

# ONTARIO COURT OF JUSTICE

CITATION: *R. v. Lee-Diggs*, 2024 ONCJ 81

DATE: 2024 01 23

COURT FILE No.: 20-45001516

Toronto Region

**B E T W E E N :**

**HIS MAJESTY THE KING**

**— AND —**

**Kenton LEE-DIGGS**

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Before Justice Cidalia Faria  
Heard on November 10, 2023  
Reasons for Sentence released on January 23, 2024

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**Barry Stagg** .....counsel for the Crown  
**Erica Predko** ..... counsel for the defendant **Kenton LEE-DIGGS**

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**Faria J.:**

## **I. Overview**

[1] On August 1, 2023, after a trial that took 7 days over a period of almost 2 years, I found Kenton Lee-Diggs guilty of the charges of cruelty to animals, impaired driving, and mischief.<sup>1</sup>

[2] The matter was adjourned for a Pre-Sentence Report<sup>2</sup>, a Centre for Addiction and Mental Health (CAMH) Report<sup>3</sup>, and a Victim Impact Statement (VIS)<sup>4</sup>. Submissions were heard on November 10, 2023.

[3] These are my reasons for sentence.

## **II. Facts**

[4] On the morning of April 30, 2020, Ms. Cedar Johnson-Nelson met Mr. Lee-Diggs at a gas station near her home. Her cat had had an unexpected litter and she was trying

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<sup>1</sup> *R v. Lee-Diggs*, 2023 ONCJ 348.

<sup>2</sup> Exhibit 3: Pre-Sentence Report, September 12, 2023, author, Maen Saleh.

<sup>3</sup> Exhibit 4: Centre for Addiction and Mental Health, September 2, 2023, author Dr. Roland M. Jones.

<sup>4</sup> Exhibit 2: Victim Impact Statement, Cedar Johnson-Nelson, September 14, 2023.

to sell or give away the kittens. Mr. Lee-Diggs said he was interested in a kitten. They discussed the age, colour, sex, and vaccination status of the kittens. Mr. Lee-Diggs followed Ms. Johnson-Nelson in his vehicle to her basement apartment, and then into her bedroom where the kittens were.

[5] In the bedroom, standing by the door, Mr. Lee-Diggs picked up a kitten and spoke of its “pure soul”. He then put his hand on the kitten’s neck and squeezed it. Ms. Johnson-Nelson heard the cat’s gurgle and told him that he was hurting the cat. Mr. Lee-Diggs then brought up his other hand and snapped the neck of the kitten. He threw the dead kitten onto the bedroom floor and quickly fled the apartment.

[6] Ms. Johnson-Nelson called 911 immediately to report what happened. She described Mr. Lee-Diggs, his vehicle, and the direction he drove away. An officer located him a short distance away and pulled him over. Mr. Lee-Diggs was immediately belligerent. Back up officers had to be called. The officers observed indicia of impairment. It took 4 officers to arrest Mr. Lee-Diggs, get him into the scout car and provide him with his Rights to Counsel and caution. After an unsuccessful *Charter* challenge,<sup>5</sup> Mr. Lee-Diggs conceded he was driving while impaired by alcohol.

[7] Once at the police station, Mr. Lee-Diggs was placed in an interview room. He was observed on CCTV purposely urinating on the floor causing Mischief.

### III. Victim Impact Statement

[8] Ms. Johnson-Nelson provided a very succinct and potent victim impact statement. She stated:

I’ve had a hard time completing this VIS. For months I could not sleep because I would re-live seeing the kitten being held by the neck, choked, & then its neck snapped. I still have nightmares and see the face of the kitten. I still have 2 of its siblings and when they yawn I get flashbacks of when the kitten was killed after all of these years. I’ve tried to be strong but still to this day I am traumatised.<sup>6</sup>

[9] In very few words, she described the long-term effect of what she saw, and how the vivid image of Mr. Lee-Diggs cruelty is imprinted on her mind. The impact has been significant.

### IV. Circumstances of Mr. Lee-Diggs

[10] Mr. Lee-Diggs is turning 29 years of age next month. He is a young man with a serious criminal history and a significant addiction.

[11] Mr. Lee-Diggs has been involved with the criminal justice system since he was a young person at 17 years old<sup>7</sup>. His adult criminal record reflects numerous (10) breaches of court orders, including breaching his release on these offences. He has a conviction for impaired driving for which both the offence date and the conviction post-date the

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<sup>5</sup> *R. v. Lee-Diggs*, 2023 ONCJ 347

<sup>6</sup> Exhibit 2: Victim Impact Statement, Cedar Johnson-Nelson, September 14, 2023.

<sup>7</sup> Exhibit 1: Criminal Record, Kenton Lee-Diggs.

offence date of the impaired driving offence for which he is now being sentenced. Though he has convictions for uttering threats, his most serious conviction is an aggravated assault in 2015 when he was 20 years old. He was sentenced to 3 years in prison (730 days on top of 354 days pre-sentence custody).

