

Ontario Judgments

Ontario Court of Justice

Windsor, Ontario

M.A. **Rawlins** J.

Heard: February 1, 2016.

Judgment: February 1, 2016.

No. 15-17281

**[2016] O.J. No. 7352**

Between Her Majesty the Queen, and Michael **Hill**

(102 paras.)

## **Counsel**

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C. **Houle**, Counsel for the Crown.

A. Ammar, Counsel for the Accused.

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### **M.A. RAWLINS J.**

1 You wish to call the, it's Hill?

2 MR. AMMAR: Michael Hill.

3 THE COURT: Hill matter, yes. Is he upstairs or what are we doing?

4 MR. AMMAR: He's downstairs. I've spoken to the officer in the courtroom and asked for him to be brought up and Mr. Hill will be taking the position for a disposition today.

5 THE COURT: Okay, that's fine.

6 MR. AMMAR: Okay.

7 THE COURT: And the Crown is prepared to accept the plea?

8 MR. HOULE: Yes.

9 THE COURT: Okay, why don't we, as opposed to, because he has to be brought up, right? Why don't we take our morning recess now for 15 minutes because I know it's going to take longer than 15 minutes with Mr. Hill.

10 MR. HOULE: Thank you.

11 THE COURT: Okay, so we'll take our morning recess now.

12 MR. AMMAR: Thank you.

13 MR. HOULE: Your Honour, I know we were going to deal with the Hill matter.

14 THE COURT: Yes.

15 MR. HOULE: I'm prepared to deal with most of that at this point. The officer in charge indicated to me, reminded me that this may be a case where a victim impact statement would be required from the owners, from the family. So he's just going to go make that phone call now, but we can certainly deal with the plea and if we need to just put the sentencing over until this afternoon...

16 THE COURT: That's no problem.

17 MR. HOULE: ...we could do that, but we can certainly take the plea and the facts and that right now.

18 THE COURT: Thank you.

19 REPORTER'S NOTE: Mr. Ammar off mic.

20 MR. AMMAR: Your Honour, that's Mr. Hill before the court. I had him read section 606 and he knows all [indiscernible] his risks.

21 THE COURT: Sorry, I didn't catch that.

22 MR. AMMAR: I talked to him [indiscernible] his risks.

23 THE COURT: Okay, thank you.

24 CLERK OF THE COURT: Michael Earl Hill, you stand charged sir, on information 15-17281 that between, the 15th day of December of the year 2015 and the 18th day of December of the year 2015 at the City of Windsor in the Southwest Region did wilfully cause unnecessary suffering to an animal namely, a Patterdale Terrier, P-A-T-T-E-R-D-A-L-E T-E-R-R-I-E-R, by taping its legs together and its mouth shut and leaving it in a field, contrary to section 445 (1) (1) (a) of the *Criminal Code*. This Crown's by indictment. There's no accused election noted on the file.

