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**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**REGINA**

v.

**BRIAN EDWARD WHITLOCK**

**EXCERPTS FROM PROCEEDINGS  
REASONS FOR SENTENCE  
OF THE  
HONOURABLE JUDGE D. ST. PIERRE**

Counsel for the Crown:

J. Hauschildt

Counsel for the Defendant:

J.T.J. Campbell; T. Paisana

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

June 12, 2013

[1] THE COURT: Mr. Whitlock has pled guilty to three different charges. There is, between March 27, 2012, and July 18, 2012, the charge is he did wilfully cause unnecessary pain, suffering, and injury to his dog, Captain, the name of the dog, and that is contrary to s. 445.1 of the *Criminal Code*.

[2] Another charge is between April 17 and May 17, 2012, he committed mischief to the property of his estranged spouse's mother, that is contrary to s. 430(4) of the *Criminal Code*. I am paraphrasing these charges, that is not the exact wording.

[3] Finally, on February 26, 2013, he has pled guilty to assaulting William Foster and Erin Fitzpatrick, and that is contrary to s. 266 of the *Criminal Code*.

[4] The Crown suggests that a suspended sentence with probation is the appropriate sentence for the latter two offences. With respect to the offence involving Captain the dog, the Crown says that a jail sentence is warranted, between four and six months, along with a long probation order.

[5] The defence suggests, in light of Mr. Whitlock's personal circumstances, which include the fact that he suffers from a serious mental disorder, that a discharge is appropriate for the mischief and assault charges, and that I should consider the discharge provisions for the offence involving Captain, but in any event, if that is not possible, there should be a non-custodial sentence on the matter.

[6] It should be noted that Mr. Whitlock has -- my calculation now is different, is there 53 days now in custody? I think there were at 45 last time, was it?

[7] MR. CAMPBELL: Yes, that's right.

[8] THE COURT: Okay, thanks. Fifty-three days in custody awaiting the disposition

of these matters.

[9] Next month, as I understand it, Mr. Whitlock will be 27 years old. To put it simply, he showed great promise as a young man. He captained his high school basketball team. He has excelled in the past at competitive rowing. He graduated with honours from high school in 2004.

[10] He started drinking excessively and experimenting with different narcotics while attending the University of Victoria. He eventually dropped out of university there and came back to Vancouver, where he commenced a relationship with a woman who is five years his senior. That relationship lasted several years. In the meantime, Mr. Whitlock could only be described as under-employed, under-motivated. Some people would characterize him as a floater during that period of time. He does not really have a significant direction.

[11] In 2009, his father moved out of his mother's home during a somewhat messy divorce, and I am told that the father later disclosed the reason that the marriage had broken down and suffered a dissolution and that reason caused Mr. Whitlock some great psychological stress.

[12] It was around that time that he and his common-law spouse became pregnant, but as a result of continuous conflicts they separated in the spring of 2011.

[13] His ex-spouse moved in with her mother, and Mr. Whitlock came to believe that his ex-spouse and her mother were conspiring to keep him away from his child, and it seemed to me from all the reports that he was commencing exhibiting symptoms that were consistent with mental disorder.

[14] He entertained paranoid and delusional thoughts in relation to his efforts to gain access to the child, and this caused him again even further emotional and psychological stressors.

[15] The mischief charge arises out of this context. Mr. Whitlock began engaging in increasingly bizarre behaviour. He would visit his mother-in-law's house, I will call her that, and damage her property. He would let the air out of her tires, damage flowers, the gate at the house, the carport. He later admitted to this damage and he offered a few dollars for restitution. Those offences took place between April 17 and May 17 of 2012.

[16] In March of 2012, just before that period, he had purchased a German Shepherd by the name of Captain. That dog was, as I understand it, formerly to be trained by the RCMP as a police service dog, but was dismissed from that program because he did not show sufficient aggression, so he was sold. I think Mr. Whitlock was the second owner after that.

[17] Around that time as well, he was living in an unfurnished apartment in Kitsilano, and photos show that Mr. Whitlock was essentially living in squalor. The apartment is largely unfurnished and unkempt. His thinking was, by all accounts, becoming increasingly disordered and paranoid. His own mother became quite concerned for him and with what appeared to be a break with reality that she was observing. He was sent for assessment and treatment in June of 2012, and there is a letter, a report from Dr. Buttle around that time.

[18] I should note that before this time, there are no reports of Mr. Whitlock mistreating Captain, and by all accounts he appeared to be a responsible dog owner up

to that time, and appeared to hold great affection for his animal.

