 in his arguments, it looks like injury. Now, actually, what the Crown -- this particular
27 section deals with is whether or not the Crown can establish or has established beyond a
28 reasonable doubt that an animal -- I think there's -- the Court accepts that it's a
29 Yorkshire terrier and that is a domestic animal, a dog, Your Honour -- that it was
30 either -- and it's either either or, or it could be -- and or, Your Honour, suffering, pain,
31 or injury. We are conceding, Your Honour, that we cannot prove beyond a reasonable
32 doubt there was injury, but we're saying, from the evidence, even from what Dr. Lange
33 says, and from what you logically induce, that it was unnecessary pain and suffering;
34 there was no reason to kick this dog down the stairs.

35
36 Your Honour, those are my respectful submissions, unless you have any questions.

37
38 THE COURT:

No, thank you, Mr. Lim.

39
40 Mr. Morin?

41

1 MR. MORIN: Just very briefly, Sir.

2

3 THE COURT: Of course.

4

5 **Submissions by Mr. Morin**

6

7 MR. MORIN: This Honourable Court has the difficult task
8 of sifting through the evidence, in my respectful submission, on all counts, that
9 Mr. McPike should be given the benefit and acquitted because the Crown has not
10 proven each element of each of the assault, the weapon, and suffering caused by my
11 client's actions.

12

13 Now, it's clear that on page 44 of the transcript, there's discussion about the dog
14 sometimes injecting himself into the fray. There's evidence from Mr. Orr and also my
15 client that there was a confrontation at the door, and it's quite plausible there was an
16 accident and the dog went flying down the stairs. The doctor's evidence is -- is -- is
17 acceptable. It's clear that if, in fact, he did cause it, then there would be suffering, so
18 we know that. No -- no quibble with that.

19

20 As far as Ms. Rosen's evidence, she's honest but mistaken in some areas. What she
21 does know is that there was actually a fence that was broken. Also, the fact that
22 Mr. Roe came back several times to the front door, hammering the door, and there was
23 an exchange continually ongoing. We have him sitting on -- on the steps. Not on the
24 lawn or the front, but on the steps. He acknowledged that. He also acknowledged, when
25 he first got on the stand, that the assault happened at close to 7, but we know it
26 probably happened earlier or throughout that time, because the police were there just
27 after 6.

28

29 THE COURT: That's right.

30

31 MR. MORIN: Now, it's important -- because there's a
32 conflict in the evidence and you'd have to analyze my client's evidence versus his --
33 he also denies -- my client does -- that there was any sexual contact at 3 or 4 in the
34 morning. He would remember that. And perhaps Mr. Roe is mistaken for another time.
35 Now, as far as the -- Ms. Rosen, she also agrees on page 21 that -- I made the suggestion
36 to her that she's making assumptions about what may have happened inside and
37 then it spilled outside, and then she agreed with me: Right. That's that point. And,
38 again, in all the circumstances, particularly with the presentation of the object down by
39 his side, Get out and take this with you -- it's plausible as well, with great reasonable
40 doubt. The assault, I would suggest, occurred inside. Mr. Roe was capable of pounding
41 back on his door and trying to -- Let me in. You know, it's part of the fight,

1 which was consensual, in my viewpoint.

2

3 THE COURT: Okay, thank you very much. You're right,
4 Mr. Morin, it is a difficult task to go through the evidence of six different witnesses,
5 but that's what the task of the trial judge is, and that's what I'm going to do. We'll
6 reconvene in 15 minutes.

7

8 MR. MORIN: Thank you, Sir.

9

10 (ADJOURNMENT)

11

12 THE COURT: Thank you.

13

14 MR. MORIN: Thank you, Sir.

15

16 **Reasons for Judgment**

17

18 THE COURT: The accused, Darren John McPike, stands
19 charged with three counts: assault, possession of a weapon for a purpose dangerous to
20 the public peace, and also with wilfully causing unnecessary pain, suffering or injury to
21 an animal. The evidence consists of testimony from six witnesses, including the adult
22 complainant, with whom the accused had been in an intimate relationship, a neighbour
23 of the accused, and that of the accused himself. The issue comes down to credibility. In
24 short, the Court must decide whether the Crown has satisfied its heavy burden to prove
25 each element of the offences beyond a reasonable doubt. If I'm only satisfied that
26 the offence or offences probably happened in a manner consistent with guilt, then,
27 of course, I must acquit.

28

29 It is trite law to point out the overriding paramountcy of the presumption of
30 innocence and the principle of reasonable doubt in a criminal prosecution. The
31 Supreme Court of Canada has written extensively on the linkage between the two
32 concepts, describing the golden thread that runs between them. In reviewing the
33 extensive jurisprudence on reasonable doubt and the heavy burden which always
34 remains on the Crown to satisfy a trier of fact to that standard, the 2011 decision *R. v.*
35 *J.M.H.*, which is at 2011 S.C.C. 45, provides a comprehensive yet concise survey of the
36 most important relevant legal considerations. They become particularly important to keep
37 at the forefront where the Crown's case comes down to credibility and the particular
38 details of the allegation.

39

40 The paramount question in a criminal case is whether, on the whole of the evidence, the
41 trier of fact is left with a reasonable doubt about the guilt of the accused. And, of

1 course, that's from the *W.D.* decision, at page 758. The order in which a trial judge
2 makes credibility findings of witnesses is inconsequential, as long as the principle
3 of reasonable doubt remains the central consideration. A verdict must not be based on a
4 choice between the accused's evidence and the Crown's evidence.

