Action No.: 190263855Q2
E-File Name: CCQ22GEICKJ
Appeal No._____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

JOHN RICHARD GEICK

Accused

T R I A L
(Excerpt)

Calgary, Alberta
February 18, 2022

Transcript Management Services
1901-N, 601 - 5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@csadm.just.gov.ab.ca

TABLE OF CONTENTS

Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

February 18, 2022 Morning Session

The Honourable Justice Ho — Court of Queen's Bench of Alberta

R. Greenwood — For the Crown
E. Moldofsky — For the Accused
S. Hawkins — Court Clerk

THE COURT: Please be seated.

MS. GREENWOOD: Good morning, My Lady. Thank you, My Lady, for your patience.

THE COURT: Good morning, Mr. Geick.

THE COURT CLERK: My Lady, Her Majesty the Queen against John Richard --

THE ACCUSED: Geick. Yeah.

THE COURT CLERK: Is it Geick. Gieck.

All right. Thank you, My Lady. Thank you, counsel for your patience.

THE COURT: Okay. Counsel, are you ready to go?

MR. MOLDOFSKY: Yes.

MS. GREENWOOD: Yes, My Lady.

MR. MOLDOFSKY: Yes.

THE COURT: I am a little concerned about this screen in that Mr. Geick can't see me, but…

MR. MOLDOFSKY: I am sorry. If I can just clarify the matter. My

Lady, are you going straight into your decision?

THE COURT: Yes.

MR. MOLDOFSKY: Thank you, My Lady. Just wondering if I could perhaps stand with my client while you deliver your decision, My Lady.

THE COURT: If what?

MR. MOLDOFSKY: If I could perhaps stand with my client while you give --

THE COURT: Yes, that's fine. Well, I was going -- yes. So I was going to give the decision on your most recent applications.

MR. MOLDOFSKY: Yes.

THE COURT: Okay. Yes. So that's fine.

MR. MOLDOFSKY: Thank you.

THE COURT: Okay. Are you set Mr. Moldofsky?

MR. MOLDOFSKY: Yes.

Ruling (Application)

THE COURT: In March 2021, I convicted Mr. Geick of two counts of killing, maiming or injuring dogs, contrary to section 445.1(a) of the Criminal Code of Canada.

The dogs named Sophie and Tyler belonged to Mr. Geick and his former common-law partner Joanna Smith.

These reasons for decision relate to the defence application filed on or about February 7, 2022, for re-opening of the trial for the purposes of admitting fresh evidence, and in the alternative a mistrial.

This is the second application filed by defence counsel post conviction.

A mistrial application was filed in the fall of 2021 ("Mistrial Application #1") as we were

about to convene for sentencing submissions. I dismissed Mistrial Application # 1 in reasons for decision reported at *R v Geick*, 2022 ABQB 92.

With respect to the current application, I directed defence counsel to provide its memorandum of argument by February 11, 2022, and the Crown to provide its memorandum argument by February 15, 2022. Defence counsel filed a written reply on February 17, as counsel earlier confirmed on February 11, that they were content to have this application determined in writing.

The applicant seeks to introduce fresh evidence from two witnesses being Ms. Cassandra Murphy and Mr. Daniel Katchmar. Their evidence is outlined in filed affidavits.

They both attest to having been inside the garage of the home where the applicant and Ms. Smith lived at various points between February 16 to 18, 2019, and attest that the garage did not look as depicted in photos introduced into evidence at trial.

Ms. Murphy will further attest to text messages and other communications she had with Ms. Smith and the applicant, following the death of both dogs.

Applicable Law and Analysis

Counsel agrees on the applicable law in relation to the application to admit fresh evidence.

Even after a conviction a trial judge has discretion to permit re-opening of a trial to adduce fresh evidence but this should only be done in exceptional circumstances, and where the exercise of discretion is clearly called for: *R v Lessard*, (1976), 30 CCC (2d) 70 (ONCA) at paras 10 and 12.

Notably, after a conviction a more rigorous test must be met in the interests of protecting the integrity of the process and in enhancing the interest in finality: *R v Kowall*, (1996), 108 CCC (3d) 481 (ONCA) at para 31.

The four-part test to be met was outlined in *R v Palmer* (1979), 50 CCC (2D) 193 (SCC) at para 22. I will review each of the four criteria and provide my analysis relative to the record and reasons for conviction.

As was made clear by the Ontario Court of Appeal in *Kowall*, only if I am satisfied that the test has been met, I then must go on to consider whether to reopen and continue the trial, or whether to declare a mistrial: Kowall at para 32.

To the extent that the affidavits provide an outline as to what *viva voce* evidence would be called if trial were re-opened, I question the admissibility of several of the statements contained within Ms. Murphy's affidavit, particularly Ms. Murphy's views regarding the trustworthiness of Ms. Smith. As was made clear in the applicant's follow up memorandum, the evidence of Ms. Murphy and Mr. Katchmar is intended to raise questions regarding Ms. Smith's narrative, motive and the conviction itself. Sorry, I may have said Ms. Smith inadvertently. Let me just go back.

As was made clear in the applicant's follow up memorandum, the evidence of Ms. Murphy and Mr. Katchmar is intended to raise questions regarding Ms. Smith's narrative, motive and the conviction itself.

Essentially, it is the applicant's submission that the fresh evidence goes to Ms. Smith's credibility and corroborates the applicant's testimony regarding being brainwashed or manipulated by Ms. Smith, such that he confessed to the police that he was responsible for killing Tyler.

I turn now to the four-part Palmer Test.

1. The evidence should not generally be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in a civil case.

The applicant asserts that he only became aware of information about Ms. Murphy and Mr. Katchmar being in the garage in early January 2022. It is acknowledged in the applicant's memorandum of argument that this first criterion calling for due diligence may not be met, but the applicant relies upon the less strict approach taken in criminal cases.

The Crown submits that the evidence of Ms. Murphy and Mr. Katchmar, to the extent admissible, could have been adduced at trial with due diligence as the first *Palmer* criterion has not been met.

Paragraph 3 of the applicant's memorandum of argument states: (as read)

> The applicant did not realize at the time of trial that his friends could confirm the state of the garage after both dogs had died. While I was aware that they had friends who had talked to each of them in the time between the arrest and the statement to police, I did not think of calling any of them as witnesses. It was only at the end of my client's testimony (and after the Court disbelieved his version of being

> brainwashed and manipulated into making the statement he made) that I realized corroboration of his version would have been helpful.

Counsel for the applicant reiterates in his follow up memorandum that he did not know about the garage witnesses altogether, nor had he spoken with Ms. Murphy until January 2022.

I do not accept these assertions in light of the record of this proceeding, and I conclude that the first part of the *Palmer* criteria has not been met.

