



IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2023 SKPC 2

Date: January 30, 2023
Information: 90478510
Location: Fort Qu'Appelle

Between:

His Majesty the King

- and -

Gary Gillingwater

- and -

Morgan Desjarlais

Appearing:

Matthew Dahl
Sterling McLean

For the Crown
For the Accused

DECISION

K.A. LANG, J

I INTRODUCTION

[1] The accused individuals were charged jointly as follows:

Between the 21st day of October 2021 and the 15th day of December 2021 at or near Fort Qu'Appelle in the province of Saskatchewan did:

(1) Being persons responsible for animals, to wit: dogs, caused or permitted the animals to be or to continue to be in distress, contrary to Section 4(2) of the Animal Protection Act 2018; and

(2) Fail to comply with a corrective action order imposed on October 22nd, 2021, by an Animal Protection Officer, contrary to Section 23(1)(a) of the Animal Protection Act 2018, c A-21.2.

[2] At the conclusion of the trial the Crown conceded that there was no evidence led with respect to a Corrective Action Order being issued on October 22, 2021. I agreed. Accordingly, I find each individual not guilty with respect to count 2.

[3] The only issue, therefore, is whether any of the dogs, under the control of the accused individuals, were in “distress,” as that term is defined in *The Animal Protection Act, 2018*, SS 2018, c A-21.2 [the *Act*], at the relevant time.

[4] The Crown called three witnesses, all of which were Animal Protection Officers. The Defence called only one witness, the Defendant, Morgan Desjarlais.

[5] At the outset of the trial, the Defence conceded that the identity of the accused individuals and the jurisdiction of the Court were not in dispute.

II BURDEN OF PROOF

[6] The burden of proof on the Crown relating to this non-*Criminal Code* matter continues to be proof beyond a reasonable doubt as qualified in the case of *R v LaPlante*, 2021 SKPC 52, at para 3 which stated:

[3] The remaining charge is a non-criminal regulatory offence of causing animal distress. As this is a strict liability offence, there is no necessity for the prosecution to prove the existence of *mens rea* (mental intent). The Crown is required to prove beyond a reasonable doubt that the accused committed the *actus reus* (prohibited act), leaving it open to the accused to avoid liability by proving on a balance of probabilities that they took all reasonable

care: *R v Sault Ste. Marie (City)*, [1978] 2 SCR 1299.

III THE LAW

[7] The relevant provisions of the *Act* are as follows:

- 4(1) No person shall cause an animal to be in distress.
- (2) No person responsible for an animal shall cause or permit the animal to be or to continue to be in distress.
- (3) This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.

[8] Section 2(2) of the *Act* defines the different scenarios that would constitute putting an animal into distress. It states as follows:

- (2) An animal is in distress if it is:
 - (a) deprived of:
 - (i) food or water sufficient to maintain the animal in a state of good health;
 - (ii) care or shelter; or
 - (iii) veterinary care or medical attention;
 - (b) in need of reasonable protection from injurious heat or cold;
 - (c) wounded, ill, in pain, suffering, abused or neglected;
 - (d) kept in conditions that:
 - (i) are unsanitary;
 - (ii) will significantly impair the animal's health or well-being over time;
 - (iii) cause the animal extreme anxiety or suffering; or
 - (iv) contravene the prescribed standards, codes of practice

or guidelines; or

- (e) abandoned by its owner or by a person responsible for the animal in a manner that causes, or is likely to cause, distress resulting from any or all of the factors listed in this section.

[9] Notably section 2(4) of the *Act* defines who is responsible for an animal as follows:

2(4) For the purposes of Parts 2 and 4, a person responsible for an animal includes a person who:

- (a) owns an animal;
- (b) has custody or control of an animal; or
- (c) has custody or charge of a minor who is the owner of an animal.

[10] In this case the Crown alleged breaches, by both accused, of subsections 2(2)(a)(iii) (relating to a lack of veterinary care or medical attention) and subsection 2(2)(d)(i) and (ii) (relating to unsanitary conditions and conditions which would significantly impair the animal's health or wellbeing over time). Any one of these conditions, being proven by the Crown beyond a reasonable doubt, is all that would be required for a conviction.

[11] I will also say that with respect to subsection 2(4) of the *Act*, there is really no dispute; at all material times both accused owned and had custody and control of the dogs in question.