5
6 The first witness that the Court will remark about is the neighbour, Ms. Rosen. She
7 was someone who was very clearly doing her best to provide truthful, reliable
8 testimony about the incident. Early in the morning of May 27th, 2014, she was
9 awakened by the sound of banging. There was arguing coming from her neighbour's, the
10 residence of the accused. There were loud, angry voices escalating in intensity. She tried
11 to go back to sleep, but heard screaming and yelling outside, including someone
12 calling for help. She looked out her second-floor window and saw a man sitting on the
13 lawn, with a small dog. This turned out to be the complainant, Mr. Roe. Because he
14 was apparently in distress, she called 9-1-1. Ms. Rosen didn't previously know
15 Mr. Roe. She described him as having made a primal yell, just sitting on the lawn,
16 clutching his small dog, that he was crying and appeared scared. The accused emerged
17 from his house, and she saw him chase Mr. Roe across the street, then hitting or
18 punching him with his fists. She could see this through her front windows. She had a
19 clear view as she stood there holding her one-year-old child and watching this
20 unfold. As the accused hit Mr. Roe, the dog was yelping and Mr. Roe was
21 screaming for help. The accused was punching Mr. Roe, while the complainant was
22 cowering. The punches were hitting his head and body, she said. There were several of
23 them, and the punches were forceful, with a windup. Seeing this escalation in the
24 situation, she called 9-1-1 again. She was worried not only for the safety of Mr. Roe,
25 who was being hit, but also for her neighbour, whom she referred to by his first name.
26 This testimony was poignant and credible. It was punctuated with sincere emotion, and
27 she recalled and retold the events of that morning without favour or bias. She was as
28 interested in the accused's sake as in anyone else's. As she said in testimony, quote:
29 (as read)

30
31 I wasn't worried for Darren that he was going to be
32 physically harmed by this man. I was worried for Darren because
33 Darren's my neighbour. I care about Darren and Keith as my
34 neighbours, and I didn't want Darren to do something stupid and
35 end up where we are here today.

36
37 End of quote. The witness was reliving the events as she was on the witness stand.
38 There was a point where the emotions got to her as she was doing so. It gives the
39 Court some added indication that there weren't significant gaps of the event missed
40 by her. If she was significantly distracted by her child, for instance, the impact
41 on her would not necessarily have been what she showed.

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So the accused went back into her residence, she continued. Mr. Roe was pacing. He then emerged a second time and, she said, threatened Mr. Roe, while holding a pole. She wasn't able to testify precisely what she saw the accused holding, but she said it looked like a pole or bat. From where she was standing, it looked like it was made of wood, and she was clear that the accused was threatening the man with it and telling him to go away, to get out and leave the neighbourhood. As she testified, she made a gesture showing the object being held at shoulder height. She said that Mr. Roe looked terrified and she, herself, was scared. She made eye contact with Mr. Roe and tried to let him know that she had called the police. Police did arrive shortly thereafter. Ms. Rosen testified that she never saw the complainant do anything physically towards the accused, her neighbour. In cross-examination, she reiterated that the complainant was fearful and that the accused was not. As for the dog, it was yelping terribly. She concluded by stating that the two men were not equal aggressors. This witness testified with certainty and confidence. The Court can rely upon her testimony as being a truthful and accurate account of what she did, in fact, see.

The accused's version amounts to an admission that there was a confrontation between himself and Mr. Roe that early morning. He testified that after a music concert at Rexall Place the previous evening, the accused came home, along with a couple of friends, and that at about 4 a.m. or so, he called his boyfriend, the complainant, to come over and meet him -- sorry, and meet them. Mr. Roe arrived, and the accused says he was, himself, in a good mood. Mr. Roe was said to be quite intoxicated. After an hour or so, his friends left, and the next step of Mr. McPike's version of events is that he was fed up with his boyfriend's condition. He says that he told Mr. Roe to leave. This, he says, made Mr. Roe hostile and he initiated a physical confrontation in the front entrance of the house. Mr. Roe left through the front door, but swung to the side of the house to kick the fence hard enough to be heard in the house. The accused says that he chased him away, but in so doing, the accused himself tripped and fell. He came back to the house. Next, the complainant came back to the front door. The accused chases him away again, and he said that there was some mutual punching, shoving, and hitting. The accused returned to his place and got Mr. Roe's steam cleaner. He brought it to the front door and held it there, telling Mr. Roe to take his property with him. The accused denied that there was any sexual intimacy between he and Mr. Roe after his friends left. He denied throwing the dogs -- or kicking the dog down the stairs. He denied having any cocaine, but does admit to having had three or four drinks at the concert and another four or five more once he got home. In cross-examination, he denied crossing the street during the chase.

In assessing the accused's evidence, I cannot reconcile it with the evidence of Ms. Rosen, who clearly saw the accused across the street. This is a very stark indicator

1 that there are gaps or errors in Mr. McPike's evidence that have to affect its
2 reliability. His ability to recall the events of that early morning are impaired by lack
3 of sleep, compounded by his time relaxing in the hot tub and the significant amount of
4 alcohol that he recalls consuming.

5
6 The complainant testified more or less consistently with Ms. Rosen's observations. He
7 said he was tired when he got to the accused's residence because he had been asleep
8 after drinking the night before. He awoke and got there around 4:00. They were still
9 in a relationship at that time, according to Mr. Roe, but it was rocky. He brought
10 over his dog, a Yorkshire terrier that weighs about five pounds. He said that though he
11 was inebriated when he went to sleep, by the time he got to Mr. McPike's, he didn't
12 feel drunk. He arrived to find the accused with two of his friends. Everyone, including
13 the accused, was happy and in a good mood. Mr. Roe admitted that he was feeling a
14 little put out and disappointed about not having been invited to the concert.

15
16 He was of the opinion that the accused was intoxicated and under the effects of
17 cocaine. He'd known him for a year and a half and had been in a relationship with him
18 for about eight months. He had seen him in this condition before. A witness for the
19 defence, Mr. Orr, testified that the accused was no stranger to cocaine and that
20 there was cocaine in the accused's residence that night or morning. Mr. Roe testified
21 that all four of them were ingesting cocaine. He himself had about four lines. He
22 doesn't know how much the accused had.

