

Citation: ☼ R. v. Tremblay
2012 BCPC 0410

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File Nos:74844-C-2, 75357-1
Registry: Nanaimo

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

MATTHEW DEAN TREMBLAY

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE GOUGE**

Counsel for the Crown:

J. C. Blackman

Counsel for the Defendant:

M. J. Ritzker

Place of Hearing:

Nanaimo, B.C.

Date of Hearing:

November 2, 2012

Date of Judgment:

November 5, 2012

[1] Mr. Tremblay has entered guilty pleas to two charges: (i) wounding an animal, contrary to section 445(1)(a) of the *Criminal Code*; (ii) mischief in relation to property, the value of which did not exceed \$5000, contrary to section 430(4) of the *Criminal Code*. It is my duty to impose a fit sentence for each offence.

Circumstances of the Offences

[2] On January 27, 2012, a neighbour observed Mr. Tremblay in the back yard of the house in which he lived. Mr. Tremblay was kicking a black Newfoundland dog, named “King”, and striking it both with his open hand and with a dish. The neighbour observed similar behaviour on the morning of January 28, 2012. The behaviour escalated. At about 1:30 p.m., Mr. Tremblay began to strike the dog’s toes with a hammer. The neighbour called the SPCA, who did not respond. Mr. Tremblay continued to strike the dog, including blows with the hammer to its head and body. Mr. Tremblay sprayed a substance into the dog’s face and appeared to rub the substance into the dog’s eyes. He herded the dog behind a shed, and out of the neighbour’s sight. The dog escaped into the yard, but Mr. Tremblay again herded it behind the shed. The neighbour heard the dog’s cries of pain as the assault continued. At 2:30 p.m., the neighbour called the RCMP.

[3] King is the property of Ms. Katrina Bradford, who was then in an intimate relationship with Mr. Tremblay. Ms. Bradford arrived home sometime between 2:30 and 4:30 p.m. Mr. Tremblay told Ms. Bradford that King had been injured in a fight with Mr. Tremblay’s dog, a Rottweiler, and was adamant that King was not in need of veterinary treatment.

[4] At about 4:30 p.m. the RCMP arrived, told Ms. Bradford to take King to a veterinarian, and arrested Mr. Tremblay.

[5] King was taken to a local veterinary hospital, where he received treatment for his injuries, which consisted of broken teeth and many bruises and lacerations to his head, body and feet. During treatment, King vomited and urinated. Both the vomit and urine were observed to contain blood. The photographs which were entered in evidence clearly show that Mr. Tremblay struck King with both the blunt and clawed tips of the hammer head. The blows to the paws cut to the bone, which is exposed in the photographs. The blows to the head caused King's eyes to be swollen almost shut. Surprisingly, King is reported to have made a full physical recovery, although his psyche must be badly scarred. Ms. Bradford incurred veterinary expenses of \$5233.37 in respect of King's injuries.

[6] Mr. Ritzker makes the point that Mr. Tremblay cannot have swung the hammer with full force because, if he had done so, the blows to the head would surely have killed King. I conclude that Mr. Ritzker is correct. However, it was clearly a protracted, savage and excruciating assault.

[7] The mischief charge arises from an altercation between Mr. Tremblay and his father on April 7, 2012. The father was loading his truck with trash to be taken to the landfill. Mr. Tremblay added some recyclable items to the load, which his father instructed him to remove. An argument ensued. During the course of the argument, Mr. Tremblay picked up a piece of lumber and smashed both the passenger-side mirror and passenger-side rear window of the truck. He swung the piece of lumber at his

father, but appears to have missed, and caused no injury. He then returned to the family home and broke a window so that he could gain entry to retrieve his wallet.

Mr. Tremblay

[8] Mr. Tremblay was 21 years of age at the time of each offence. He is now 22.

[9] Mr. Tremblay has one previous conviction, for common assault, on March 10, 2010. For that offence, he received a conditional discharge and one year's probation. He has also been diverted from the court process on two previous occasions: (i) in July, 2008 on one count of mischief under \$5000; and (ii) in February, 2010 on one count of mischief under \$5000 and one count of uttering a threat. On each occasion, he complied with a condition of diversion requiring him to pay compensation to the victim of the alleged offence.