IV THE EVIDENCE

A. Crown Evidence

1. Officer Carrier

[12] The Crown's first witness was Protection Officer Nicole Carrier. Officer Carrier had a wealth of experience being in this position for six years and having investigated between two and

three hundred cases per year.

[13] Ms. Carrier was the first to investigate this matter after receiving a complaint. In total she attended and inspected the residence of both accused on October 21, 2021, November 23, 2021, and December 15, 2021.

[14] Both accused lived together in the same house in Fort Qu'Appelle where the dogs were found (the Residence).

October 21, 2021 - Inspection of the Residence

[15] On October 21, 2021 Officer Carrier first attended the Residence following an initial complaint of concerns for the welfare of dogs at the Residence. At this time she observed approximately 40 dogs inside the Residence. She testified that the dogs seemed to have good body scores but that some of the dogs had medical concerns.

[16] Officer Carrier then described the Residence in which the dogs were housed, and the accused individuals lived. She described the Residence as follows:

- unsanitary living conditions;
- feces and urine all over the flooring;
- house itself very cluttered;
- garbage piled in all of the rooms;
- a strong smell of ammonia that she attributed to the presence of feces and urine on the floors and to some extent the walls;
- she confirmed that food and water for the dogs was present.

[17] Officer Carrier took a number of photographs during her visit on October 21, 2021, which most certainly supported her testimony. The photographs from this visit were contained under Tab #1 of Crown's Exhibit P-1.

[18] The photographs certainly supported the testimony of Officer Carrier. The floors and walls are filthy and appear to be covered and stained, as Officer Carrier described, with fecal matter and urine. Considering that approximately 40 dogs were housed at the Residence, this was not surprising.

[19] The photographs further confirmed that this was not a large house and that it was filled with clutter to such an extent that there were basically only walking paths available from one room to the next and within each room very little space to move around.

[20] The photographs also showed stacks of dog kennels in one room in the Residence which appeared to house numerous dogs.

[21] Officer Carrier also testified that she witnessed dogs urinating and defecating on the floor while she was inside the Residence. She confirmed that there was no ventilation in the Residence to deal with the smell.

[22] Following Officer Carrier's visit, she issued a "Notice" which became Defence Exhibit D-1. The Notice was issued to both Defendants and outlined the concerns for animal health and the need for veterinarian's care for some of the dogs within the next two weeks.

[23] The Notice also described that several of the dogs had fecal staining on their paws and coats and have "fecal balls" attached to them.

[24] In her Notice, she described the Residence as "unsanitary/filthy living conditions" – "feces and urine coating the visible floor space" – "smells of ammonia".

[25] The Notice required action be taken by the Defendants which included:

- (1) Dogs listed must be vet assessed and treated within 2 weeks. Provide report to APSS (Animal Protection Services of Saskatchewan);
- (2) Must provide adequate and sanitary living conditions. Improvement must be made to spacing, air quality and

sanitation/cleanliness of living environment;

(3) Provide insulated and heated shelter to dogs outside;

(4) Reduce population to a manageable number and spay/neuter;

(5) Follow kennel code practice.

[26] A copy of the Kennel Code of Practice was provided to the Defendants by Officer Carrier.

November 23, 2021 – Inspection of the Residence

[27] Officer Carrier next attended to the Residence on November 23, 2021, but this time with a Search Warrant in hand and supported by other Animal Protection Officers, the RCMP and a veterinarian. Both accused persons were again present on this day.

[28] On this occasion Officer Carrier was able to count the dogs in the Residence which totaled 48. All of the dogs were now assessed by a veterinarian. The dogs were found to have good body scores of between 2.5 and 4 out of 5. However, 16 dogs were found to have health concerns as well as numerous grooming concerns such as matted coats, over-grown nails and significant dental issues (diseased and missing teeth). Many dogs had fecal and urine staining on their paws, tails and bellies. Officer Carrier believed that the condition of the dogs in the Residence had not changed from her first visit in October 2021.

[29] Certainly, the Residence was in no better condition with what Officer Carrier described as fecal matter and urine stains on the floors and walls and very poor air quality. On this occasion the air quality was measured. Ammonia was found to be present at 10 parts per million on both the main floor and basement.

[30] Officer Carrier testified that an extreme level of ammonia would be at 20 parts per million but that no ammonia should be detected for it to be a healthy living environment.