With respect to the evidence related to the garage, it is asserted that the applicant did not realize at the time of trial that his friends could confirm the state of the garage. However, at trial, during direct examination conducted on the afternoon of February 24, the applicant was asked about the testimony Ms. Smith gave about finding a mallet on the floor of the garage. The applicant testified that the last time he saw it was in a toolbox in the garage. The applicant could not remember if it was the day after Sophie died or the day that Tyler died, but his friend Dan, who he described as his son's godfather, had come over and they went to the garage to "have a quick smoke".

Dan helped the applicant organize the garage and unpack boxes, putting things into the tool cabinet. The applicant specifically stated that all of the tools that were supposedly out, were in the tool cabinet the last time he was in the garage. The applicant testified he did not see the mallet and the mallet did not have any fur or blood on it when he last saw it.

The applicant referred to Mr. Katchmar on several occasions during his testimony including that he was at Daniel and Lorrie Katchmar's residence at the time of his arrest.

Given the applicant's testimony regarding Mr. Katchmar being in the garage between February 16 to 18, I do not accept the applicant's contention that he did not realize at the time of trial that his friends could confirm the state of the garage during that timeframe.

He specifically testified that his friend Dan was over during that time period and helped him organize the garage. Moreover, the applicant specifically questioned Ms. Smith's evidence regarding the mallet at trial.

The state of the garage and its contents is not a new issue or theory being raised for the first time in the context of this application.

With respect to the testimony of Ms. Murphy detailing conversations and communications between herself and Ms. Smith, again, the applicant provided testimony

regarding this at trial. He described Cassandra as being one of his closest friends, and that she acted as a messenger between he and Ms. Smith. He testified that he gave Ms. Murphy permission to share information with Ms. Smith. Ms. Murphy's involvement in this matter is not new information to the applicant and the text messages and emails attached as exhibits to her affidavit was information that could have been adduced at trial with due diligence.

Even if it wasn't until after the applicant's testimony and my reasons for conviction that defence counsel realized that Ms. Murphy's evidence may have been helpful, it is not clear why this application was not brought sooner.

My reasons for conviction were given in March 2021, well before even Mistrial Application #1 was filed. Further, both Ms. Murphy and Mr. Katchmar submitted letters in support of the applicant for the purposes of sentencing last fall. Their letters are contained within Exhibit S-3. Thus, it is apparent that both Ms. Murphy and Mr. Katchmar were in contact with defence counsel or someone from his office much sooner than January 2022.

The transcript from the trial makes clear that the fresh evidence now proposed for admission could have been presented at trial by the applicant with the exercise of due diligence.

I am mindful that the due diligence criterion is not applied as strictly in criminal matters. I am directed by the Supreme Court of Canada in *R v B(GD).*, 2000 SCC 22 (CanLII), [2000] 1 SCR 520 at paras 19 and 20, and other Supreme Court decisions that the due diligence requirement is only one factor to be considered in the totality of the circumstances having regard for the other relevant factors in criminal proceedings.

The importance of this criterion will vary from case to case. Therefore, despite concluding that the first aspect of the *Palmer* test has not been met, I will proceed to consider the other three parts of the test.

2. The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue at trial.

The applicant asserts that Ms. Murphy and Mr. Katchmar's evidence goes to Ms. Smith's credibility and corroborates the applicant's testimony that he was brainwashed or manipulated.

The idea that the applicant was manipulated into giving a false confession was explored at trial. What the applicant now seeks to do is introduce fresh evidence that he submits,

supports his version of events, notwithstanding that it was rejected at trial.

In my view it is noteworthy that defence counsel characterizes Ms. Murphy and Mr. Katchmar's possible evidence as narrative in his memorandum of argument. He submits "more of the narrative would have been helpful" in this case where only the version of events outlined by the applicant and Ms. Smith were available. The applicant acknowledges in his memorandum of argument that neither Ms. Murphy nor Mr. Katchmar were at the home at the time of the incidents.

As already noted, the applicant provided testimony at trial regarding the mallet. Notably no mallets or hammers factored into my findings of fact and the reasons for conviction. The only evidence from the garage that factored into my reasons for conviction was the Duct tape seized by police which Dr. Doyle confirmed had hair on it that was consistent with canine hair.

Mr. Katchmar attests to not having seen any tape with any dog fur, and Ms. Murphy attests to a wad of tape, amongst other things, not being on the floor in front of the sofa.

With regards to the evidence of Ms. Murphy and her communications with Ms. Smith, as the Crown noted in its submissions, Ms. Murphy's evidence is not inconsistent with that given by Ms. Smith at trial and arguably may even be supportive of the inculpatory statement originally given by the applicant, to the police. The applicant takes issue with the Crown's characterization of Ms. Murphy's evidence in the follow up memorandum.

What the debate between counsel shows is that there are differing interpretations of Ms. Murphy's evidence, and its significance relative to the testimony provided by Ms. Smith at trial.

The applicant asserts in his follow up memorandum that some of the findings in my reasons for conviction may now be questionable because of Ms. Murphy's evidence. At paragraph 18 of his submission, he points to an excerpt from the reasons from conviction. However, the quotation taken from my reasons is taken from the section where I reviewed the evidence given by the applicant and Ms. Smith at trial. It is not taken from the section outlining my findings of fact.

Credibility of witnesses is an issue in every trial and it is not enough to simply assert that a witness's credibility may be impacted by fresh evidence.

Having considered the evidence of Ms. Murphy and Mr. Katchmar, which I agree is narrative, I conclude that the second *Palmer* criteria has not been met. I do not accept that it is relevant in the sense that it bears upon a decisive or potentially decisive issue in the

trial.

3. The evidence must be credible in the sense that it is reasonably capable of belief.

Ms. Murphy and Mr. Katchmar have both sworn affidavits regarding their recollection of the state of the garage three years earlier.

I agree with the Crown that reliability is an issue from the perspective of the time that has elapsed and because they are also referring to objects in the garage that they would have no reason to focus on at the time.

That said, credibility is different than reliability.

Ms. Murphy and Mr. Katchmar's evidence is presented in affidavit form and I am not in a position to assess their credibility per se. Given this, I conclude for the purposes of this application only, that their evidence is reasonably capable of belief.

4. The evidence must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

Recall that I accepted Dr. Doyle's opinion that Sophie would have died within 30 to 60 minutes of receiving blunt force trauma injuries to her liver.

As for Tyler, Dr. Doyle acknowledged that Tyler's injuries could have been caused any time within 24 hours of being examined by Dr. Chamberlain on February 17, but agreed that it was more likely that Tyler died within 12 hours of sustaining the trauma.

It is important to consider these timeframes relative to the applicant's own testimony at trial, and pertinent findings of fact outlined in my reasons for conviction.