[10] Although he appears often to have fallen into conflict with his father, Mr. Tremblay's family history is unremarkable. His parents and grandparents, and other family members, attended his sentencing hearing in a supportive role. Mr. Tremblay completed grade 9, but then left both school and his parents' home at age 16. He has worked at a variety of jobs since then, but none for any extended period of time, and has also collected social assistance when unemployed.

[11] Mr. Tremblay began to use alcohol at age 15 and marijuana at age 16. He later became addicted to oxycontin and, in 2011, to heroin. He used heroin daily from December, 2011 to February, 2012, when he entered a methadone maintenance program. He remains in that program. It is worthy of note that he was on the

methadone maintenance program on April 7, 2012, when he committed the second of the two offences for which I must sentence him.

[12] Mr. Tremblay says that, at the time of the assault upon King, he was heavily intoxicated by heroin, and that he does not recall assaulting King, although (through his counsel) he admits the assault. Mr. Tremblay was interviewed by Ms. Carver, a probation officer, for the purpose of preparation of a pre-sentence report. Mr. Tremblay told Ms. Carver that:

- a. he "... doesn't recall hitting [King] with a hammer ...";
- b. he "... would not willingly hurt the dog ...";
- c. King's head injuries were caused by an attack by Mr. Tremblay's dog; and that
- d. the injuries to King's paws were caused by broken fence boards as King tried to escape.

It will be observed that this was the second occasion on which Mr. Tremblay sought to lay the blame on his own dog, an allegation which he now admits to be false.

[13] At Ms. Carver's request, Mr. Tremblay agreed to submit to an interview and assessment by Dr. Laws, a psychiatrist. Dr. Laws suspected that Mr. Tremblay might suffer from a mental illness, and asked him to agree to testing and an assessment by Dr. Dugbartey, a psychologist. Mr. Tremblay acceded to that request also. During his interview with Dr. Laws, Mr. Tremblay repeated his assertion that King's injuries were caused by an attack by Mr. Tremblay's dog.

[14] Dr. Laws remarked that Mr. Tremblay's "... lack of apparent emotion or affect when discussing [King's] injuries is significant". I interject the narrative to observe that I was similarly startled by the absence of any sense of concern or empathy for King on the part of Mr. Tremblay when I asked him at his sentencing hearing whether he had anything to say. Dr. Laws and Dr. Dugbartey have not diagnosed any mental illness from which Mr. Tremblay suffers. Their joint conclusions are summed up in the following passages from Dr. Laws' report:

- a. Mr. Tremblay possesses "... characteristics of impulsivity, poor frustration tolerance, rebelliousness, poor relationships with authority figures, lack of insight regarding his own mental state and superficial feelings for others as well as social isolation and very low self-concepts".
- b. "Although [Mr. Tremblay] does not fulfill the criteria for a diagnosis of psychopathy, he does score relatively highly on the affective (or emotional) characteristics that are central to this concept, specifically selfish and callous personality traits."
- c. "... any attempt at individual psychotherapy should only be undertaken with a therapist who is highly experienced in dealing with persons 'with a history of manipulation and mendacity'. I would like to remind the court that any form of psychotherapy... is only likely to be successful if the individual is truly unhappy with their own characteristics and wishes to change."
- d. Mr. Tremblay's "... account of events significantly minimizes the actions described in the police report. His lack of apparent emotion or affect when discussing these events is significant."

[15] I observe that Mr. Tremblay has not personally admitted that he assaulted King, although he has tendered a guilty plea through his counsel. He has only said that he does not remember having done so, and asserts to this day that it is not the kind of thing which he would do. He has never uttered a word of remorse for his action. He had never expressed any compassion for King's suffering. In particular, he made no reference to those matters when I invited him to speak at his sentencing hearing. On the contrary, he simply said that he wants to get on with his own life. In light of those facts, and the third passage quoted from Dr. Laws' report, I fear that Mr. Tremblay is unlikely to benefit from psychiatric or psychological counseling.

Sentencing Positions

a. Wounding an Animal

[16] Mr. Blackman, for the Crown, seeks a sentence comprising 6 months' imprisonment, 3 years' probation, a restitution order in favour of Ms. Bradford in the amount of \$5233.37 pursuant to section 447.1(b) of the *Criminal Code*, and an order pursuant to section 447.1(a) of the *Criminal Code* prohibiting Mr. Tremblay from having custody or control of, or residing in the same residence with, any animal or bird for a period of 25 years.