25 THE COURT: Thank you, waiving the formal reading of the election?

26 MR. AMMAR: Yes, Ontario Court please.

27 THE COURT: Thank you and that's with the consent of the Crown?

28 MR. HOULE: Yes, it is.

29 THE COURT: Thank you.

30 CLERK OF THE COURT: Sir, to this charge, how do you plead?

31 MR. HILL: Guilty.

32 CLERK OF THE COURT: Thank you, please be seated.

33 THE COURT: Thank you, have a seat please and listen to the facts. The facts please.

34 MR. HOULE: Your Honour, on Thursday, December 17th of 2015, a citizen was walking his own dogs in a field located north of the Canadian Tire on Walker Road. While in the field the citizen located a small Patterdale Terrier in the field. The dog had both of its legs taped together and its mouth taped shut with electrical tape. The citizen called 911 and both police and the Humane Society were dispatched. The Humane Society arrived and determined the dog was in need of immediate assistance. The Humane Society employee immediately transported the dog to receive treatment by a veterinarian. The dog was treated by a veterinarian and the tape was removed. The citizen that found the dog, the dog was later identified as Nos, N-O-S, started a media campaign to find the owner of the dog and attempt to find who may have done this to the animal. During the social media campaign the owners of the dog went to the Humane Society to see the animal. On December the 18th the owner, Adam Esipu, E-S-I-P-U, along with his father Michael and Adam's uncle, Michael Hill, the accused, all attended the Humane Society. While there, Adam indicated that he had asked this accused to bring the dog to the Humane Society to be adopted. He indicated that he and his wife have a newborn daughter who was allergic to the dog. Mr. Esipu indicated that he would get too emotional if he brought the dog to the Humane Society because he was very close to the animal. Mr. Esipu had arranged for the accused to pick up the dog from his wife, Jessica Hems, after their children left for school on Tuesday morning. The accused did pick up the dog from Ms. Hems and Ms. Hems gave him \$60 for the adoption fee. The accused called Mr. Esipu at approximately 10:00 a.m. on Tuesday and told him that the boyfriend of one of the workers in the Humane Society was going to adopt the dog. Through the investigation the accused's version of the events was found to be inaccurate. He provided details that were inconsistent and some were able to be shown to be completely false. On December the 18th, the accused was arrested by Windsor Police Service at the Humane Society. The, Mr. Esipu indicated that the accused was planning to go to Kingston on Friday night or Saturday to see his son, that's when he was arrested. While in custody the accused provided an inculpatory statement to police. During the statement he advised that he was responsible for taping up the dog and putting him in the field. Those are the facts.

35 THE COURT: Thank you, on behalf of Mr. Hill are those facts acknowledged?

36 MR. AMMAR: They are.

37 THE COURT: Thank you, finding of guilty. I saw the record at the pre-trial. Is the record acknowledged?

38 MR. HOULE: Yes, there's a record before you.

39 THE COURT: It's Exhibit 1.

40 MR. HOULE: I can indicate that it's fairly lengthy.

41 MR. AMMAR: The record's on consent.

42 THE COURT: Yes, no previous acts of this nature, but it's certainly...

43 MR. HOULE: There's no related record.

44 THE COURT: Thank you. That'll be Exhibit 1.

45 EXHIBIT NUMBER 1: Criminal record - produced and marked.

46 THE COURT: Now, you wish time to canvas with the victim as to whether or not they wish to make a victim impact statement, either in writing or in person?

47 MR. HOULE: Well, I do wish to do that and we can certainly deal with submissions at this point if Your Honour's prepared to do that and then I'll...

48 THE COURT: Certainly we can do that. Generally I think that people like to hear the victim impact statement, but I'm quite willing to do it and then have the victim impact statement dealt with afterwards if that, Mr. Ammar if you agree with that?

49 MR. AMMAR: I'm okay with either way, Your Honour.

50 THE COURT: Okay, thank you. So we'll move to submissions then.

51 MR. HOULE: Thank you.

52 THE COURT: Submissions, Mr. Ammar?

53 MR. AMMAR: Thank you, Your Honour. As Your Honour has noted, there are no previous record related to this specific conviction that's before you. Mr. Hill is 32 years of age. He is married, has been married for almost four years. He has a son, three years old, turned three on January 16th. I can inform this court that Mr. Hill was raised by a mother and a biological, and sorry, a step-father. the mother passed away at the age of 20. Mr. Hill has 2 step-brothers, 32 and 30 which he has okay relations with. I can inform this court that Mr. Hill does have quite of a record before this court and, but that record is somewhat dated. There are different crimes which has put Mr. Hill in the penitentiary before. We're asking this court to consider on a joint submission of two years of jail and I believe three years of probation with regards to no own, not owning any animal.

54 MR. HOULE: I can indicate to you that it's the Crown's view that the sole purpose of sentencing this accused in this particular case is to denounce this act and send a message to deter any other persons who may think that it was okay to do something like this. There's really no other way to describe this act as a despicable act of depravity. The sentence needs to address that issue and as I indicated, send a message not only to this accused but to anyone else in the community who would even think about going down the road that Mr. Hill went down. There is a lengthy record that is before you and while not related to this specific event, certainly shows a history of some violence and Your Honour has to take that into consideration when sentencing Mr. Hill as well. I can indicate to you that it is a joint submission for a sentence of two years in the penitentiary, not including any dead, any pre-sentence custody. So two years as of today, followed by three years probation. He's to report; he's to take any counselling as directed; he's not to have any contact with Adam Esipu, Jessica Hems; he's not to possess any weapons...