[31] With respect to acceptable ammonia levels, in the case previously cited of *R v LaPlante*

(*supra*), which involved a house that contained over 100 cats. Ammonia testing was also done in that case and an expert called who testified as follows with respect to ammonia levels:

APO Grake took measurements of the ammonia levels in the house and obtained readings around 25 ppm, which she explained “is a high number that makes it difficult to breath and can cause issues with watering eyes and chest tightness if exposed for more than eight hours”. Dr. Woodsworth, who was qualified on *voir dire* to give expert testimony in the assessment, examination and treatment and the adequacy of food, water and shelter of domestic animals, explained that the ammonia levels in an environment are associated with the amount of feces and urine and that, over time ammonia levels over 5 ppm will cause harm to the respiratory systems, eyes and skin of animals.

[32] With respect to the November 2021 inspection, Officer Carrier confirmed that food and water for the dogs continued to be present. She did, however, also confirm that one dead dog and one dead puppy were found outside the Residence during this inspection and that a third dog, “Molly”, had to be euthanized by the veterinarian because of significant health issues including numerous large growths on its body and being in overall poor condition.

[33] All of the dogs were examined on November 23, 2021, and extensive photographs were taken of all the issues found and were submitted into evidence under Tab 2 of the Crown’s Exhibit P-1. The photographs most certainly supported Officer Carrier’s testimony.

[34] Officer Carrier prepared a “Follow Up Report”, which became Defence Exhibit D-2, noting all of the issues with the Residence and the dogs themselves. That report also confirmed the presence of ammonia gas at 10 parts per million which Officer Carrier associated to the fecal and urine all over the flooring surfaces.

[35] Officer Carrier also noted in her “Follow Up Report” that her previously noted “Required Improvements”, from her October 2021 inspection, had not been met and that “no vet care” had been provided.

[36] Officer Carrier’s testimony is supported in large part by Defence Exhibit D-6, which purported to be a stack of veterinarian bills paid by the Defendants from 2017 to 2022. Notably in that stack there were only two vet bills in 2019 (April and December), and no veterinarian bills at all in 2021 and only one veterinarian bill in 2022 (September 20, 2022).

[37] Officer Carrier had previously required the Defendants to have several dogs examined by a veterinarian within two weeks of her October 2021 visit. No veterinarian bills were provided anywhere near that time period. The Court therefore can only conclude that no veterinarian care was provided as required.

[38] Notably, Morgan Desjarlais, one of the accused, would later testify in-chief that the stack of bills provided in Exhibit D-6 was complete and was illustrative of the fact that a veterinarian was being used. When pressed on cross-examination as to why there were no bills for 2021, he backtracked on his testimony, now stating that there were bills in 2021 but they must be in a “folder”. These bills, if they existed at all, were never presented to the Court. The Court found it curious that of all of the bills submitted, the most important bills, relative to the period in question, would not have been submitted and were never presented to this Court. The Court can simply not accept Mr. Desjarlais’ testimony in this regard and is prepared to accept the testimony of Officer Carrier that no veterinarian care had been provided as required. Her testimony seemed to be supported by Defence Exhibit D-6.

[39] Officer Carrier confirmed that at the conclusion of the November 23, 2021 search three animals were seized (the two dead dogs carcasses and the dog, Molly, which was euthanized for medical distress reasons). Defence Exhibit D-3 confirmed this as well.

[40] On November 23, 2021, Officer Carrier then did issue a “Corrective Action Order”. This document was also part of Defence Exhibit D-2 and detailed very specifically the veterinarian care required for each dog. That order also outlined what needed to occur to the Residence which included “removal of all fecal material and urine on surfaces, carpet and flooring within three weeks of this visit and significantly reduce ammonia levels”.

[41] Officer Carrier also required the Defendants to “reduce stock density” and noted that 48 animals in the space is over-crowding and contributed to unsanitary conditions.

December 15, 2021 - Inspection of the Residence

[42] Officer Carrier’s last attendance to the Residence was on December 15, 2021. She was again armed with a search warrant and accompanied by fellow Animal Protection Officers, the RCMP, and a veterinarian. Both Defendants were present in the Residence as they were on each occasion.

[43] Officer Carrier observed approximately 46 dogs on this occasion, all within the Residence. The Residence was still in a very unsanitary condition but had marginally improved with some evidence of cleaning in the front room.