[17] Mr. Ritzker, for Mr. Tremblay, submits that the appropriate sentence is an 18-month conditional sentence order, pursuant to section 742.1 of the *Criminal Code*. He

consents to a restitution order in favour of Ms. Bradford, and made no submission in relation to the Crown's application for a prohibition order under section 447(1)(a).

b. Mischief

[18] Counsel are agreed that a fit sentence for the mischief charge would be a suspended sentence, with one year's probation on the statutory terms set out in section 732.1(2) of the *Criminal Code*, and with an additional term that he report to his probation officer as required by the probation officer.

Sentencing for the Offence of Causing Injury to an Animal

[19] At the opening of his submission, Mr. Ritzker urged me to be guided by Aristotle's observation that "justice is reason without passion". That is an admirable admonition, to which I have given effect in the analysis which follows.

[20] The charge to which Mr. Tremblay has entered a guilty plea is wounding an animal, contrary to section 445(1)(a) of the *Criminal Code*. If the Crown had elected to proceed by indictment, the maximum penalty would have been 5 years' imprisonment. In this case, the Crown elected to proceed by summary conviction, for which the maximum penalty is 18 months' imprisonment and/or a fine of not more than \$10,000. Those maximums came into force (replacing lesser maximum penalties) on April 17, 2008. Before that date, the maximum penalty was 6 months' imprisonment. His Honour Judge Quantz of this court offered the following observations about the 2008 amendments in *R. v. Connors* 2011 BCPC 24 at paragraph 49:

In increasing the penalties Parliament did conclude that the previous maximums were wholly inadequate and failed to represent the prevailing views in society as to the seriousness of these offences. However, it is also important to remember that while increasing the maximum penalties, the range of sentences still considered appropriate by Parliament remain broad and include an absolute discharge.

[21] The decision to proceed by summary conviction, rather than by indictment, is within the sole discretion of Crown counsel. I intend no criticism of the choice which was made in this case.

[22] If Mr. Tremblay had attacked a human being in the same way he attacked King, the appropriate charge might have been aggravated assault, contrary to section 268 of the *Criminal Code*. Aggravated assault is an indictable, rather than hybrid, offence carrying a maximum sentence of 14 years' imprisonment. A moral philosopher might conclude that an assault on an animal is no less worthy of denunciation, and should not attract a lesser punishment, than a similar assault on a human being. However, Parliament has clearly espoused a contrary view, and that is a matter for Parliament, not for me.

Sentences in Comparable Cases

[23] Section 718.2(b) of the *Criminal Code* provides that "... a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances". A compendium of cases considering offences more or less similar to Mr. Tremblay's offence is found in *Connors* at paragraphs 23 – 33, and need not be repeated here. It is to be noted that all of them were decided in relation to

offences committed before the 2008 amendments. As a result, more onerous penalties ought now to be imposed for similar offences, although I accept Mr. Ritzker's submission that one ought not to simply multiply the pre-2008 sentences by three.

[24] One factor is present in this case which was absent in the cases referred to in *Connors* at paragraphs 23 – 33. In this case, Mr. Tremblay continued to strike King repeatedly with a hammer over a period of more than an hour, ignoring King's cries of pain and repeatedly blocking his attempts to escape. As noted in *R. v. Munroe* 2012 OJ #4405 @ paragraph 96, such cases are rare. As explained below, I view that as a fact of cardinal importance in relation to many of the factors which the *Criminal Code* requires me to consider. For the present purpose (consistency in sentencing), it leads me to conclude that the only two similar cases which I should consider are *Connors* and *Munroe*. Counsel referred me to no others. In each of those cases, the court rejected the accused's submission that a conditional sentence would be appropriate. A 6-month jail sentence was imposed in *Connors*. In *Munroe*, the learned trial judge imposed a 12-month sentence [2010 ONCJ 226], which was reduced to 7 months on appeal: 2012 OJ #4405.

General & Specific Deterrence

[25] Section 718(b) of the *Criminal Code* requires me, in assessing a fit sentence, to consider the possibility that my sentence may deter Mr. Tremblay or others from committing future similar offences. Despite the comments of the Court of Appeal in *R. v. Johnson* (1996) 112 CCC (3d) 225 at paragraph 29, quoted in *Connors* at paragraph 43, I do not consider this to be an important factor in relation to Mr. Tremblay's offence.