23
24 After about an hour, the two friends left. Mr. Roe says that he and the accused had an
25 intimate encounter but that things deteriorated into an argument afterwards. There
26 were harsh words from both parties and eventually Mr. McPike was quite adamant
27 that Mr. Roe leave his place. The complainant got his dog and went to the front door to
28 leave. He testified that Mr. McPike made a remark to the effect of, quote, Your kind
29 don't use the front door; they use the back, unquote. The back door is accessible
30 through the basement. The complainant testified that at that point, the accused kicked
31 the dog down the stairs, causing it to yelp. Mr. Roe stipulated that it wasn't a
32 wound-up roundhouse kick, but enough to make the dog fly down and land at the foot
33 of the stairs. It didn't cause him to limp or cry afterwards, just the yelp when he hit the
34 floor. Mr. Roe went downstairs, got his dog, and left out the back door. He admits that
35 on his way out, he was angry and screaming, as was the accused. The complainant
36 was still feeling the effects of the cocaine.

37
38 When he was heading to the front of the house, he kicked the fence boards. The
39 photos which have been entered as an exhibit show a regular enough urban residence
40 with a fence. The complainant admits to causing damage to the fence and says he
41 did it in the hopes of provoking the accused to come outside and talk things out or

1 at least to call him a taxi to get home.

2

3 The accused did come out, but he chased Mr. Roe away and down the street. He
4 was angry and the complainant could not remember what he was yelling. The accused
5 caught him by the back of his jacket or shirt, spun him around, and hit him with
6 open-handed slaps to the face. Mr. Roe collapsed to the ground and buried or
7 covered his face. The hitting continued to the back of the head. He says that the
8 accused deliberately pulled off Mr. Roe's glasses, broke them in half and threw them
9 on the ground. The accused then walked away. Mr. Roe began hollering for someone
10 to call the police and went back to Mr. McPike's front steps to wait for them.
11 Mr. McPike emerged from his home and chased him away again. This time, they
12 went across the street and Mr. Roe was pushed to the ground. It was muddy and his
13 clothes got soiled with it. He says that his face was also pushed into the mud and that
14 he was punched in the face and grabbed by the back of the hair. The accused then went
15 back to his house. Mr. Roe remained across the street.

16

17 At one point, the accused came out of his house with a baseball bat. Mr. Roe's
18 testimony was that Mr. McPike has a baseball bat in his front closet and he presumes
19 that this was what he was holding. He can't recall the bat being raised, but rather was
20 of the view that it was at the accused's side as the accused said something to him.
21 He then went back into his house just before the police arrived. Mr. Roe doesn't recall
22 Mr. Orr being there. He agrees that he has a steam cleaner there, but doesn't think this
23 is what the accused was holding at the door, because the steam cleaner is neon green in
24 colour. Mr. Roe did not disagree with the suggestion that after this incident, he made
25 attempts to reconcile with the accused.

26

27 The police witness testified as to Mr. Roe having mud on his shoes and shirt and that he
28 was in a very distraught condition.

29

30 The final witness was called by the defence, and that was Mr. Orr. He testified to
31 arriving at the residence at the point where Mr. Roe was in the front entrance leaving.
32 He is a former boyfriend of the accused and they remain friends. He arrived at
33 approximately 5:30 or 6:00 and both the accused and the complainant were at the door.
34 He says that Mr. Roe hit the accused and tried to take a jab at Mr. Orr. Mr. Orr went to
35 the kitchen and did not see what happened after that. He did hear the dog yelp
36 and testified that there was cocaine at the residence earlier on. He also testified, as
37 previously noted, that the accused had used cocaine in the past, but he did not say that
38 he used any that night.

39

40 A trier of fact may accept all of a witness's evidence, some of it, or none of it. I find
41 the accused's recollection of events to be superficial, self-serving, and perforated. The

1 complainant's evidence is not perfect by any stretch. He does not recall Mr. Orr being
2 there, for instance. He can't say whether the incident with the mud happened first
3 or second in chronology. But his is a fuller, more fair recollection of the morning's
4 events. I say more fair in the sense that he is prepared to testify as to aspects which
5 reflect negatively on him and his reliability as a witness, such as the consumption of
6 cocaine and his full participation in the shouting match and argument. His evidence
7 was not exaggerated or rife with hyperbole. Obvious opportunities for aggravated details
8 were missed. He was prepared to leave gaps in his testimony that would have been easily
9 filled. In cross-examination, when possibilities were put to him such as the
10 possibility that when he returned to the front door, he knocked on it, he agreed that this
11 was possible. It is also more logical that he would have kicked the fence as he walked
12 from the back of the house, along the fence, to the front yard, rather than leaving the
13 front door and going to the fence at the far side of the yard to kick it, which is
14 the accused's version.

15
16 The Crown submits that the detail and assuredness that Mr. Roe presented when
17 talking about what happened to the dog is significant, and I agree with that. It makes
18 sense that this would have made a particular impression on him, and it was, again,
19 not exaggerated or aggravated in respect to the kick itself, nor the consequences of it. I
20 also noted that he was visibly uncomfortable when he got to the part of the
21 testimony dealing with their sexual intimacy and the role that cocaine played in that.
22 Details like this in his demeanor and the details in his version of events assist the Court
23 in assigning reliability to his evidence. When Mr. Orr hears the dog yelp as he
24 goes upstairs, it corroborates the complainant's version too. So do the
25 independent, objective police observations.

26
27 And so in weighing the evidence, the findings of fact are that after the argument, the
28 two men were in the front landing of the house. The argument was loud enough and
29 intense enough that it could be heard by the next-door neighbour. Mr. Roe was being
30 asked to leave, and he wasn't happy about it. Coincidentally, Mr. Orr arrived at that
31 point and didn't want to get involved in what was becoming a physical situation, so he
32 went to the kitchen. Mr. McPike made the insulting comment and kicked the dog down
33 the stairs. Mr. Orr heard it too. The expert opinion evidence, coupled with plain
34 common sense, dictates that when the dog was kicked and flew down the flight of stairs,
35 it suffered unnecessary pain. The complainant and the dog left out the back, and then
36 matters transpired consistent with the complainant's evidence.