On the day prior to Sophie's death, the applicant testified he was home with the dogs and taking care of household chores including cleaning fish tanks and preparing supper. This was also the day that the applicant admitted to throwing Sophie across the deck after she peed in the dog bed. According to the applicant, Ms. Smith returned home from work, they ate supper and they went to bed as the applicant was preparing to wake up early for his snow removal job.

Both the applicant and Ms. Smith testified that Sophie was alive at the time they went to bed. I also found as a fact that no one other than the applicant, Ms. Smith, and their child were home on the night of February 14 and morning of February 15, 2019. There was no evidence adduced at trial to suggest otherwise.

The applicant was first awake on the morning of February 15, but he did not ultimately go to work. He testified he eventually woke up Ms. Smith who was still asleep in the master bedroom with their child, in order to inform her about Sophie's condition.

With regards to Tyler, the applicant described that the family spent the entire day together on February 16 and Tyler was put in his crate for the night. On the morning of February 17, the applicant again testified, he was first awake. He took Tyler out to the garage to have a cup of coffee and watch TV before returning to the house with Tyler.

The applicant testified Ms. Smith was still sleeping, waking up around 9 AM.

I also found as a fact that Tyler was fine when everyone went to bed on the night of February 16, and no one else was in their house that night. Again, there was no evidence adduced at trial to suggest otherwise.

Given Dr. Doyle's opinion as to the timeframes and causes of Sophie and Tyler's death, the applicant's own evidence regarding the events and time periods in question, and pertinent findings of fact outlined in reasons for conviction, I am unable to conclude that Ms. Murphy and Mr. Katchmar's evidence would have affected the result of the trial even if believed.

Neither Ms. Murphy nor Mr. Katchmar were present at the home at the critical time periods.

The fourth *Palmer* criteria has not been met.

Disposition

Having regard for the four-part *Palmer* test and my analysis of each of the criteria, I am not satisfied that the applicant has met the test to re-open the trial.

In my view, the first, second and fourth *Palmer* criteria have not been met. There are no exceptional circumstances calling for the exercise of my discretion to re-open the trial for the purposes of adducing fresh evidence. Given this, I am not required to consider whether a mistrial is warranted.

In any event, I would observe that the applicant was not deprived of the ability to make full answer in defence, and there was no fundamental trial unfairness.

The applicant's application to adduce fresh evidence, and in the alternative for mistrial is

dismissed.

And with that I propose to move directly into sentencing.

Mr. Geick, you have an opportunity to address the Court if you wish. You do not have to say anything, but if you wish to say something, now is your opportunity, sir.

THE ACCUSED: Yeah, I would like to --

THE COURT: You can just stand, Sir. And if you wish, you can remove the mask.

Accused Addresses the Court

THE ACCUSED: Honestly, I -- I don't know really what to say here. If I am responsible for Tyler's death, I really have no memory of it, but I know I am not. I know I am not. I don't understand why she would stage that scene if I was responsible, but at this point, like, I am just throwing myself at the mercy of the Court. Like, I don't know -- I am terrified. I have never -- I have never -- it's my biggest fear in my life coming up in front of me.

It's not -- it's -- I am terrified I am not going to come out of this the same person. That I am not going to come out of this a good person. That's all I really can say, is I am just -- I am throwing myself on the Court's mercy and I just -- I just hope you can see, you know -- like, I have never done anything violent in my entire life. I've never even been in a street fight, like -- I am not a violent person and I hope that can be taken into effect here and you will consider house arrest or something like that, so I can be rehabilitated and put into society and continue to be a valued member of society instead of coming out a broken person.

I think that's all I have to say. Thank you.

THE COURT: Thank you, Mr. Geick. You can have a seat.

THE ACCUSED: Thank you. Thank you, Judge.

THE COURT: Okay. Mr. Moldofsky, do you wish to continue standing?

MR. MOLDOFSKY: Yeah. If that's okay.

THE COURT: So that's fine.

MR. MOLDOFSKY: Thank you.

THE COURT: I will warn you my reasons are fairly lengthy.

MR. MOLDOFSKY: Fair enough, My Lady.

THE COURT: Okay. I am just going to shift my chair a bit.

Sentence

THE COURT: On March 16, 2021, I found Mr. Geick guilty on two counts of killing, maiming or injuring dogs, contrary to section 445.1(a) of the Criminal Code.

I heard sentencing submissions on September 17, 2021. Mr. Geick's counsel submitted supplementary written submissions on October 8, addressing two specific issues, being the degree to which I should consider media scrutiny as a mitigating factor, and why a conditional sentence order is appropriate in this case.

The Crown filed a written response on October 20 and counsel addressed these issues further on October 29.

Counsel also provided additional submissions following the release of the Court of Appeal's decision in *R v Chen,* 2021 ABCA 382, on November 25, 2021.

These are my oral reasons respecting sentence. If a transcript of these reasons is requested, I reserve the right to edit it for non-substantive matters, including adding headings, case citations and correcting quotations, typographical, or formatting issues.

Circumstances of the Offence

I outlined my findings of fact on March 16, 2021. I will only repeat those findings of fact relevant to counsel's sentencing submissions. For clarity, I refer to the two dogs by their names, Sophie and Tyler.

In February 2019, Mr. Geick and his common-law partner at the time, Ms. Joanna Smith, had one child.

On February 14, 2019, Mr. Geick was home alone with the child while Ms. Smith was at

work.

Sophie pushed Tyler out of his dog bed located in the dog room and then peed in the dog bed. Mr. Geick grabbed Sophie by the collar and put her nose in the pee in order to discipline her.

He then went to put her outside of the dog room into the back yard when Sophie started acting up. Mr. Geick continued holding Sophie by the collar, and with two hands, threw her in an overhanded fashion. Mr. Geick used significant force to throw Sophie almost 15 feet until she collided with deck furniture and the garage. He then went back inside the house for approximately 10 minutes before letting Sophie back inside.

Mr. Geick was the first adult awake in the house the next morning. He told Ms. Smith at 6 AM, he was not going to work. Ms. Smith was sleeping in the master bedroom at the time with the child located beside her on a separate mattress.

Some time on the morning of February 15, Mr. Geick repeatedly used his hands and feet to beat Sophie causing many, if not all of the 14 distinct bruises identified by Dr. Doyle during the necropsy performed on Sophie. Mr. Geick used significant force in causing the blunt force trauma injuries sustained by Sophie. At some point, Mr. Geick pulled on Sophie's ear with so much force that her ear was almost pulled from her skull. Mr. Geick caused severe injury to Sophie's liver, which was the cause of Sophie's death.

Sophie died within 30 to 60 minutes of sustaining the fatal injuries to her liver. Sophie died due to hemorrhagic shock caused by blunt force trauma. Sophie experienced significant pain as a result of the blunt force trauma and ear pull. She was lethargic and moved slowly as a result of the blood loss she experienced when her liver was - using Dr. Doyle's word - pulverized. It would have been apparent that Sophie was injured because she would have moved in an abnormal fashion and in pain.