That is because I do not believe that a human being with a healthy psyche could commit such an offence. To descend to the vernacular, only a very sick person could do what Mr. Tremblay did. Any of us might lose his temper and lash out at a dog. However, a person with a healthy psyche would react in instant horror and remorse when the dog cried out in pain. It requires a complete absence of empathy and compassion to sustain the slow, agonizing torture of an animal over a period of hours. A person who can do that is unlikely to be deterred by the threat of a prison sentence if he is caught.

[26] I note that Drs. Laws and Dugbartey were unable to make an affirmative diagnosis of psychopathy in relation to Mr. Tremblay, but they do say that he displays many of the symptoms of that disorder. A further example of the disorder is provided by Mr. Tremblay's attempts to blame the attack on his own dog. He seems to have been unaffected by the fact that, by so doing, he was placing in jeopardy the liberty, and perhaps the life, of his dog. Psychopaths are not easily deterred.

Denunciation

[27] Section 718(a) of the *Criminal Code* requires me, in assessing a fit sentence, to consider the importance of denouncing Mr. Tremblay's crime. The concept was described in the following terms by Chief Justice Finch in *R. v. Khosa* 2003 BCCA 645; 180 CCC (3d) 225 at paragraph 45:

Denunciation has both punitive and exhortative elements. It satisfies a community's desire and need to condemn certain conduct, and also plays a more positive role in communicating and reinforcing society's shared set of values as described in the *Criminal Code*.

I would add this observation. Citizens are entitled to conclude that society condones behaviour which it fails to punish with appropriate severity. If I were to impose an inadequate sentence, other citizens inclined to abuse animals would be entitled to conclude that society (represented by me) does not regard such abuse as a serious crime. Custodial sentences are necessary in some cases to make clear to potential offenders that commission of the offence will attract the denunciation of the offender by the community.

Protection of the Public

[28] Section 718(c) of the *Criminal Code* requires me, in assessing a fit sentence, to consider whether it is necessary to incarcerate Mr. Tremblay in the interests of public safety.

[29] As noted above, Mr. Tremblay committed a brutal and protracted assault and continued that assault for hours, ignoring the manifest suffering of his victim. Dr. Laws expresses the opinion that "... his risk of recommitting a violent offence is in at least the moderate range."

[30] If the Crown had chosen to proceed by indictment, this might have been an important factor. However, the Crown's choice to proceed by summary conviction requires me to impose a sentence of 18 months or less. That means that I cannot protect the public from Mr. Tremblay for very long.

Rehabilitation of Mr. Tremblay

[31] Section 718(d) of the *Criminal Code* requires me, in assessing a fit sentence, to consider the prospects for Mr. Tremblay's rehabilitation. It is impossible for me to be optimistic on this issue. Dr. Laws and I have separately observed the absence of any compassion or remorse on the part of Mr. Tremblay. Drs. Laws and Dugbartey believe that he would be a challenging patient for any therapist. Compulsory therapy for the unwilling rarely produces the desired outcomes. Mr. Tremblay has not put forward any rehabilitation plan. The only step which Mr. Tremblay has taken in pursuit of his rehabilitation is to enrol in a methadone maintenance program. There is no indication that he believes any other steps to be necessary. I observe that he had been on the methadone maintenance program for 2 months before he committed the mischief for which I am to sentence him. The change from heroin to methadone does not appear to have assisted him in dealing with his anger-management problem.

[32] Shortly put, I do not consider the prospect of rehabilitation to be a significant factor in this case because there is no evidence to indicate that it is a realistic possibility, and much in the evidence to indicate that it is unlikely.

Alternatives to Incarceration

[33] Sections 718.2(d) & (e) of the *Criminal Code* require me, in assessing a fit sentence, to refrain from imposing a custodial sentence if "... less restrictive sanctions may be appropriate in the circumstances ...", and to consider all available sanctions

other than imprisonment which "... are reasonable in the circumstances ...". I refer to the reasoning in *Connors* at paragraphs 44 – 50 and in *Munroe* at paragraph 36 of the trial decision, as affirmed at paragraph 92 of the appellate decision. For those reasons, I do not believe that a non-custodial sentence would adequately denounce Mr. Tremblay's crime. As a result, a non-custodial sentence would be neither appropriate nor reasonable in all the circumstances.