37
38 Where the evidence of the complainant and the accused diverge, I find that the
39 complainant's evidence is the reliable version. His cowering and unwillingness to fight
40 or participate in any altercation outside is the way it happened. I reject Mr. McPike's
41 assertion that this was a consensual fight or some overblown defence of his property.

1 Whatever happened in that front entrance did not entitle the accused to pursue and
2 attack once the complainant retreated.

3

4 Now, as for whatever was being brandished or held at the door, it was wood; it was
5 aluminum; it was raised; it was at his side. It could have been a baseball bat or other
6 pole. That said, it could have been a steam cleaner. The accused was intoxicated, and
7 the cleaner was apparently right there in the front closet. It could be that his emotional
8 upset was such that when he saw it, he didn't want any reminder of his now
9 ex-boyfriend in his house. That's not an unlikely scenario. I have varying descriptions
10 of the object from the accused, Ms. Rosen, and the complainant. The uncertainty
11 of identification and its purpose does not satisfy proof of the elements of the offence to
12 the required standard. I agree with Mr. Morin's argument. I am uncertain both as to
13 what it was and why the accused was holding it.

14

15 Mr. McPike, would you stand up, please, sir. Accordingly, I find you not guilty on
16 count number 2, which is possession of a weapon. I find you guilty of counts number 1
17 and 3, sir. That is assault and cruelty to the animal. All right, you can have a seat, sir.

18

19 THE ACCUSED:

Thank you, Sir.

20

21 THE COURT:

Counsel, are we prepared to proceed to the

22 next phase?

23

24 MR. LIM:

If I could have a moment to try printing out a

25 case, that might assist the Court.

26

27 THE COURT:

Sure. Mr. Morin, did you want to proceed to

28 sentencing today?

29

30 MR. MORIN:

I should speak to my friend briefly. Just two

31 minutes or so.

32

33 THE COURT:

All right, thank you. I'll just be behind. Let me

34 know when you're ready.

35

36 MR. LIM:

Thank you, Your Honour.

37

38 (ADJOURNMENT)

39

40 THE COURT:

Thank you very much.

41

1 **Submissions by Mr. Lim (Sentence)**

2

3 MR. LIM: Your Honour, we will have a joint
4 submission for your consideration. However, before we actually say that, we should
5 probably look at the victim impact statement. I know there was one filed.

6

7 THE COURT: All right.

8

9 MR. LIM: I'm asking if you would give permission to
10 open that and let us review it.

11

12 THE COURT: Yes, please do. Counsel --

13

14 MR. MORIN: Appropriate.

15

16 THE COURT: -- take a look at it and make sure that it's
17 appropriate for me to see it.

18

19 MR. LIM: I've already informed by friend, because the
20 guilty convictions were on counts 1 and 3, that we obviously -- anything that
21 refers to count 2 should not be dealt with.

22

23 THE COURT: Right.

24

25 MR. LIM: May I approach Madam Clerk, Your Honour?

26

27 THE COURT: Yes, please do.

28

29 MR. LIM: May I be seated, Sir, when we do this?

30

31 THE COURT: Yes, of course. Thank you, Mr. Lim. Does it
32 more or less conform with the provisions of --

33

34 MR. LIM: Yes, Your Honour.

35

36 THE COURT: -- the *Code*?

37

38 MR. MORIN: It complies with 722 of the *Criminal Code*.

39

40 THE COURT: Thank you.

41

1 MR. MORIN: The (INDISCERNIBLE)
2
3 THE COURT: All right.
4
5 MR. MORIN: It should be part of these proceedings.
6
7 THE COURT: Thank you.
8
9 Madam Clerk, you have a different document there, don't you, or is that --
10
11 MADAM CLERK: It's the original.
12
13 THE COURT: -- original of those three?
14
15 MR. LIM: It's the original, Your Honour.
16
17 THE COURT: Great. I'll take a look at it, then. Mr. Lim,
18 you're of the same view?
19
20 MR. LIM: Yes.
21
22 THE COURT: Thank you. Okay, this will be Exhibit S-1.
23
24 **EXHIBIT S-1 - Victim Impact Statement**
25
26 MR. LIM: Your Honour, if we could also take Exhibit
27 3 and use that for sentencing purposes. If you remember correctly, that's the criminal
28 record of Mr. McPike.
29
30 THE COURT: Yes, I'll --
31
32 MR. MORIN: No objection.
33
34 THE COURT: I'm happy to refer to Exhibit Number 3. We
35 don't need to relabel it or anything.
36
37 MR. LIM: No.
38
39 THE COURT: I'll simply refer to it.
40
41 MR. LIM: Thank you, Sir.

1

2 THE COURT: Thank you.

3

4 MR. LIM: And it's somewhat dated, Your Honour, and
5 unrelated at this point, anyways.

6

7 THE COURT: Sure. I'm going to refresh my memory from
8 it, because I didn't rely on it at all in coming to my decision.

9

10 MR. MORIN: I believe there were two obstructions, going
11 back a number of years.

12

13 THE COURT: I think so. That's what I recall.

14

15 MR. LIM: There was an impaired, I think was the most
16 recent, but it's dated. It's like 2003, Your Honour, is the last conviction.