55 THE COURT: Can you spell Hems?

56 MR. HOULE: H-E-M-S.

57 THE COURT: Thank you.

58 MR. HOULE: The Crown is also asking you to consider an order under section 447.1(a) prohibiting this accused from owning any animals for a period of 25 years. I can indicate to you that I've advised that the human victims in this matter do wish to provide a victim impact statement. I've indicated that they'll be here at, for them to attend at 2:30 and I'm asking that we stand down the actual sentencing of this matter until 2:30 to give them an opportunity to do that please.

59 THE COURT: Thank you. Upon that request we'll stand the matter down until 2:30, thank you.

60 MR. AMMAR: Thank you.

61 REPORTER'S NOTE: Other matters dealt with.

62 CLERK OF THE COURT: Recalling the Hill matter.

63 THE COURT: Thank you.

64 MR. HOULE: Thank you for the opportunity from this morning Your Honour. There have been two victim impact statements filled out...

65 THE COURT: No.

66 MR. HOULE: ...one from Jessica Hems and one from Adam Esipu. Both have indicated that they would wish Your Honour to read it out loud...

67 THE COURT: Thank you.

68 MR. HOULE: ...in the court and then I'll have one other issue to deal with after you've done that before the sentencing takes place. If those could be marked, the victim impact statement of Jessica Hems could be marked as Exhibit 1 on sentence?

69 THE COURT: Well, that would be Exhibit 2 because we have Exhibit 1...

70 MR. HOULE: The record, thank you.

71 THE COURT: ...as the record.

72 MR. HOULE: Exhibit 2 on sentencing and the victim impact statement of Adam Esipu can be Exhibit 3 on sentencing.

73 THE COURT: Thank you.

74 THE COURT: The order that you're asking me to make is pursuant to section, I'm trying to remember, yes, 447 was it?

75 CLERK OF THE COURT: I believe so, I have the order filled out for you already, Your Honour.

76 THE COURT: Okay, just so I know what...

77 MR. HOULE: Yes, can we just have a moment, please? It was 447.1 (a).

78 THE COURT: Thank you. It is my custom with respect to victim impact statements to either offer to the victims the opportunity to read it themselves, or to have the Crown read it, or myself read it onto the record. The reason it's important to have it on the record is that if I just park it as an exhibit it doesn't diminish what has been written, but sometimes it gets lost in the shuffle. This way the comments will form part of the permanent record in the transcript of these proceedings which will follow with respect to the accused. This is the victim impact statement of Jessica

Hems. With respect to emotional response,

'When we found out what had actually happened to our family pet I was in total shock. Never did I think someone we trusted and treated as an uncle to our kids could be capable of something so horrific. We have been traumatized by this happening to our family. We have lost sleep and appetites. For days we've had to work very hard to shield our children of any of this that is everywhere you look. We are heartbroken he could be so cruel after we trusted him and could hurt us all so deeply after we accepted him into our family. This has scarred us,'

I think it's scarred, as opposed to scared,

'scarred us for life and definitely ruined my trust for people. We have been trash-talked all over social media and every few days we see something new and our hearts are broken again. Our poor innocent puppy was put through a terrible ordeal and thinking about it makes me sick to my stomach daily.'

And it's dated the 1st day of February, 2015 [sic] and signed by Jessica Hems. That's Exhibit 2 Madam Clerk, thank you.

**79 CLERK OF THE COURT:** Thank you.

**80 EXHIBIT NUMBER 2:** Victim impact statement of Jessica Hems - produced and marked.

**81 THE COURT:** Victim impact statement by Adam Esipu.

'When I found out I was devastated and in shock that this had happened. I have not been able to eat or sleep many days because of this. The stress from all of this ruined my holidays with my family and friends. It has also been stressful shielding my two older children from this horrific act, someone I trusted and tried to help get back on his feet would do. The fact that some people think I was in any way involved in this makes me extremely angry and upset. I loved Nos and would never be involved in anything like this. If this wouldn't have come up so quickly my mom and dad would also be here to tell how they also have been traumatized by this and ruined their faith in people. We all did nothing but try and help him and give him the opportunity to turn his life around. This is how he repaying us. We are forever scarred,'

I believe it is as opposed to scared,

'from this.'