After Sophie died, Mr. Geick washed Sophie's body and placed her body on the floor of the dog room before going to wake Ms. Smith up at approximately 9 AM. He told her that Sophie was non-responsive. When Ms. Smith went downstairs to the dog room to check on Sophie, Sophie was already dead.

With respect to Tyler, on the morning of February 17, 2019, Mr. Geick woke up at approximately 6 AM, and again, was the first adult awake in the house. He went about his usual routine of bringing Tyler out to the garage, having coffee and watching television.

Mr. Geick was aware that because of Tyler's size he could not discipline him the same

way as a larger dog. He knew that he could not spank Tyler, nor could he grab a little dog like Tyler, by the scruff of his neck and smack him on the bum because he was a really small dog.

Despite having this knowledge, at some point while being in the garage with Tyler that morning, Mr. Geick used his hands to apply force to Tyler's mouth and both ears, and he choked him causing the bilateral scleral hemorrhage. He also kicked Tyler with significant force in the abdomen area, causing bruising on Tyler's ventral abdomen and lungs. The blunt force trauma caused Tyler to develop a pneumothorax and experience bleeding in his abdomen. As a result of these injuries, a decision was made by Ms. Smith, Mr. Geick, and Ms. Smith's mother to humanely euthanize Tyler on February 17, 2019.

Circumstances of the Offender

Mr. Geick is approximately 40 years old. As indicated in the presentence report dated June 1, 2021, marked as Exhibit S-1, Mr. Geick self-reported that he suffered physical and mental abuse by his father, and was also the victim of sexual abuse between the ages of 8 and 12 years old. Though he has a sibling and numerous half-siblings, he reported that he is not really close to his family apart from an aunt.

With respect to his education, Mr. Geick reported that he skipped classes in Grade 9 and then dropped out of school. He has a varied employment history with experience working in the construction and hospitality industry. He has also worked in telemarketing, cleaning and snow removal. It appears that his longest period of employment was when he worked at a reptile store for approximately six years, eventually becoming a manager.

Mr. Geick is now involved in a long-term relationship with a new partner who submitted a character reference to the Court as part of the package marked as Exhibit S-3. I will address the letters of character later in these reasons.

Victim Impact Statements

Joanna Smith and her mother Kathleen Smith both provided Victim Impact Statements that were reviewed by Crown counsel and marked as Exhibit S-2.

Joanna Smith reviewed the feelings she has experienced since the date of conviction, describing pain, sadness, fear, anger and betrayal. She described the dogs, Sophie and Tyler as her family members and questioned why Mr. Geick did what he did to them. She also described feeling guilty and failing to protect the dogs. She wrote that she still experiences flashbacks of visual images tied to the events in question.

Ms. Smith also described what has happened in her life afterwards, losing her job and having to relocate to B.C. in order to be closer to family and support systems.

For her part, Kathleen Smith described that she has felt fear in dealing with this while trying to provide support for her daughter, Joanna and grandson. She describes steps taken to provide a sense of security for the family indicating that she has now developed severe anxiety and depression as well as other health complications.

Kathleen Smith sold her property in Calgary at a financial loss in order to have the money to support Joanna's relocation to B.C. Though retired, she described that her finances will always be a worry.

Position of the Crown

The Crown submitted that a custodial sentence of three and a half years be imposed for causing Sophie's death and two and a half years for causing Tyler's death on a consecutive basis.

Having regard for totality, the Crown ultimately seeks a custodial sentence in the range of three and a half to four years. It was submitted that this sentence is proportionate to the crimes committed, and reflects the moral blameworthiness of Mr. Geick.

Position of the Defence

The defence submitted that a custodial sentence of six months gaol should be imposed subject to the terms of a conditional sentence order.

Analysis

My overarching duty as a sentencing judge is to draw upon all legitimate principles of sentencing to determine a just and appropriate sentence which reflects the gravity of the offence committed, and the moral blameworthiness of the offender: *R v M(CA),* [1996] 1 SCR 500 at para 82.

Specifically, I am required to consider the fundamental purpose and principles of sentencing established in sections 718, 718.1 and 718.2 of the Criminal Code. I am also required to consider binding jurisprudence.

There are a number of issues that I must consider in this case. I begin by reviewing the presentence report before reviewing relevant issues and jurisprudence.

Presentence Report

Both Crown and defence counsel submitted that the PSR is not particularly helpful.

Crown counsel noted that Dr. Yacoub did not seem to employ any of the risk assessment tools or tests that are typical of presentence reports. While Dr. Yacoub opined that Mr. Geick's risk of recidivism is in the low to moderate range, no specific tests were completed to arrive at this opinion.

Crown also cautioned that much of the information relied upon by Dr. Yacoub, was obtained from Mr. Geick himself as opposed to third-party sources, and there is no mention of internal controls undertaken. That said, Crown pointed that it was evident from the PSR that Mr. Geick has not shown remorse or accepted responsibility for Tyler and Sophie's death.

Defence counsel expressed the view that PSRs generally are of limited value, although he points to aspects of Exhibit S-1 where Dr. Yacoub provided commentary favourable to Mr. Geick's position such as the low to moderate risk of recidivism. Defence counsel did not rely heavily on these aspects of the report.

Defence submitted that Mr. Geick's description of his family background was perhaps the most useful information contained in the PSR.

In the end, I agree with counsel that the PSR is of limited assistance given its shortcomings, although it includes some information that Mr. Geick provided himself, including regarding his family background. Other than this information, I place little weight on the PSR, including in relation to Dr. Yacoub's findings respecting Mr. Geick's risk of recidivism.

Aggravating Factors

At paragraph 23 of its written submission, Crown counsel submitted that there are a number of aggravating factors to be considered in this case being:

a) The brutality of the assaults on both dogs.

b) The nature and extent of the injuries resulting in significant suffering and ultimately death.

c) Leaving Sophie to internally bleed to death, being a very painful death.

d) Leaving Tyler to suffer and initially trying to dissuade taking Tyler to the veterinarian by saying Tyler was likely just depressed.

e) Causing the deaths of Sophie and Tyler two days apart. Crown submits this was not an isolated incident and I should rule out any suggestion this was out of character for Mr. Geick.

f) The prolonged nature of the assault on Sophie.

g) The domestic element as he beat to death his common-law partner's dogs and the psychological impact this has had on Ms. Smith, and,

h) The breach of trust and defencelessness of Sophie and Tyler. Animals are in a position of trust and a highly vulnerable group. The Crown submits that this is a significant aggravating factor.