[12] He was raised by his mother with whom he is still close. He is the youngest of 6 and not close to any his siblings or half siblings. He did not complete high school but obtained his General Equivalency Development while in custody. He has worked since he was 16 at Rona, a cleaning company, and started up his own renovation company.

[13] Mr. Lee-Diggs has been with his partner since 2017. They have a little boy and Mr. Lee-Diggs is a stepdad to his partner's older children. The couple lost a newborn and this tragedy seemed to have exacerbated his use of alcohol.

[14] This alcohol use has caused Mr. Lee-Diggs much trouble. Indeed, the over 2 hours of videotape capturing Mr. Lee-Diggs conduct when he was stopped by police and subsequently arrested, illustrated aggressive, belligerent, and confrontational behaviour while intoxicated. He denies his alcohol use is a problem.

[15] Dr. Jones of CAMH reported Mr. Lee-Diggs has no mental health history and there is no evidence of a major mental illness. He uses substances to manage stress and likely fulfills the criteria of mild alcohol use disorder. As his partner did report recent cocaine use, it is also likely that he would fulfill the criteria for drug use disorder.

[16] That Mr. Lee-Diggs does not see the direct connection between his drinking and his offending is concerning.

[17] Regarding the offences for which he has been found guilty, he accepts responsibility for the impaired driving and mischief, but not for killing the kitten. He is adamant he is innocent, as is his right to assert.

## V. Positions

[18] The Crown recommends a jail term of 23 months minus pre-sentence custody on the cruelty to animals charge, 60 days jail on the impaired driving and mischief charges to be served concurrently, and a 2-year probation order with terms. He also recommends a s. 447.1 order prohibiting Mr. Lee-Diggs from owning animals and a 2-year driving prohibition.

[19] Mr. Stagg submitted denunciation and deterrence as the guiding principles in this case. He emphasized the gratuitous nature of the violence and described the killing of the kitten as an act of savagery.

[20] Counsel for Mr. Lee-Diggs submitted the appropriate sentence is 8 months jail for the cruelty to animals charge, and 2 months jail on the each of the impaired driving and the mischief charges, for a total 12-month jail term to be served in the community as a Conditional Sentence. However, she submits that *Downes*<sup>8</sup> consideration for the strict

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<sup>8</sup> *R. v. Downes*, [2006] O.J. No. 555, 79 O.R. (3d) 321.

house arrest and GPS monitoring conditions of Mr. Lee-Diggs' release, combined with his pre-sentence custody of 192 real days, should lead the court to a Suspended Sentence and 18 months probation. She does not dispute the 2-year driving prohibition but submits the s.447.1 order prohibiting Mr. Lee-Diggs from owning animals is unnecessary.

## **VI. Legal Principles**

### ***Purpose and Objectives***

[21] The criminal law is a system of values and sentencing is meant to reflect and reinforce those basic values in our society. A fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions (s.718).

[22] The fundamental guiding principle is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (s.718.1)

[23] The sanction that the court imposes should have one or more of the following objectives (s. 718 (a) to (f)):

- to denounce unlawful conduct
- to deter the offender and other persons from committing offences
- to separate offenders from society, where necessary
- to assist in rehabilitating offenders
- to provide reparations for harm done to victims or to the community
- to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[24] A sentence is to be similar to other sentences imposed on similar offenders in similar circumstances (s.718.2(b)).

### ***Aggravating & Mitigating Factors***

[25] Mr. Lee-Diggs killed a kitten in front of its owner in her own home thereby traumatizing her to this day.

[26] The act was a gross one of gratuitous violence inflicted on a defenceless, sentient being. In terms of both the act and the context, this offence certainly illustrates a clear level of disturbing cruelty.

[27] Mr. Lee-Diggs' lack of insight into his alcohol problem and how it contributes both to his historic anti-social criminal behaviour, as well as the role it played on April 30, 2020 and these offences, does not bode well for his rehabilitation potential.

[28] His criminal record also demonstrates his capacity for violence on human beings, which is now coupled with violence against animals which is disconcerting.

[29] Mr. Lee-Diggs has family support as his partner is very positive about both his parenting ability and his commitment to financially supporting the family. His dedication to his young son is a source of motivation to change his behaviour.

[30] He also has positive employment prospects as he has the initiative to start his own renovation company and has worked in various roles since he was a teenager.

### ***Applying Principles***

[31] Sentencing is a complex balancing of many factors that must be considered to create a fit sentence appropriate to the specific offender and the offence he/she/they committed. Individualization is essential.<sup>9</sup> The principals of proportionality, denunciation, deterrence, parity, and rehabilitation must all be considered in this case as they pertain to Mr. Lee-Diggs.