[44] Photographs and video were again taken on this day (photographs at Tab 3 of Crown’s Exhibit P-1), showing filthy living conditions with stained and soiled flooring and walls, a home so cluttered with items that it was non-functional with basically only walking paths between the rooms and within the rooms due to all of the miscellaneous items stacked nearly to the ceiling and in nearly every available space.

[45] Ammonia samples were again taken on this occasion and registered at 10 parts per million upstairs, and 12 – 15 parts per million downstairs. This was an increase over the readings in November 2021.

[46] It was noted that the dogs still appeared to have access to food and water. However, the overall unsanitary condition of the Residence remained as supported by the ammonia testing. The

fecal and urine matter and staining in hallways, stairwells and walls was very clearly still evident in the photographs and video. In a few places fresh feces can be seen laying on the floor in numerous places throughout the Residence.

[47] The dogs were again inspected and but for a few that had been groomed, no corrective actions had been taken and Officer Carrier found the dogs to be in distress. In her Follow Up Report of December 15, 2021, she noted 16 dogs were in need of dental medical attention (Defence Exhibit D-4).

[48] During this inspection the Defendants voluntarily surrendered 13 dogs to Animal Protection and 32 dogs were seized by officers (see defence Exhibit D-5).

[49] During cross-examination of Officer Carrier the Defence reviewed documents entered as Exhibits D-1 to D-5, which have been discussed extensively already and simply documented what Officer Carrier did during her inspections. These all became Defence exhibits.

[50] During cross-examination Defence stressed that food and water were always available, which is also what Officer Carrier testified to in-chief.

[51] Defence stressed that no dogs were “tied up”. Officer Carrier acknowledged that a number of dogs had free range of the house, or whatever space was available amongst all of the clutter. However, she also noted that several dogs were confined to kennels which seemed odd given that the inspections occurred during daylight hours.

[52] The Defence also suggested that some of the staining and spotting on the floors could have come from other sources. Officer Carrier admitted that no testing was done of the flooring but that she personally witnessed dogs urinating and defecating while she was in the Residence and the tested ammonia levels, not to mention the photographs and video, certainly supported her conclusion that the floors were covered in urine and feces. She also smelled it on the dogs. Her assumptions were also verified by other Animal Protection Officers who testified later.

[53] The Court is of the view that given Officer Carrier's extensive experience in combination with the other factors mentioned, it was beyond doubt that what was on the floors, walls and to some extent the furniture, most certainly was composed, at least in part, of fecal matter and urine.

[54] In cross-examination Officer Carrier also agreed that her conclusion that the dogs were in distress was just her opinion. However, it must be noted that she also had a veterinarian in attendance as well as other Animal Protection Officers and the photographs and video filed was overwhelming evidence of the unsanitary condition of the Residence.

[55] Finally, Defence was clearly upset with the action of the Animal Protection Officers after the seizure. Officer Carrier acknowledged that on December 22, 2021, Defendant Desjarlais contacted her about getting the dogs back. Officer Carrier advised him of the procedure and the fact that seizure costs would also have to be paid. Nothing has happened since that date.

[56] The Court found Officer Carrier to be a very credible witness. The actions she took throughout this process seemed measured and fair and were well documented which assisted her with her testimony at trial. She was really not contradicted during cross-examination and conceded obvious points. There was no equivocation in her responses. She spoke clearly and was easily understood and had a very good recollection of these events. In addition, much of her testimony was corroborated by the testimony of others and the evidence collected, including photographs, video and ammonia testing. I accepted her evidence.

2. Officer Dennis Muirhead

[57] The next Crown witness was Protection Officer Dennis Muirhead. He also had considerable experience having worked in this capacity for over seven years. His involvement only started on November 23, 2021, when he assisted Officer Carrier to execute the Search Warrant at the Residence on November 23, 2021.

[58] He testified that due to high ammonia levels in the Residence he was required to wear a

respirator during the search. He supported much of Officer Carrier's testimony, confirming:

- The presence of fecal matter caked on the floors, walls and animals;
- The unkept condition of the dogs with fecal balls attached to them, long nails and matted coats.

[59] He described the Residence as a house of clutter with only small pathways throughout the Residence. He also commented on the "stickiness" of the floor, which he attributed to the feces and urine accumulating on the floors.