During oral submissions, defence counsel generally agreed with the list of aggravating factors advanced by the Crown, except for the suggestion that Mr. Geick tried to dissuade Ms. Smith from taking Tyler to the veterinarian.

I agree that there are a number of aggravating factors in this case.

Several findings of fact in the reasons for conviction speak to the brutality and extent of the assaults suffered by the dogs.

With regards to Sophie, Dr. Doyle indicated that Sophie sustained multiple bruises and significant damage was inflicted upon her liver through repeated blows, describing her liver as having been pulverized. I also found that Sophie experienced significant pain as a result of being subjected to blunt force trauma, and the ear pull.

Dr. Doyle concluded that Sophie would have died within 30 to 60 minutes of sustaining the fatal injuries to her liver.

With regards to Tyler, I found that on the morning of February 17, Mr. Geick used his hands to apply force to Tyler's mouth and both ears, and he choked him causing the bilateral scleral hemorrhage. He also kicked Tyler with significant force in the abdominal area, causing bruising on Tyler's ventral abdomen and lungs. The blunt force trauma caused Tyler to develop a pneumothorax and experience bleeding in his abdomen.

Animals are capable of displaying signs of discomfort and pain as sentient beings and domestic pets are particularly vulnerable as they are heavily dependent on people for

their well-being.

Moreover, there is an unmistakable domestic element to this case, as Sophie and Tyler were family pets with Sophie initially being Joanna Smith's dog, and Tyler initially being Kathleen Smith's dog. At trial, Mr. Geick described Sophie as being more Ms. Smith's dog. Ms. Smith described them as family members in her victim impact statement. Indeed, many in today's society regard their pets as an integral part of their family.

I agree with defence counsel that I must be cautious when asked to draw inferences that support the Crown's submissions on aggravating factors. In particular, he submitted that it was not safe to draw an inference that Mr. Geick attempted to dissuade Ms. Smith taking Tyler to the veterinarian. I agree, and note that I made no finding of fact in this regard in my trial decision. Nor am I prepared to infer and consider as an aggravating factor that Mr. Geick was not acting out of character when inflicting the injuries on Sophie and Tyler. Both Ms. Geick (sic) and Mr. Smith (sic) testified to the care that Mr. Geick provided to other animals including Sophie and Tyler in the past.

Mitigating Factors

The Crown submitted that there are no mitigating factors to be considered in this case. Defence counsel disagreed.

Adverse media publicity as a mitigating factor

Defence counsel submitted that Mr. Geick's case has attracted significant media attention and I should consider the comments received by media outlets as a mitigating factor on sentence, to the extent that such comments serve to promote deterrence. He noted that Mr. Geick's picture has been published, as well as photos of the dogs. Comments submitted by members of the public to local newspapers were described as being "over the top", indicative of high levels of danger to Mr. Geick from some members of the public.

It was further submitted that Mr. Geick has suffered in dealing with publicity associated with this case and he has lost friends and family as a result.

In support of his position, defence counsel pointed to a decision of Judge Brown in *R v Campbell Brown*, 2004 ABPC 17. That was an animal cruelty case that attracted intense media attention. Judge Brown held that while intense media scrutiny does not fall into the category of generally accepted mitigating factors, it can mitigate the need for individual deterrence: para 42.

In *R v Huston*, 2021 ABPC 108, Judge Brown noted that in the 17 years since the decision in *Campbell Brown* social media had vastly expanded the historic notion of extensive media coverage. In *Huston*, also an animal cruelty case, Judge Brown held that the online vengeful shaming directed at the offender was one factor that mitigated the need to include an element of individual deterrence in the sentence imposed: paras 33-37.

In supplemental written submissions, defence counsel referenced a recent Provincial Court of Alberta decision *R v Friesen*, 2021 ABPC 223 at paras 46 to 65 where Judge Stirling reviewed authority discussing media attention, including the Supreme Court of Canada's decision, *R v Bunn*, 2000 SCC 9.

The Crown submitted that paragraph 42 of the *Campbell Brown* decision explicitly provides that media scrutiny is not a mitigating factor and may only be considered in the context of deterrence. The Crown further submitted that the question to be asked is whether media scrutiny is having a greater impact on a particular individual, and there is no evidence that the media scrutiny has had a greater impact on Mr. Geick. Moreover, the general deterrence aspect as a sentencing principle has become more important where there is general greater media attention.

Adverse publicity can be a mitigating factor when the publicity fulfils a denunciatory function that has an inordinate impact on the offender, and there is direct evidence to that effect: *R v Heatherington,* 2005 ABCA 393 at paras 4-6; *R v Deck*, 2006 ABCA 92 at paras 17-18. On the other hand, publicity is an ordinary incident of our justice system, and "stigma for the offender is an inevitable feature of the criminal justice process", thus, adverse publicity will not always justify a reduction in sentence; *Deck* at para 17.

In *R v Zentner*, 2012 ABCA 332, the Court of Appeal cautioned against the use of adverse media publicity as a mitigating factor as doing so would not result in a just outcome that accords with established sentencing principles.

At paragraph 49 the Court stated: (as read)

> [49] There is a grave danger that the suggestion that publicity replaces punishment, will degenerate into lower sentences for the prominent, the successful, and those holding public office. Or those whose personality or crime or name is unusual enough to make it newsworthy because it is novel. Not to mention those arrested on a slow news day, or in the presence of television cameras. That would be both unjust and quite outside established sentencing principles. Sometimes such sentencing is totally backwards because the very

> factors which make the case newsworthy are those (such as abuse of trust or authority) which the *Criminal Code* and precedent say enable and aggravate the crime.

The Court of Appeal reiterated its use regarding media publicity and sentencing in *R v Eliasson*, 2021 ABCA 188 where the appellant appealed the sentence imposed after being convicted on charges of aggravated assault, possession of a weapon for a dangerous purpose and mischief causing damage to an automobile. The Court wrote at paragraph 19: (as read)

> [19] … In our view, the sentencing judge properly exercised caution against permitting that publicity to substitute for punishment in accordance with this Court's direction in ***R v Zentner***, 2012 ABCA 332 at para 49, 539 AR 2. As a sentencing consideration, the adverse effects of publicity are a "collateral consequence" as defined in ***Suter*** and are relevant, if at all, in determining how the individual circumstances of the offence and the offender affect the appropriate "individualized" sentence: ***Suter*** at paras 46-47. Some stigmatization of the appellant was inevitable given the offences and circumstances surrounding the event. As a matter of principle, the mitigating force of collateral circumstances that are "almost inevitable" is "greatly diminished: …

Given appellate jurisprudence, I agree that media publicity may only be considered as a collateral consequence and therefore a mitigating factor in limited circumstances. In this case, there is little, if any evidence, that the adverse effects of publicity are having an extraordinary impact on Mr. Geick. As observed by the Court in *Eliasson*, some stigmatization may be inevitable given the offences and circumstances surrounding the event. In this case, in my view, it is the nature of the charges attracting the media's attention more so than Mr. Geick himself. Therefore, I do not consider adverse publicity in the media's scrutiny to be a mitigating factor in determining a fit and just sentence in this case.