17

18 THE COURT: Okay, thank you.

19

20 MR. MORIN: It's quite dated.

21

22 MR. LIM: Yes. The Crown looked at it.

23

24 THE COURT: Okay, thank you.

25

26 MR. LIM: And, Your Honour, in respect to
27 sentencing, I will make a quick statement about the victim impact statement,
28 which you have as S-1. Of course, we -- it doesn't change my position in respect to
29 sentencing, which we have a joint submission. I note the first paragraph, Your Honour,
30 technically deals with the relationship of raw -- as you know, it's very hard for often
31 individuals to separate, so I don't -- I think this Court's quite fluent and quite aware that
32 sometimes they kind of generalize about relationships --

33

34 THE COURT: Yes.

35

36 MR. LIM: -- and domestics. That being said, I
37 actually have spoken to the complainant, and we -- I spoke to my friend, and
38 considering these circumstances here, we do have a joint submission for your
39 consideration, Your Honour, which takes in consideration what you have found the
40 accused guilty of, that being a charge of assault, and the facts that you have outlined, as
41 well as causing unnecessary pain and suffering to an animal. Your Honour, the joint

1 submission, Your Honour, in respect to the assault would be for a 12-month suspended
2 sentence. Your Honour, we have some terms. I believe my -- do you have the -- did
3 you give it to Madam Clerk?
4

5 MR. MORIN: I'm going to pass to Madam Clerk the --

6
7 MR. LIM: Sorry, 12 months, essentially -- sorry, Your
8 Honour.
9

10 THE COURT: Thanks.
11

12 MR. LIM: There is a reporting condition,
13 maintaining a designated address. The main thing is to look at the assessment
14 and treatment, looking at specifically psychiatric and psychological issues,
15 substance abuse, and domestic violence, and that he waive such information to allow
16 for such treatment, if required, and that he also provide evidence of receiving such
17 treatment and programs as directed by the probation officer. No contact with Benjamin
18 Roe. We have confirmed that there seems to be no reason for them to have
19 contact. There's no issue about the address, I'm told. Actually, I don't know if the Court
20 has a problem, because when you read the legislation, I think I actually need the
21 complainant -- do I actually need the complainant to sign that's there's no --
22

23 THE COURT: No.
24

25 MR. LIM: Okay, I just want to make sure --
26

27 THE COURT: No.
28

29 MR. LIM: -- that's there's no issue, but I can tell you
30 that I've spoken to the --
31

32 THE COURT: Well --
33

34 MR. LIM: Do you know what I'm saying, Your Honour?
35

36 THE COURT: -- I seem to recall that's there's some
37 special form and --
38

39 MR. LIM: There is a document.
40

41 THE COURT: -- incantation that needs to be done so that's

1 there's no -- a no-go, but --

2

3 MR. LIM: I'm just letting the Court know that's my
4 understanding at law, and I don't want to do anything inappropriate.

5

6 THE COURT: No. So what we -- what we have, Counsel,
7 is you've indicated no contact or communication whatsoever either directly or indirectly
8 with Benjamin Roe, which is very good.

9

10 MR. LIM: Yes.

11

12 THE COURT: With respect to the new provisions regarding
13 non-attendance, I'm simply going to say, Shall not attend within a one-block radius of
14 Mr. Roe's residence, and we'll just leave it at that.

15

16 MR. LIM: Thank you, Your Honour.

17

18 THE COURT: And then if there's a violation, it's going to --
19 one of the elements that the Crown is going to have to prove is that he knew --

20

21 MR. LIM: Knowledge, I agree --

22

23 THE COURT: -- that that was Mr. Roe's residence.

24

25 MR. LIM: -- Your Honour. I agree. No, I agree, Your
26 Honour. Exactly.

27

28 THE COURT: Sure.

29

30 MR. LIM: Thank you, Sir.

31

32 THE COURT: That -- so that will work just fine.

33

34 MR. LIM: We've also circled Number 37.

35

36 THE COURT: Yes?

37

38 MR. LIM: Because of his lack of criminal record, recent
39 record, we are also consenting that it can be served intermittently. He has employment.
40 I'm well aware of that.

41

1 THE COURT: Serve what intermittently?

2

3 MR. LIM: Sorry, the sentence intermittently, for the --
4 for the second charge, which we're agreeing, Sir, to a sentence of days' incarceration.
5 Your Honour, I base that upon the *Cardinal* decision, where the Court gave 15
6 days to an individual who didn't have much of a record, certainly not related, and
7 threw the dog against the wall -- it was two dogs, actually -- against the wall, that
8 were in a bag. There was no injuries. They scampered away. And the Court gave 15
9 days. There was also another case, Your Honour, that -- where the sentence was higher,
10 Your Honour, where the Court -- but it was a slightly different situation, where they
11 gave 90 days for pulling a leash too hard, Your Honour. Considering the facts we have
12 here, Your Honour -- there were no injuries -- I agree that 15 days would be
13 appropriate, Your Honour. It would set certainly a deterrence factor. So we have
14 agreed to 15 days' incarceration, which would be served intermittently, in respect to
15 the unnecessary pain and suffering to an animal, Your Honour.

16

17 THE COURT: Okay.

18

19 MR. LIM: And that's based upon -- they are
20 provincial decisions. I'm not going to deny that. They are in the -- Edmonton. They
21 are fairly recent. I think one was 2010 and the other decision was 2013 or fourteen,
22 Your Honour, but they are consistent with the approach that we're taking, Your
23 Honour --

24

25 THE COURT: Okay.

26

27 MR. LIM: -- considering all the factors.

28

29 THE COURT: All right.

30

31 MR. LIM: In respect --

32

33 THE COURT: Thanks, Mr. Lim.

34

35 MR. LIM: Sorry, Your Honour. In respect to the
36 animal pet prohibition, this is not a situation, Your Honour, here where the Crown
37 necessarily has to go really hard. The Court, I would suggest, should consider whether
38 or not it's appropriate to have a very short pet prohibition. I'm saying two years, Your
39 Honour. The reason why I say I'm not asking for a longer one, I think it depends on
40 the facts, and here we have a situation here where there may have been some substance
41 abuse issues on that day or whatever affected. There's obviously some anger, you

1 know, too, Your Honour. So the Court may want to consider a very short -- I'm not
2 certainly asking for over ten years, but -- in other circumstances I would.

3
4 I would leave it up to my friend to explain if there's a reason why he needs animals.
5 The Court can then consider pursuant to section 447, which is similar to section 12(3)
6 of the Animal Protection Act, allowing you to use your discretion that if you say, you
7 know what, still, even though the animal wasn't injured, but nevertheless it's something
8 that we don't want to promote, I'd like -- you know, and we can limit the number of
9 animals he has and the conditions. Usually there's -- and I can assist the Court if you
10 need -- if you are considering that -- reporting conditions to just make sure that the
11 animals or any animals that he may possess are okay, essentially, and that they're
12 properly registered.