It's spelled S-C-A-R-E-D, but I'm sure it's scarred. Thank you, that will be Exhibit 3.

**82 EXHIBIT NUMBER 3:** Victim impact statement of Adam Esipu - produced and marked.

**83 MR. HOULE:** Thank you, Your Honour. I can also indicate that on my way up to court I was approached by an individual by the name of, is it Mr. Dean Cresswell? Mr. Cresswell is present. Mr. Cresswell, as I understand, was the individual that actually located the animal. I understand that Mr. Cresswell brought with him a petition of some 65,000 names, is that correct? Do you wish to file...

**84 THE COURT:** I'm prepared to have that petition filed as Exhibit 4 if you wish Mr. Cresswell?

**85 MR. HOULE:** Do you wish to file that petition with the court, sir?

**86 REPORTER'S NOTE:** Mr. Cresswell speaking from body of court.

87 MR. CRESSWELL: [indiscernible] our petition and we're waiting for a fax, but I don't know if that came through yet.

88 MR. HOULE: Okay, well, do you have the petition with you?

89 MR. CRESSWELL: Yeah, the petition's here.

90 MR. HOULE: Okay, would you like me to file that?

91 THE COURT: If you wish, we'll have that filed as Exhibit 4 and...

92 MR. HOULE: Yes.

93 THE COURT: ...I'll read what the petition says. Not all the names, but I will read what the petition says.

94 MR. HOULE: If that can be marked then as Exhibit Number 4?

95 THE COURT: Thank you.

96 CLERK OF THE COURT: Exhibit Number 4, I'll [indiscernible]

97 MR. HOULE: Just before you do that, Your Honour, may I explain, Mr. Cresswell would have been a witness in this proceeding and I understand from him, obviously that there has been significant impact on him, although in my view, he doesn't classically qualify as a victim for the purposes of a victim impact statement, but he is obviously someone who has been deeply impacted as anyone would by having found the animal in the condition that he found him.

98 THE COURT: That's why I agreed to have the petition filed, thank you. This is a petition Justice for Justice', the dog. We're referring to the same dog also known as Nos, N-O-S.

'Background. Justice is a seven year old dog who was found abandoned in a field with his snout, neck and ankles tightly bound with electrical tape. Justice was found by a good Samaritan who was out walking his dogs. When Justice was found he was having difficulty breathing as a result of the swelling caused to his snout by the tape. A veterinarian who subsequently examined Justice say he was mere hours from death had he not been discovered in the field. Michael Earl Hill, 32 years of age, has been charged with animal cruelty in this case. Petitioning Crown Attorney, Ontario Court of Justice. We, the undersigned, respectfully request that the Crown Attorney proceed with this case against the accused as an indictable offence and TF he's convicted advocate for the maximum sentence possible, including a ban from owning, having the custody or control of, or residing in the same premises as an animal or bird for the rest of his life and restitution for Justice's care. We make this request recognizing that animals are sentient and vulnerable beings who rely upon the courts to ensure sentences reflect appropriate deterrence and denunciation of people who are convicted of harming them (as well as people who would consider harming them). Further, it has been well demonstrated in research that people who harm animals have the potential to also harm humans. So our communities will be safer if the courts take animal cruelty seriously and impose meaningful sentences in such cases.'

Thank you and that petition will be marked as Exhibit 4. As it is [indiscernible] you can put it in an envelope, thank you.

99 EXHIBIT NUMBER 4: Petition - produced and marked.

**100** THE COURT: Thank you, we have heard the submissions and the positions. Is there anything any of you would like to say further?

**101** MR. HOULE: Not on behalf of the Crown, thank you.

**102** MR. AMMAR: No thank you.

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