[32] Though a Conditional Sentence can and does have a deterrence and denunciation component for many offenders, for Mr. Lee-Diggs who has both a historic and a recent record of breaches, including for breaching the Release he was on for these offences, I have no confidence he would obey the conditions of such an order. In addition, a Conditional Sentence would also not reflect the gravity of the cruelty to animals offence, nor would it sufficiently reflect the denunciation principle required in this case, to be a fit and proportionate sentence.

[33] Mr. Lee-Diggs sentence should also not be reduced because of the strictness of his Release, pursuant to *Downes* principles. He was originally released on non-house arrest terms. It only became one of house arrest and a GPS bracelet because of his breaches. He breached his conditions regularly. He admitted as much. To then reduce his sentence for such behaviour would be to provide him with a benefit for his utter disregard for court orders.

[34] Supporting their position, both parties referred me to several cases. I have considered them all but need not summarize them all.<sup>10</sup> No case was on all fours with the one at bar, as rarely one ever is given the individuality of every offender, and the context of their offence. However, they were helpful to situate Mr. Lee-Diggs' offences within a continuum of conduct that our society abhors, cruelty to animals.

[35] Mr. Lee-Diggs act was on one pet, and not many and not over a period of time such as that in the *Dennison* case where the sentence was two years less one day. Mr. Lee-Diggs also did not commit this offence in the context of an intimate partner relationship where the traumatizing effect of the offence would have an insidious and particularly targeted intent to wound the pet owner.

[36] Though Mr. Lee-Diggs has a criminal record, he also demonstrates pro-social behaviour by both contributing to society as a working member of it, and by being a

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<sup>9</sup> *R. v. Lacasse*, [2015] 3 SCR 1089 at paras. 54, 58, 59, 128, 140, and 143.

<sup>10</sup> *R. v. Knuff*, 2023 ONCJ 73, *R. v. Munroe*, 2010 ONCJ 226, *R. v. Munroe*, 2012 ONSC 4768, *Andrade v. R.* 2010 NBCA. *R. v. Dennison*, [2021] O.J. No. 4661.

responsible parent and providing for his family. For that reason, rehabilitation plays a role in this sentencing. Mr. Lee-Diggs has the ability, if he so chose, to turn his life around.

[37] Though proportionality frames the analysis with an emphasis on both denunciation and deterrence, the sentence must also reflect the principles of parity and rehabilitation as they apply to Mr. Lee-Diggs.

[38] On the mischief offence, the disdain and contempt for the officers with which Mr. Lee-Diggs conducted himself must be reflected in the sentence. His purposeful urination in the interview room was intended to insult the officers and he verbally revelled in the fact that they would have to clean his urine from the floor. This is conduct must be deterred and denounced.

[39] I note that the impaired driving offence for which I am sentencing Mr. Lee-Diggs was the first such offence he committed. The similar conviction on his record was for an offence committed and sentenced after the offence before me. Both parties submit the appropriate sentence to be that of 2 months jail concurrent, but I find that to be on the heavier side given it was a first such offence, even with is belligerent behaviour.

[40] Counsel opposes an order prohibiting Mr. Lee-Diggs from owning an animal. She submits such an order is not necessary.

[41] I do not agree. Mr. Lee-Diggs killed a kitten. He must not be in a position of ownership, care, or trust with an animal.

## VII. Sentence

[42] Mr. Lee-Diggs I sentence you as follows:

- On the count of cruelty to animals, s.445 (1)(a): 12-month jail term (365 days) minus pre-sentence custody of 192 days enhanced to be 288 days. You will serve 77 more days.
- On the count of mischief, s.430(4): 3 months jail to be served concurrently.
- On the count of impaired driving, s.320.14(1)(a): 30 days jail to be served concurrently.

[43] I will also make a 2-year probation order with the following terms:

- Report to a probation officer within 24 hours of your release and thereafter as directed by your probation officer.
- Reside as approved by your probation officer.
- Have no contact with Cedar Johnson-Nelson directly or indirectly.
- Remain 500 meters away from where Cedar Johnson-Nelson lives, works, goes to school or you know her to be.
- Take counselling as directed by your probation officer, and specifically for
  - anger management
  - alcohol abuse
  - psychological skills training

- Sign releases to permit your probation officer to monitor your attendance and completion of such programs as your probation officer recommends.

[44] I will also make the following ancillary orders.

- s. 447.1(1)(a) order prohibiting you from owing, or having the custody or control, or residing in the same premises as an animal or bird for the period of 5 years.
- s. 259 driving prohibition for 2 years.
- The victim fine surcharge is waived as you have not been working while in custody, have family financial responsibilities, the fine would cause you undue hardship.

[45] Thank you to both counsel for your submissions.

**Released: January 23, 2024**

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Signed: Justice Cidalia C.G. Faria