13
14 But I'll leave that up to the Court, because certainly, I'm not pounding for the ten
15 years, but it's not uncommon, Your Honour, for something like this, where it's a
16 helpless animal who really didn't deserve -- it's not a situation, Your Honour, where --
17 and I'm not advocating that it's appropriate -- where the animal was misbehaving or
18 maybe had nipped the accused, you know -- for example, there's no suggestion that it
19 was like playing with the accused and nipped and the reaction was a shove that may
20 have been overzealous. So that would be a different -- here we do have a situation
21 where it is an innocent victim, so I'm suggesting a one-or two-year pet prohibition may
22 be appropriate in this particular case.

23
24 THE COURT: Okay, thank you.

25
26 MR. LIM: Those are my respectful submissions, Your
27 Honour, considering the criminal record and the facts that we have before this Court.

28
29 THE COURT: Okay, very good, thank you.

30
31 Madam Clerk, can I borrow a pen, please. Mine is sitting by the phone. Thank you.

32
33 Mr. Morin.

34
35 **Submissions by Mr. Morin (Sentence)**

36
37 MR. MORIN: Your Honour, I certainly am not in line or
38 joining my friend on the -- any type of prohibition as far as animals are concerned. He
39 has had animals for many, many years. This was a very impulsive, you know, lack
40 of judgment at the time, consumption of alcohol. We're addressing that in the probation
41 order.

1
2 He's 38 years old. He's gainfully employed at a hydraulic company as a salesperson,
3 Lorenson Fullet (phonetic) in Edmonton here. He works full time, gainfully employed,
4 originally from Winnipeg, but however, he's been in Edmonton for -- Alberta for 19
5 years. He's a single man. As I said, he's in sales, works very hard. We had some
6 difficulties accepting incarceration but felt that if this Honourable Court thought it was
7 appropriate, it would be at the very low end and he could do, perhaps, two weekends and
8 you would remind him of, you know, Don't kick dogs, if -- as this Court found. But in
9 all the circumstances, he's a homeowner at 12005 - 36 Street, gainfully employed. He
10 had a night of risky behaviour, consumption of alcohol.

11
12 In all the circumstances, I ask you to accept a very short, sharp shock, 15 days for
13 count 3, 12 months' probation with terms as outlined. I'd ask that you allow him to
14 serve it starting May 15, get his affairs in order, and he would report 8:00 to Fort
15 Saskatchewan on the 15th and then be released on Sunday, perhaps around noon, so he
16 could continue with his employment. He does travel out of town from time to time for
17 his company.

18
19 And I think that he's learned something from this. He's glad it's over. And we've
20 concluded all matters. I don't think we'll see him back here for many, many -- at all
21 ever again. Those are my submissions.

22
23 And his mother and father live in Winnipeg: Janet and John McPike. He has two
24 younger brothers as well. In all the circumstances, it was just a lack of judgment and
25 night of drinking after a concert. And we ask that you accept our submissions. Thank
26 you.

27
28 THE COURT: Thank you very much.

29
30 Mr. Lim, are there precedents for community service work when there isn't a
31 deliberate decision to cause injury to the animal or where there's -- see, I think on the
32 spectrum of blameworthiness -- and I have to take that into account with respect to a
33 proportionate sentence -- if he decided to deliberately cause injury to the dog, if he
34 decided to deliberately do something that is foreseeably going to cause bodily
35 harm, wounding, maiming, that sort of a thing, then that's more at the serious end. This
36 is closer to the other end, where in the midst of this bruha with his boyfriend, the
37 dog is there, and he kicks the dog out of an instant of anger, so that the dog yelps
38 when he's kicked, yelps at the end, but there's no injury. Are there precedents for a
39 noncustodial disposition with respect to that?

40
41 MR. LIM: Your Honour, I can't answer that. I note that

1 Judge Anderson, in *R. v. Dudar*, he considered that, Your Honour. And I'd say this
2 most closely reflects this one here, and he said -- you know, he made some comments --
3 I'm sorry, I can't quote him exactly, but people may know that he can be more lenient
4 when it comes to people or other circumstances; however, when it's an animal or an
5 individual or a living creature that is totally defenceless, he says, a clear message needs
6 to be said. I agreed to 15 to 30 days, a joint submission, using the decision I
7 mentioned earlier, in *Cardinal*.

8

9 THE COURT:

Yes.

10

11 MR. LIM:

All of that was an aboriginal individual, and
12 the judge said, you know, that's not a sufficient enough deterrence, and it must be gaol
13 time, and looked at that. And I notice -- so the cases that we've had more recently,
14 heard both in Edmonton, but even when you change -- the legislation changed in
15 2008. It made it more clear that Parliament is saying that these are very serious
16 charges.

17

18 Now, what Judge Anderson did was he gave a sentence of 90 days to a dog that was
19 being walked; it was misbehaving, according to the accused, but not according to the
20 witness, which was a police officer . He was walking the dog. He yanked the chain
21 three times and then hit it. There were no injuries. It did yelp. And so it's somewhat
22 similar to this, and he said 90 days' incarceration in respect to that, that he would not
23 accept the 15 to 30 days.

24

25 I'm not trying to mislead the Court here, because I think there is still -- I told you
26 there is a *Cardinal* decision, which said 15 days in gaol, but it was in gaol. And that's
27 consistent with what we constantly see, even when Judge Stevens-Guille -- sorry, on --
28 I'm sorry. Judge Stevens-Guille did a matter here. It was certainly more serious as to the
29 injuries, and again, the animal had done something bad and there was -- there was --
30 there was some, shall we say, provocation, and the Court went through a glowing PSR,
31 but said, again, because of what the comments have been saying about the issue for
32 deterrence and denunciation, that's the reason why we get gaol. That's the reason why
33 I don't want to say we joke about it or anything like that here, but where the Crown --
34 I didn't sell out the farm or anything or suggest anything when I suggested probation
35 for the assault, considering what we had here when speaking to the complainant as well,
36 Your Honour, in respect to what he suffered in respect to this. We have to stay balanced,
37 but it's been really clear that the Courts have taken a very serious position.