Conditional Sentence Order

[34] Section 742.1 of the *Criminal Code* empowers me to order that Mr. Tremblay serve his sentence in the community if and only if I am satisfied that such a sentence: (i) would not endanger the community; and (ii) would be consistent with the fundamental purpose and principles of sentencing.

[35] The nature of his crime indicates that Mr. Tremblay is a danger to the community. Anyone who could continue to inflict such suffering on an animal for a period of hours without the slightest sign of compassion must be regarded as a danger to the community. If he can treat a dog that way without compassion or remorse, one may reasonably conclude that humans are similarly at risk. It is no answer to say that Mr. Tremblay committed the offence while grossly intoxicated by heroin. He had been enrolled in the methadone program for more than 2 months when he committed the mischief for which I am to sentence him. As a result, I conclude that the transition from heroin to methadone has not significantly reduced the risk of violence at his hands. I was provided with no information, other than the bare fact that he is enrolled in a methadone maintenance program, tending to show that he is addressing his addiction

or his manifest anger-management problem. Unless and until he does that successfully, he remains a public danger.

[36] The fundamental purpose of sentencing is stated in section 718 of the *Criminal Code*. It is to contribute to "... respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have ..." as their objective one or more of denunciation, deterrence, public safety, rehabilitation, the promotion of a sense of responsibility in offenders and reparations to victims or the community. In my view, a conditional sentence order would fail to fulfill that purpose in this case, primarily because it would fail to sufficiently denounce Mr. Tremblay's crime.

Sentence for Wounding an Animal

[37] For the attack on King, I impose a custodial sentence of 6 months. But for two factors, I would have been inclined to a longer sentence: (i) Mr. Blackman asked for a 6-month sentence. I think that, in most cases, I should refrain from imposing a longer sentence than that sought by Crown counsel. (ii) It would be difficult to justify a longer sentence by comparison to those imposed in *Connors* and *Munroe*.

[38] Mr. Tremblay was arrested on September 28, 2012 for breach of his bail conditions, and has been in custody awaiting resolution of that matter since September 28. I was provided with no particulars of the alleged breach. He is entitled to credit for 38 days in custody, leaving a net sentence for the assault on King of 144 days.

[39] In relation to the attack on King, the six-month custodial sentence will be followed by a term of probation of 30 months, on the following conditions:

- a. to keep the peace and be of good behaviour;
- b. to appear before the court when required to do so by the court;
- c. to notify the court or his probation officer in advance of any change of name or address, and to promptly notify the court or his probation officer of any change of employment or occupation;
- d. to report to a probation officer in person within 48 hours after his release from prison, and thereafter as the probation officer may require;
- e. not to possess or consume any alcohol or any controlled substance, as defined by the *Controlled Drugs & Substances Act*, unless with a valid medical prescription;
- f. to attend, participate in and successfully complete any counseling or treatment program (including residential treatment) required of him by his probation officer;
- g. to have no contact, directly or indirectly, with Katrina Bradford or Carol Moon;
- h. not to attend at any place of employment, education or residence of Katrina Bradford or Carol Moon;
- i. not to possess, or have the custody or control of, any animal or bird;
- j. not to reside in any premises in which resides any animal or bird;
- k. not to be in the presence of any domesticated animal or bird unless another adult is present;
- l. not to possess any weapons, as defined in the *Criminal Code*, or any imitations thereof.

[40] In addition, there will be a restitution order in favour of Ms. Bradford in the amount of \$5233.37 pursuant to section 447.1(b) of the *Criminal Code*, and an order pursuant to section 447.1(a) of the *Criminal Code* prohibiting Mr. Tremblay from having custody or control of, or residing in the same residence with, any animal or bird for a period of 25 years.

[41] In relation to the mischief charge, there will be a suspended sentence with a period of probation of 12 months, on the following terms:

- a. to keep the peace and be of good behaviour;
- b. to appear before the court when required to do so by the court;
- c. to notify the court or his probation officer in advance of any change of name or address, and to promptly notify the court or his probation officer of any change of employment or occupation.

November 5, 2012

T Gouge, PCJ