Letters of Character

A number of letters of character were marked as Exhibit S-3 at the sentencing hearing and defence counsel submitted that I should consider the contents of these letters in my deliberations.

With regards to the matter of character, the Crown submitted that the Alberta Court of Appeal has made clear that where an individual does not have a prior criminal record that

means there is a lack of an aggravating factor which should not be considered as a mitigating factor. I agree that the lack of a criminal record is not a mitigating factor.

As to the contents of the letters I observe that the letters contain a significant amount of hearsay, questioning Mr. Geick's conviction and making negative remarks regarding Ms. Smith. Those aspects of the letters were entirely unhelpful, and I have disregarded all such comments. It was inappropriate for those comments to have been included in the letters of character at first instance.

As to good character more generally, Justice Antonio as she then was, in *R v Shrivastava*, 2018 ABQB 998, considered the potential effect on sentence in view of the offender's character, which was described by defence counsel in that case as being "exemplary". She noted that it may be true in some cases that an offender of prior good character will require less punitive measures to prevent recidivism. For example, previous good character may go towards showing that the offence was out of character, and that there is a higher chance of rehabilitation and a lower chance of reoffending. A weakness in this rationale, she pointed out, is that the use of good character as a mitigating factor is a cloak for privilege and may tend to advantage offenders with high social or economic standing. For offences where the primary sentencing objectives are general denunciation and deterrence, good character should not mitigate sentences as it may dilute the deterrent effect of punishment: para 90. She also noted that an offender's public face and character is of limited value when sentencing for an offence committed in secret: paras 77 and 96.

In view of the recent Court of Appeal ruling in *R v Chen,* 2021 ABCA 382 which I discuss further below, where it was made clear that the primary sentencing objective in animal cruelty cases is general denunciation and deterrence, I agree with Justice Antonio's view that any evidence of good character has a limited role in mitigating sentence in this case.

In addition, the violence towards Sophie and Tyler was inflicted in secret, and therefore, Justice Antonio's comments regarding the limited utility of an offender's public facing character are equally applicable in this respect.

While I will not consider the contents of the letter of character to mitigate sentence, the letters do reflect that Mr. Geick has the support of several friends in the community, many of whom have attended to support him during the sentencing hearing. I am hopeful that this assist Mr. Geick in the future.

Mental Health Considerations

Although defence counsel expressed concerns regarding the usefulness of the PSR, he

nevertheless pointed to aspects of Dr. Yacoub's report that referenced Mr. Geick's history of victimization through sexual abuse and his experiences with depression, anxiety and suicidal ideation in the past.

While jurisprudence makes clear that mental health considerations may be a significant mitigating factor, no expert evidence was adduced at trial or during the sentencing hearing confirming that Mr. Geick suffered a mental health disorder concurrent with the attacks on Sophie and Tyler. The only evidence adduced at trial consistent with that suggestion was that when the Calgary Police attended the home on February 20, 2019, they spoke with Mr. Geick who acknowledged having suicidal thoughts. Ultimately, Mr. Geick left with the police under a mental health warrant. He was examined in hospital for approximately 18 hours before being released, without further direction for care or observation.

In addition, Mr. Geick reported to Dr. Yacoub feeling anxious and depressed and experiencing insomnia. But there is no evidence or explanation that these would cause him to injure Sophie and Tyler in the manner that he did. Therefore, there is insufficient evidence before me of any mental health issues that would serve to mitigate sentence in this case.

In the end, I agree that there are few, if any mitigating circumstances that would warrant consideration in this case.

Criminal Code and Reforms

An offence contrary to section 445.1 is a hybrid offence. The Crown elected to proceed by indictment. The maximum term of imprisonment for an indictable offence is not more than five years.

Since 2008, the Criminal Code has undergone significant reforms resulting in increased maximum terms of imprisonment for animal cruelty cases. In 2008, the Criminal Code was amended to make these offences hybrid: An Act to amend the Criminal Code (Cruelty to Animals), SC 2008 c12. The maximum term of imprisonment increased from 6 to 18 months for summary conviction offences, and the maximum term of imprisonment was established at 5 years for indictable offences. The amendments also removed the maximum term of a prohibition order under section 447.1 allowing courts to issue lifetime orders prohibiting owners from owning or residing with an animal, although in the case of a second or subsequent offence the minimum is five years.

In 2019, the maximum term of imprisonment for summary conviction offences was increased again from 18 months to 2 years: An Act to amend the Criminal Code, the

Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, SC 2019, c25.

Review of Jurisprudence

I have reviewed the authorities provided by counsel. Until the recent decision in *Chen* there was little appellate guidance on sentencing in animal cruelty cases.

The Crown relied on authorities where the range of custodial sentences imposed is between one and two years, with lengthy probation and prohibition orders.

In *R v Miller,* 2020 ABPC 92, the accused pled guilty to one count of injuring or endangering an animal where the animal, a kitten, was euthanized after being beaten by the accused. The accused was sentenced to 12 months gaol, two years probation and a lifetime prohibition order.

In *R v. Camardi*, 2015 ABPC 65, the accused pled guilty to two counts of causing unnecessary suffering to an animal where a cat and a dog were subject to significant violence. The dog died of starvation and dehydration and the cat was strangled to death. The accused was sentenced to 22 months gaol, three years probation, and a lifetime prohibition order.

In *R. v. Helfer*, [2014] OJ No 2984 (QL), the accused was sentenced to two years imprisonment and a 25-year prohibition order for one count of maiming a dog where the dog had been found dumped in a dumpster after being badly beaten.

In the unreported decision of *R v Morgan*, (2 July 2019), Calgary 170717573P1 (AltaPC), the accused pled guilty to two counts of injuring or endangering an animal where a kitten was beaten to death and burnt with a blow torch. The accused was sentenced to two years gaol, two years probation and a lifetime prohibition order.

The Crown also relied on an ongoing 2021 case where Crown and defence have made joint recommendation of 18 months gaol and a lifetime prohibition order where the accused pled guilty to one count of causing unnecessary suffering to a kitten who was severely injured by burns and blunt force trauma.

All of these cases were decided after the 2008 amendments to the Criminal Code that I detailed earlier. And the Crown notes that in all of the above cases the accused pled guilty.

The Crown submitted that the sentence imposed in this case must be reflective of

contemporary societal views and the legislative scheme. In 2008, Parliament introduced an increase to the maximum penalty to recognize the harmfulness of the act of violence itself. I was referred to the Supreme Court of Canada's decision in *R v Friesen*, 2020 SCC 9, where the Court discussed the need to increase sentence reflective of the will of Parliament and that this applies in context outside of sexual assault involving minors. Conversely, defence counsel submitted that it would be a stretch to apply *Friesen* in other contexts.