[60] He also confirmed the presence of fresh feces and urine and confirmed that puddles on the floor looked and smelled like urine. He also confirmed that ventilation in the home was poor to non-existent.

[61] Officer Muirhead did testify that food and water was available to dogs running freely in the house but did not see any water in the kennels that were holding other dogs.

[62] Officer Muirhead described the Residence as "not large" consisting of the main level and basement.

[63] Officer Muirhead was also present during the execution of the search warrant on December 15, 2021. It was his opinion that the Residence was in "dirtier condition" on this occasion and that the ammonia levels were higher. His testimony was supported by ammonia testing that was completed.

[64] Officer Muirhead attributed the higher ammonia levels with more and more urine and fecal matter in the home since the November 2021 search.

[65] On cross-examination he agreed that food and water was available but said he would, "disagree totally" with the suggestions that the animals were healthy.

[66] He did testify that the Defendants were co-operative throughout the process.

[67] When cross-examined on the condition of the flooring he was asked if the stickiness could have been associated with the poor quality of the floor. He disagreed and attributed the stickiness to animal feces.

[68] I also found Officer Muirhead to be a credible witness. His testimony was very similar to that of Officer Carrier and it too was supported by the photographs, video, and ammonia testing.

3. Officer Sanborn

[69] The last Crown witness was Officer Sanborn. She had 2.5 years of experience and only attended on the December 2021 date to assist with the execution of the Search Warrant.

[70] She testified that she wore a hazmat suit to enter the Residence for her own protection given the high levels of ammonia. Like the others, she also confirmed the unsanitary conditions of the Residence and general clutter in the house.

[71] Officer Sanborn testified that she found ice scrapers in the house with fecal matter on them that she believed were used to scrape parts of the flooring. She also confirmed a cleaning bucket of very dirty water was found. That bucket can be seen at photo 104. Judging from the colour of the water, nothing could be cleaned with this bucket of dark brown to black liquid substance.

[72] Officer Sanborn also confirmed that there was no food or water or blankets in the kennels where dogs were located. She did confirm the presence of food and water in the Residence generally.

[73] Officer Sanborn shot the videotape evidence which was played in court and entered as Crown Exhibit P-2. The video was compelling evidence of the extremely unsanitary and cluttered condition of the Residence and the magnitude of the number of dogs running throughout the

Residence, defecating and urinating at will.

[74] During cross-examination she did agree that food and water was available for the free running dogs and that in some locations, newspaper was on the floor and that the floor tiling in parts of the house was falling apart.

[75] I found Officer Sanborn to be very credible as well. Her testimony was also supported by that of other officers and by the video she took.

[76] The Crown then closed its case.

B. Defence Evidence

[77] The Defence called its sole witness, Mr. Morgan Desjarlais.

[78] Mr. Desjarlais confirmed that he and the Defendant, Mr. Gillingwater, had lived at the Residence for 30 years.

[79] Mr. Desjarlais then confirmed that often people would drop off dogs at the Residence and he and Mr. Gillingwater would take them in and care for the dogs and try to find them new homes.

[80] He confirmed that the Defendants had in excess of 40 dogs and that he and the co-accused paid for all of the food and veterinarian bills for the dogs.

[81] He confirmed that on October 21, 2021, he had 13 kennels in his bedroom and more dogs in “Gary’s room”.

[82] He testified that at bedtime, around 7:00 p.m., the dogs would go to their kennels on demand.

[83] Mr. Desjarlais acknowledged the October 2021 visit by Officer Carrier and the requirements she imposed upon the Defendants to clean up the conditions of the Residence. He

often mocked Officer Carrier by mimicking her voice in a less than flattering way while he testified.

[84] On the issue of the conditions of the flooring, Mr. Desjarlais' testimony was hard to follow but I believe he was suggesting that the floor was first covered with linoleum then tarred and tiled. In his view it was the tar that could be seen in the photographs because the tile had lifted.. He brought a piece of flooring to court, (Defence Exhibit D-7), to illustrate what he meant. D7 was one very small piece of what he testified was flooring from the Residence. He testified that the Defendants were hesitant to strip the floors because they were concerned what toxins might be released from the tar.

[85] Mr. Desjarlais testified that after the October 2021 inspection by Officer Carrier, they did do some work to the house by scraping some of the floors and cleaning up the living room. This was confirmed to some degree by the Animal Protection Officers.