38

39 Now, I need to be clear: it's not the Court of Appeal; it's your brothers and sisters
40 who have made it very clear. Consistently, it's been gaol. Actually, to make it -- I
41 mean, of course, you're just taking my word for it. Since we started the portfolio in

1 2010, we have only gotten gaol on any criminal conviction, even if there was no injury.

2

3 THE COURT: Okay.

4

5 MR. LIM: So I appreciate, Your Honour, that this one
6 here -- so I don't know if it's better or worse, I guess. I agree that it wasn't pure
7 maliciousness, but I don't think it's much better than most cases where the animals --
8 you know, like a child when they've been acting up and then they got thrown against
9 the wall or --

10

11 THE COURT: Right.

12

13 MR. LIM: -- kicked or pulled.

14

15 THE COURT: Okay. Thank you. You've answered my
16 question.

17

18 Mr. Morin, would you --

19

20 MR. MORIN: Very briefly, if you're not inclined to -- as far
21 as count 3 is concerned, I think that deterrence would also be satisfied by a high
22 fine, but I'll leave this Honourable Court -- you have -- you can exercise your discretion
23 if you see fit to order otherwise.

24

25 THE COURT: Yes.

26

27 MR. MORIN: I urge you --

28

29 MR. LIM: We did have a joint submission, though.

30

31 MR. MORIN: -- to do so if you can.

32

33 THE COURT: Yeah. I know Mr. Morin is not resolving from
34 a joint submission. He's just assisting me in my question to you.

35

36 Mr. Morin, in order to give some effect to the comments in the victim impact
37 statement, I'm proposing a condition in the probation order that the accused must not
38 publish or post on the internet any comment or material pertaining to the complainant.
39 I think that's a reasonable term, but --

40

41 MR. MORIN: Not unreasonable.

- 1
2 THE COURT: -- I want --
3
4 MR. MORIN: Not unreasonable, Sir.
5
6 THE COURT: -- but I want his consent on the record.
7
8 THE ACCUSED: Yes, Your Honour. Yeah, that's -- that's okay.
9
10 THE COURT: Okay. It impairs your right to freedom of
11 expression and so forth, sir, but I think that in the circumstances, it's reasonable. Do
12 you agree with that?
13
14 THE ACCUSED: Absolutely, yeah. I do.
15
16 THE COURT: All right, thank you, Mr. McPike. I appreciate
17 that.
18
19 MR. MORIN: Thank you.
20
21 THE COURT: So I'll write that into the probation
22 order. There's a statutory aggravating factor that needs to be addressed with respect
23 to count number 1, and that is the provision in the *Criminal Code* sentencing provisions
24 that indicates that where there is a relationship between the complainant and the
25 accused, that it's a statutory aggravating factor, that it's something that the Court has
26 to take into account in terms of making the situation worse, and that's something that I
27 want to put on the record that I'm considering in crafting a proportionate sentence.
28
29 All right, Mr. Lim, anything else you want to add?
30
31 MR. LIM: Your Honour, I'll leave it up to the Court
32 whether a DNA sample is appropriate. He doesn't have -- it's a dated record, Your
33 Honour. You understand the circumstances. It's a domestic situation, Your Honour. I
34 will leave it up to the Court whether it's appropriate, but it's a secondary
35 designated offence.
36
37 THE COURT: All right, thank you.
38
39 MR. MORIN: Lastly, as far as count 3, there's no previous
40 history of related offences --
41

1 THE COURT: Correct.

2
3 MR. MORIN: -- with animals.

4
5 THE COURT: Thank you.

6
7 And Mr. McPike, you get the last word. Is there anything you want to add to what
8 Mr. Morin has said on your behalf?

9
10 THE ACCUSED: No, Your Honour. Just I'm terribly sorry this
11 all happened, and I'm -- I'm really relieved that it's all over, and I -- I feel bad that
12 this -- that Ben has gone through what I've read in his impact statement, and I
13 don't -- I don't wish any ill will or ill feelings towards him whatsoever, and I never
14 have, and I . . .

15
16 THE COURT: Okay. All right, thank you for that. I
17 appreciate that.

18
19 Mr. McPike, when I'm sentencing you, I want you to know a couple of things. I want
20 you to know that I'm not penalizing you for running a trial. I'm not penalizing you for
21 giving evidence that I found to be in some respects unbelievable. I believe what
22 happened that early morning, sir, is that you ingested some alcohol at the concert, then
23 when you got home, you had some more when you were relaxing with your friends,
24 and I think you might have lost track of how much you had. Either the -- you had
25 four or five drinks, whether they were stronger than you thought, or maybe you had
26 more than four or five, but I think the alcohol affected you more than maybe perhaps
27 you realized. Maybe now you realize it, but at the time of the incident and at the time
28 that you were testifying, something has skewed your memory as to what happened that
29 night, and, Mr. McPike, it was worse than you remember. That lady that testified, I
30 wish I had witnesses like that on every one of my trials, because she was the next
31 best thing to a video recorder, as you've heard the Crown prosecutor refer to. So
32 that's what happened, and, you know, you need to leave here knowing that that's what
33 happened.

34
35 THE ACCUSED: Yes, Your Honour.

36
37 **Sentence**

38
39 THE COURT: All right. I've heard the joint submission
40 from two counsel. These are two very respected lawyers in the city, and the Court of
41 Appeal has told me that where two respected counsel come together and they make a

1 joint submission to the Court, it's supposed to be treated with respect and deference,
2 because they know more about you and the circumstances and the complainant than
3 I do, and so I take into account what they said, but at the same time, I have to come
4 up with a sentence that reflects your moral blameworthiness for what you did, the
5 nature of the relationship, the vulnerability of the dog, and sending out a message to
6 other people about what will happen if they make the same bad decisions that you did
7 that night.