The Crown also referred to *R v Alcorn*, 2015 ABCA 182, where the accused pled guilty to one count of causing unnecessary suffering to an animal. The accused was sentenced to 20 months gaol, three years probation and a lifetime prohibition order. The accused and his partner obtained a cat on Kijiji. They then assaulted the cat in the course of engaging in sexual activity by stringing the cat up and cutting it so that it bled to death. The Court of Appeal upheld sentence on appeal noting that the accused's motive of self-gratification, the sadism inherent in the methodology and the degree of premeditation and planning involved, called for a denunciatory and deterrent sentence.

Defence counsel relied on cases where the sentences ranged from a conditional discharge to 12 months gaol. The appropriateness of a CSO in this case will be discussed later.

In *R. v. Rabeau,* 2010 ABPC 159, the accused pled guilty to one count of injuring or endangering an animal when he was approached by a dog in an alley and struck the dog. The trial judge accepted that the action was motivated by fear and granted a conditional discharge. The trial judge declined to grant a prohibition order while the Crown had requested two years. Defence counsel acknowledged that *Rabeau* is significantly lower in sentence compared to other cases.

In *R v Houston*, 2021 ABPC 108, the accused pled guilty to killing a cat in view of his neighbours. The court sentenced the accused to a 6-month CSO and three-year prohibition order. The accused was aged 65.

In *Springer* v Her Majesty the Queen, 2019 NBQB 216, the accused pled guilty to abandoning a dog that ultimately starved to death. The sentencing judge imposed 12 months, a custodial sentence that was twice what the Crown requested and above the range of the relevant case law. On appeal, the court held that the sentence was demonstrably unfit and reduced the sentence to six months followed by 12 months probation. The court distinguished the Alberta Court of Appeal's decision in *Alcorn* on the basis that it proceeded as an indictable offence and there were no specific findings of premeditation and planning in that case. The prohibition order on owning and caring for animals was increased on appeal from a term of three years to a term of 10 years following incarceration. The court held that three years was inordinately low and beyond

the range of authorities provided to the sentencing judge. The Crown had requested a 10-year order and the defence had taken no position.

Defence counsel submitted that *Alcorn* has generally been regarded as an outlier in many sentencing decisions. In large measure, because it dealt with an indictable offence with a much higher maximum penalty. In any event, defence counsel submitted that whether the Crown proceeds summarily or by indictment should not be a major consideration on sentencing. The Crown disagreed. Instead, the Crown submitted that its decision to proceed by indictment reflects the gravity and moral blameworthiness of Mr. Geick in this case and this should result in a lengthier sentence.

However, I note that in *R v Solowan*, 2008 SCC 62, the Court indicated at paragraph 15 that a: (as read)

> [15] A fit sentence for a hybrid offense is neither a function nor a fraction of that sentence that might have been imposed had the Crown elected to proceed otherwise than it did. More particularly, the sentence for a hybrid offence prosecuted summarily should not be scaled down from the maximum on summary conviction simply because the defendant would likely have received less than the maximum had he or she even prosecuted by indictment. Likewise, upon indictment, the sentence should not be scaled up from the sentence that the accused might well have received if prosecuted by summary conviction.

Therefore, it would appear that the Crown's election to proceed by indictment should not factor heavily in my determination of a fit and just sentence.

Both parties were asked to provide submissions regarding our Court of Appeal's recent decision in *R v Chen*. In that case the accused beat his dog repeatedly for 20 minutes and the dog suffered significant injuries but ultimately made a full recovery. The sentencing judge imposed a 90-day intermittent custodial sentence, followed by two years probation. On appeal, the Court of Queen's Bench reduced the sentence to a one-year CSO and two years probation. On further appeal, the Court of Appeal restored the original sentence.

In restoring the original sentence, the Court of Appeal recognized that animal cruelty offences are crimes of violence, yet sentences for such offences often fail to reflect the gravity of the conduct: *Chen* at paras 20 and 33. Animals must be treated as uniquely vulnerable victims, not chattels: *Chen* at paras 27 and 39.

As to the significance of the 2008 amendments, the Court of Appeal confirmed that the

guidance in *Friesen* applies. Courts should generally impose higher sentences and the sentences imposed in the cases that preceded the increases in maximum sentences: *Chen* at para 24.

While deterrence and denunciation are the primary sentencing principles, specific deterrence, rehabilitation and the protection of animals are also applicable. Accordingly, significant consideration should be paid to prohibition orders to ensure the offender is no longer in a position to harm animals: *Chen* at para 40.

The Court of Appeal also noted that a CSO will be disproportionate to an aggressive attack on an animal and to some serious crimes of neglect: *Chen* at paras 35-36. The Court found that in the circumstances of Mr. Chen's case, a CSO would not have been appropriate "having regard to the extent and duration of the violence": *Chen* at para 47.

As to aggravating and mitigation factors, the Court of Appeal addressed how sentencing judges ought to consider the following factors: the nature of the injury; the presence of provocation; whether the accused is in a position of trust; and cultural norms.

The focus is on the animal's pain and suffering during and after the event.

While the animal's inability to recover may be aggravating, a full recovery is not mitigating: *Chen* at para 42. Ordinary animal behaviour, such as urination does not diminish moral blameworthiness: *Chen* at para 43. If the offender is in a position of trust, the breach of trust is an aggravating factor: *Chen* at para 45. Another aggravating factor is if the abuse is motivated by a desire to assert control or exact revenge on another person: *Chen* at para 44. And while cultural norms may explain conduct, they cannot diminish moral culpability: *Chen* at para 46.

I have considered the circumstances of the offences, the aggravating and lack of mitigating factors, the 2008 amendments to the Criminal Code, and the guidance outlined in *Friesen* and *Chen.* I have also reviewed and considered the jurisprudence provided by counsel.

With regards to the factors identified in *Chen* that I am to focus on, the evidence before me established that both Tyler and Sophie suffered pain during and after the time their physical injuries were sustained. Sophie's ear was pulled so hard that it was almost pulled from her skull, and Dr. Doyle described her liver as having been pulverized. She identified 14 distinct bruises on her body. With regards to Tyler, he was choked and kicked causing him to develop scleral hemorrhaging and pneumothorax and experienced bleeding into his abdomen. Sophie died as a direct result of the injury she suffered, while Tyler died because of a decision to euthanize him to stop his suffering. It should be

remembered that Tyler, a chihuahua, and Sophie, a basset hound, were family pets, and therefore were in a vulnerable position relative to Mr. Geick. Ordinary animal behaviour such as urination in the case of Sophie, does not decrease the moral blameworthiness of Mr. Geick's actions.