[86] Mr. Desjarlais testified that he never did see a court order but that they willingly surrendered 13 dogs, but 32 others were seized by Animal Protection Officers.

[87] Mr. Desjarlais was also upset by his interaction with Animal Protection Officers after the seizure. He testified he wanted the dogs back and would have paid to get them back.

[88] According to Mr. Desjarlais, since December 15, 2021 (the day the dogs were seized), new linoleum has been laid throughout most of the house. He also confirmed that Mr. Gillingwater was currently suffering with ill health.

[89] Mr. Desjarlais was adamant in his testimony that any time a dog would defecate in the Residence he would clean it up right away and bleach the spot. This testimony was very difficult to accept given the compelling evidence to the contrary presented by the Animal Protection Officers.

[90] One thing that was clear from his testimony is that he and Mr. Gillingwater loved the dogs

and were passionate about them. Each dog had a name and clearly the Defendants had gone to great expense to feed these animals and at least prior to 2020, incurred significant veterinarian costs.

[91] On cross-examination of Mr. Desjarlais, the Crown challenged Mr. Desjarlais on his cleaning practices. The Crown directed Mr. Desjarlais to numerous photographs in the booklet where fresh feces and urine can be seen on the floor. Mr. Desjarlais accepted what was clearly in the photographs.

[92] The Crown also challenged Mr. Desjarlais on his ability to run after that many dogs and clean up after them all day long. Mr. Desjarlais said he did. Clearly, he did not. There is overwhelming evidence from three very experienced Animal Protection Officers of the presence of fecal matter and urine, both fresh and old, caked on the floors, walls, furniture and the dogs themselves. The photographs supported this conclusion as did the ammonia testing done in the house.

[93] While I accept that the floors in the Residence were in poor condition and perhaps had a layer of some type of tar-like matter or glue on them, where the tiles had lifted, I do not for a moment accept that this was what was solely on the floors. The evidence to the contrary was overwhelming, including Mr. Desjarlais' own admissions during cross-examination to the existence of fresh fecal matter in numerous photographs.

[94] I also found that while being cross-examined Mr. Desjarlais would often answer a completely different question from what was asked. He did this a number of times.

[95] I also wondered about 7:00 p.m. being bedtime for the dogs as Mr. Desjarlais testified. He said the dogs were trained when he said "bedtime" to run into their kennels for the night. Yet on each occasion when Animal Protection Officers attended, (three in total), it was during the day and many dogs were always observed to be locked in their kennels without food or water.

[96] At one point Mr. Desjarlais also testified that, "most people say we take better care of the

dogs than most people take care of their kids”. I found this statement to be outlandish given the filthy living conditions that these dogs lived in.

[97] Mr. Desjarlais also testified that the Defendants have had as many as 63 dogs at one time. It is hard to imagine that anyone would think it appropriate to shelter anywhere near this number of dogs in these types of conditions. This testimony went directly to the poor judgment of these Defendants.

[98] With respect to veterinarian records, I have already described the misleading testimony of Mr. Desjarlais relating to the 2021 records. This certainly negatively affected his credibility.

[99] On many occasions Mr. Desjarlais would also ramble incoherently making his testimony difficult to follow or understand.

[100] Overall, I did not find Mr. Desjarlais to be a credible witness. Clearly, he was motivated by self-interest. He was caught up in contradiction on more than one occasion. He gave equivocal responses, and was not able to testify in a clear and straightforward manner.

[101] Clearly, Mr. Desjarlais and Mr. Gillingwater do have a love of animals and in particular dogs. They took in stray dogs and dogs no one else wanted. However, it is not enough to take a dog out of one bad situation and place them into another, different, bad situation. While their intentions may have been good, their execution was sorely lacking and caused real harm and potential future harm to these dogs.

[102] The Defence closed its case after Mr. Desjarlais testified.

[103] The Defence’s closing argument was difficult to follow. At times it sounded like Defence was conceding that the circumstances outlined in the *Act* relating to “distress” had been met by the Crown.

[104] Defence also filed the case of *Andrew Mandziak (Applicant) and Animal Protection Services of Saskatchewan*, 2022 SKQB 75. This case was not relevant to the matter at hand. That

case involved seizure of cows and a *Charter* challenge to the search warrant. There was no such challenge before this Court.