8

9 On the other hand, you know -- and also, you don't come before the Court as a first
10 offender. You've got this record, so I can't treat you the same way as somebody who is
11 lily white, let's put it that way. At the same time, you don't have anything related on
12 your record, I accept that you're genuinely remorseful, and the submissions that you just
13 made, what you just told, me, that helps; I'm happy to hear it.

14

15 THE ACCUSED: Thank you.

16

17 THE COURT: So what I'm going to do, sir, is I'm going to
18 give effect to the joint submission, but I'm going to tweak it just a little bit, all
19 right. So what the lawyers have worked out, that's what your sentence is going to be,
20 but it's going to be as follows: on each of the counts, the sentence is 15 days. It's
21 concurrent to each other, so the total sentence is 15 days. In addition, on each of the
22 counts, you'll be on probation for 12 months.

23

24 The terms and conditions are the ones that the lawyers have worked out. I'll go through
25 them with you again, so I want to make sure if you have any questions, now is the time
26 that you raise them. You must keep the peace and be of good behaviour. You have to
27 report to the Court when you're required to do so. You have to report to a probation
28 officer today and thereafter as they direct. You have to reside at an approved address, so
29 you have to have a discussion with your probation officer. That's not usually a big
30 deal. You have to attend for such assessment, counselling, or treatment,
31 specifically with regards to psychiatric or psychological counselling, alcohol and drug
32 abuse, and some domestic violence treatment. You shall sign a release or waiver of
33 information so that you can be properly supervised. Sir, you shall have no contact
34 or communication whatsoever, either directly or indirectly, with Benjamin Roe. I can't
35 emphasize to you enough how important that condition is. If you violate a
36 no-contact provision, you can expect to go to gaol. That's how serious the Courts take it.
37 All right?

38

39 THE ACCUSED: Yes, Your Honour.

40

41 THE COURT: You shall not attend at or within a one-block

1 radius of the residence of Benjamin Roe. And we'll just leave it at that, okay? Your
2 supervisor can grant a temporary written exemption from any of the terms for
3 humanitarian reasons. You may not publish in any form, including on the internet,
4 any comment or material pertaining to the complainant, Benjamin Roe, and you'll
5 understand what I'm getting at with that. I --

6

7 THE ACCUSED: Yes, I do. I don't -- I -- yes, of course.

8

9 THE COURT: I don't want you saying anything about him. I
10 don't want you putting any pictures of him on there.

11

12 THE ACCUSED: No, certainly not.

13

14 THE COURT: Don't do that.

15

16 THE ACCUSED: No, certainly not.

17

18 THE COURT: All right, thank you, sir. And as requested by
19 you through your counsel, I will allow -- allow you to serve your sentence on weekends.
20 Sir, you shall serve your gaol sentence on an intermittent basis by reporting to the
21 Fort Saskatchewan correctional centre in a clean and sober condition at 8:00 PM on
22 Friday -- which date did you want to start this?

23

24 MR. MORIN: May 15th, sir.

25

26 THE COURT: All right, Friday the 15th day of May, 2015,
27 for incarceration and remain there until your release at 4:00 PM on Sunday the 17th day
28 of May, 2015, and you shall continue to report in like manner until your sentence is
29 served according to law.

30

31 MR. MORIN: I think I was asking for noon, Sir, but it's up
32 to you.

33

34 THE COURT: Yeah, that's what I'm going to make it.

35

36 MR. MORIN: Okay, thank you.

37

38 THE COURT: I've -- I'm going to exercise my discretion
39 not to make a prohibition with respect to animals.

40

41 MR. MORIN: Appreciate that.

1
2 THE COURT: And I'm going to exercise my discretion and
3 I'm not going to make a DNA order, sir.
4
5 MR. MORIN: Thank you, Sir.
6
7 THE COURT: A victim fine surcharge on each of the counts
8 is \$100, in default one day. Do you need some time to pay that, sir, or can you pay the
9 \$200 today?
10
11 MR. MORIN: Ninety days, Sir.
12
13 THE COURT: All right.
14
15 MR. MORIN: It's like a surcharge on each of the counts.
16
17 THE ACCUSED: I understand, yeah, okay.
18
19 THE COURT: There's no option on it. I have to impose it.
20
21 THE ACCUSED: Okay.
22
23 MR. MORIN: Mandatory.
24
25 THE ACCUSED: Yeah.
26
27 THE COURT: It used to be discretionary, but not
28 anymore. I'll give you the whole summer to put it together --
29
30 THE ACCUSED: Okay, thank you.
31
32 THE COURT: -- so it has to be paid by Tuesday, September
33 the 1st.
34
35 THE ACCUSED: Fine.
36
37 THE COURT: All right. Mr. Lim, have I covered everything?
38
39 MR. LIM: Yes, you have, Your Honour. Thank you.
40
41 THE COURT: Thank you very much. All right. Mr. McPike,

1 good luck to you.

2

3 THE ACCUSED: Thank you.

4

5 MR. MORIN: Thank you, Sir.

6

7 THE COURT: Thank you.

8

9 MR. MORIN: Have a good afternoon, Sir.

10

11 THE COURT: And we're adjourned.

12

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14 PROCEEDINGS CONCLUDED

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1 Certificate of Record

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3 I, Victoria Parsons, certify that this recording is the record made of the evidence in the
4 proceedings in Provincial Court held in courtroom 446 at Edmonton, Alberta on the
5 30th day of April, 2015, and that I was the court official in charge of the
6 sound-recording machine during the proceedings.

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1 Certificate of Transcript

2

3 I, Barbara Krieger, certify that

4

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
7 transcript of 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 this transcript.

11

12

13

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14

Barbara Krieger,

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Order No. 54517-15-1

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35 Pages: 43

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