I conclude that a fit and proper sentence is 30 months incarceration relative to Sophie and 18 months incarceration relative to Tyler to be served on a consecutive basis. In my view, the periods of incarceration are reflective of Mr. Geick's moral blameworthiness and are consistent with the notion that the wilful infliction of unnecessary pain on animals or family pets is considered repugnant in today's society.

Notwithstanding the foregoing, and having regard for the principles of totality and proportionality, I direct that Mr. Geick serve a total of 36 months incarceration.

In arriving at the conclusion that the sentences should be served on a consecutive basis, I reject that Sophie and Tyler were killed as part of a crime spree. The circumstances described by Mr. Geick in his evidence, and my findings of fact, do not support any suggestion that there was a connection between what happened to Sophie and Tyler. This was not a "single transaction" as referenced by the Court of Appeal's decision in *R v Trapasso*, 2014 ABCA 66; see also *R v May*, 2012 ABCA 213. The general rule where offences are separate and distinct, the general rule is where offences are separate and distinct, a consecutive is imposed: *Trapasso* at para 13.

Conditional Sentence Order

Given my conclusion regarding the length of incarceration to be served by Mr. Geick, it is not necessary for me to address whether a CSO would be suitable in this case. I also note that the guidance from *Chen* makes clear that a CSO would be disproportionate in the circumstances of this case given the level of physical violence involved in the attacks upon Tyler and Sophie.

Ancillary Order

The Crown requested that an order be issued prohibiting Mr. Geick from owning, having the custody or control of, or residing in the same premises as an animal or a bird for his lifetime.

Defence counsel submitted that this is too harsh, requesting that a three-year ban is sufficient. As he noted that the Criminal Code provides for a minimum five-year ban for a second and subsequent offence.

In my view, a lifetime ban requested by the Crown is appropriate having regard for the extent of the violence and brutality of the assaults inflicted on Tyler and Sophie. As already noted, both dogs had their ears pulled. Sophie to the point where it was nearly pulled from her skull. Tyler was choked and kicked and Sophie was beaten showing evidence of 14 distinct bruises to her body, and sustaining fatal injury to her liver. It was Dr. Doyle's opinion that both dogs experienced significant pain during and following their attacks. Ultimately, both animals died because of their injuries. I must impose a sentence that prevents animals from suffering at the hands of Mr. Geick in a similar manner in the future, and a lifetime prohibition achieves that objective.

Mr. Geick, can you please stand.

Mr. Geick, I sentence you to 36 months incarceration.

THE ACCUSED: No, no.

THE COURT: I also impose a lifetime ban pursuant to section 447.1 of the Criminal Code, prohibiting you from owning, having custody or control of when residing in the same premises as an animal or a bird.

You can have a seat, sir.

THE COURT CLERK: My Lady, could you just break that down. Count 1 is how much and count 2 is (INDISCERNIBLE).

THE COURT: Well, count 1 was 30.

THE COURT CLERK: Thirty.

THE COURT: Count 2 was 18.

THE COURT CLERK: So --

THE COURT: Totality is 36.

THE COURT CLERK: Sorry. It is hard to hear over her crying. I am sorry. Eighteen -- so it is 30 months on count 1 --

THE COURT: Yes.

THE COURT CLERK: -- and 18 months on count 2?

THE COURT: Eighteen months on count 2.

THE COURT CLERK: And it is 36 --

THE COURT: Thirty-six in total.

THE COURT CLERK: -- months in total.

THE COURT: Yes.

THE COURT CLERK: Okay. So count 1, 30 months and count 2, 30 -- or 18 months and total is 36 months.

THE COURT: Yes.

THE COURT CLERK: Okay.

THE COURT: And the prohibition order under 447.1.

THE COURT CLERK: So it is a lifetime ban of section 109?

THE COURT: No. 447.1.

THE COURT CLERK: 447.

THE COURT: Point 1.

THE COURT CLERK: I have never heard of that one, My Lady. That's --

MS. GREENWOOD: And I can provide an order to the Court for signature.

THE COURT: Okay. Thank you.

THE COURT CLERK: So it's --

THE COURT: Do you have that today, Ms. Greenwood? No?

MS. GREENWOOD: I have, yes.

THE COURT: Okay.

THE COURT CLERK: So it's section 447.1 for lifetime?

THE COURT: Correct.

THE COURT CLERK: And I think that's all you said, right, My Lady?

THE COURT: Yes, that's --

THE COURT CLERK: Oh, excellent. Thank you so much for going over that.

THE COURT: Thank you. Okay, thank you.

MR. MOLDOFSKY: Thank you, My Lady. I do have one final request if I may in terms of transcripts.

Certainly, I can thank you, of course, My Lady, for your reasons. I am anticipating potentially a conviction appeal of one kind or another whether with me or with someone else. Obviously, we need to look at bail in the near future. I am wonder if perhaps the Court or my friend can commit to ordering transcripts in general both of Mr. Geick's testimony and today, just sort of -- because I don't have any funding for the appeal. It will be difficult for him to find funding for the transcripts. I am wondering if the transcripts can be ordered by one of the parties?

THE COURT: I can't commit to ordering the transcripts, Mr. Moldofsky. I am sorry.

MR. MOLDOFSKY: Thank you.

MS. GREENWOOD: And the Crown will be ordering a transcript of your decision, just for future use. With respect to the other transcripts, unfortunately, Mr. Geick will have to fund that. We don't order transcripts for defence appeals.

MR. MOLDOFSKY: Thank you.

MS. GREENWOOD: But I can provide you with the other one.

THE COURT: Okay. Anything further required at this time,

counsel?

MS. GREENWOOD: No.

MR. MOLDOFSKY: No, thank you.

MS. GREENWOOD: Thank you.

THE COURT: Thank you very much.

THE COURT CLERK: Thank you, My Lady.

UNIDENTIFIED SPEAKER: You're ruining your life. Bitch. (INDISCERNIBLE). I am so sorry.

MS. GREENWOOD: Efrayim, could you have a conversation with her about saying things like that to officers of the court.

UNIDENTIFIED SPEAKER: I don't care. You're ruining a life.

MS. GREENWOOD: Mr. Sheriff, you might need to (INDISCERNIBLE).

UNIDENTIFIED SPEAKER: She was the one that did it.

THE SHERIFF: Come on. Come on.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Sharon Hawkins, certify this recording is the record made of the evidence in Court of Queen's Bench Court, at Calgary, Alberta, in courtroom 1501, on February 18th, 2022, and that I was the official clerk in charge of the sound-recording machine during these proceedings.

Certificate of Transcript

I, C. Emblin, certify that

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

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

C. Emblin, Transcriber
Order Number: TDS-001384
Dated: March 18, 2022