[105] Clearly the Defence had an issue with how matters were handled by Animal Protection Services following the seizures of the dogs. That is a different matter for another day and does not speak to the issues relating to these charges. On this point however, I want to be clear, the Court is not saying that the Animal Protection Officers did anything wrong following the seizure of the dogs on December 15, 2021. That is the Defence position. That was not the issue before this Court.

V ANALYSIS

[106] In a prosecution such as this, the Crown bears the burden of proving all of the elements of the offence beyond a reasonable doubt. This burden must be discharged through the use of credible and reliable evidence. Unless and until that burden is discharged by the Crown, the accused is presumed innocent. Credible evidence is evidence that is both believable and convincing; reliable evidence is evidence that is of a quality that the Court can confidently act upon it.

[107] In a case in which the accused testifies, the Court does not acquit or convict based on whether or not the Court believes the accused. Rather, in assessing credibility, the Court will be guided by the decision in *R v W. (D.)*, [1991] 1 SCR 742 which set the following process.

1. If you believe the evidence of the accused, you must acquit.
2. If you do not believe the testimony of the accused but are left in reasonable doubt by it, you must acquit.
3. If you are not left in doubt by the evidence of the accused, you must ask yourself whether you are convinced beyond a reasonable doubt of the guilt of the accused on the basis of the balance of evidence which you do accept.

[108] In *R v P. (M.N.)* (also referred to as *R v McKenzie*) (1996), 106 CCC (3d) 1, the Saskatchewan Court of Appeal referred with the approval and accepted an additional consideration as follows:

4. If, after careful consideration of all the evidence, you are unable to decide whom to believe, you must acquit.

[109] The determination of credibility does not require the Court to choose one version of events over the other; it is not an “either/or” process. Rather, the Defendants can only be convicted if I am satisfied beyond a reasonable doubt, on all of the evidence, that they are guilty. The Defendants do not bear the onus of proof in this regard.

[110] While the Defendants do not bear any onus of proof, I must keep in mind that in this case the Crown need not prove a criminal intent such that once the act is proven, the Defendants are guilty and their only defence is that they took “all reasonable care” to prevent these things from happening.

[111] With respect to the central issues of whether, between the dates in question, the Defendants caused or permitted the dogs to be in distress, the Court heard from only Mr. Desjarlais. His testimony was not credible for the reasons already articulated. I did not believe his testimony and did not find that his testimony raised a reasonable doubt relating to either Defendant.

[112] With respect to the Crown’s evidence, I do find that it has proven its case, beyond a reasonable doubt on a number of fronts already discussed when summarizing the evidence.

[113] The Crown has proven, beyond a reasonable doubt that between the dates in question the dogs, in the care of these Defendants, were in distress because of failure by the Defendants to:

- 1) provide veterinary and medical attention (s. 2(2)(a)(iii) of the *Act*).
- 2) provide sanitary conditions for the dogs to live in (s. 2(2)(d)(i) of the *Act*).
- 3) To ensure the conditions the dogs lived in would not impair the

animal's health or wellbeing (s. 2(2)(d)(ii)).

[114] I find that the Defendants took no reasonable action to prevent distress to the dogs given that they were directed on October 21, 2021 to clean up the Residence and get immediate veterinary care for the dogs. Despite this warning, the condition of the Residence actually got worse as noted by Animal Protection Officers during the ensuing two inspections with ammonia levels rising to dangerous levels. Clearly no attempt was made to have these dogs seen by a veterinarian as no veterinarian bills were produced for that timeframe.

[115] Clearly, little to no effort was put into cleaning the Residence as Animal Protection Officers felt that the overall condition of the Residence was either no better or was even worse as time passed.

[116] Clearly, many of the dogs needed immediate medical attention – one dog needed to be euthanized the same day due to its poor condition. The condition of all the dogs was and continued to be in jeopardy throughout this timeframe given the unsanitary conditions of the Residence.

[117] Mr. Desjarlais testified that since the seizure, conditions in the home have improved with new linoleum being installed in many of the rooms in the house. I sincerely hope this has happened given that these hazardous conditions would not only be harmful to the dogs but to the Defendants themselves, one of whom is already suffering from significant health issues.

[118] Having found that the Crown has met the onus upon it I find the Defendants, Morgan Desjarlais and Gary Gillingwater guilty as charged under count # 1.

K.A. Lang