[19] Dr. Buttle reported in June of 2012 that Mr. Whitlock was likely suffering from psychosis, that he was placed on an anti-psychotic medication. Sometime in July of 2012, Mr. Whitlock reported that Captain had -- this is his reporting to later authorities, and it is all consistent, his reporting to authorities about what was going through his mind at this time, but in July of 2012, Captain had apparently, according to Mr. Whitlock, eaten something off the ground while on a walk, and Mr. Whitlock had come to believe that the dog was poisoned by evil forces and may have become cursed in some fashion.

[20] Obviously, that thinking was related to his mental health disorder, because it did not have any relation to reality.

[21] Mr. Whitlock believed that the dog was acting bizarre and acting like he was deranged or suffering from a rabies-type affliction. He was making strange cat/hyena-like noises, the dog was throwing up, and the dog was defecating uncontrollably, it seemed. He came to believe that the dog needed to be put down and that it was his responsibility to do that.

[22] I should note that again this version of events has been repeated multiple times to various sources.

[23] Mr. Whitlock decided, and this is where he fell into grave error and gets himself into the difficulty he finds himself in now, he decided, imprudently and unlawfully, to take -- eventually unlawfully, take a bat to euthanize the dog with several blows to the dog's head. Of course, he now concedes in hindsight with his guilty plea and the acceptance

of responsibility that he should have taken obviously different steps if that was the case, if that was truly the case, and that his decision to take this step caused his pet dog Captain to experience unnecessary pain and unnecessary suffering. That is the offence.

[24] He admits to striking the dog several times in the head. That is the basis of his plea for which he is being sentenced. There were other injuries found on Captain that I understand were not consistent with that particular admission, but when the police examined several other instruments in the apartment suspected of causing other injuries, they could not find any DNA on those instruments, and it is, at the end of the day, an unexplained mystery, some of the other injuries.

[25] According to him, Mr. Whitlock, he believed he had killed the dog when he wrapped him up in a blanket and placed him in a dumpster behind the building. Of course, we now know that he did not kill the dog, and that Captain was found in the dumpster still alive by some citizens.

[26] He was treated at an emergency veterinarian clinic, but within a few days he had succumbed to his injuries, which were significant injuries, although in the vet's opinion the dog, as far as suffering pain, he says the dog did not suffer serious pain at that time.

[27] Mr. Whitlock then left his apartment at that time and first went to Richmond, and then lived, as I understand it, in the woods at the UBC endowment lands for some time.

[28] Obviously, the community was outraged at the scenario that had played out, the citizens that found Captain in that dumpster, and it was understandably very distressing for citizens, many of whom are pet owners themselves, to know that somebody could

have treated a defenceless animal in such a barbaric manner.

[29] Now, many pet owners have had to make the very unpleasant and difficult decision to euthanize their pet, but obviously a reasonable owner will take the pet to a vet or to the SPCA, who will determine a humane method of euthanasia that will cause the pet the least amount of pain and suffering.

[30] Mr. Whitlock, after this event, received many death threats, threats of bodily harm from undesirable elements within the public at large. I say that, because everybody should believe that those people who do that are not desirable elements within our society.

[31] By doing that, those people were themselves committing criminal offences with those threats. The threats, along with the bright light of media and public scrutiny, have caused, understandably, Mr. Whitlock's mental health condition to further deteriorate, because he is now under significantly more stress, so much so that on February 26, 2013, he was at the Forensic Psychiatric Services there, the outpatient clinic, and he was attempting to get his medication refilled. This is his anti-psychotic medication. He was also, to his detriment and to his discredit, he was also intoxicated. He was trying to, I am told and there is no reason not to accept, that he was trying to inhibit his anxiety at that time about coming into the city and was self-medicating.

[32] He was late for this appointment and he could not be seen at the doctor's office. That caused him to act out and he went to a local Starbucks and was exhibiting some very strange behaviour in his interactions with the people there. Ultimately, he hit a manager of the Starbucks with an open palm of his hand, and then on his way out he hit a woman, as I understand it, slapped her on the buttocks. That incident is the subject of

the last charge he has pled to, the assault charge.

[33] I have the benefit of several reports from professionals who have assessed the state of Mr. Whitlock's mental health. There is little doubt that he suffers from a mental disorder. There are numerous reports that his mental health has destabilized even further over the past year. He is now taking medication for his disorder. In a very comprehensive report, assessing his risk for future violence, Dr. Lohrasbe, who is a highly respected forensic psychiatrist who deals with violent offenders and has done for many dozens of years, has rated Mr. Whitlock's risk for future violence as relatively low if he attends to and deals with his mental disorder in a responsible and appropriate fashion. I accept that assessment.

[34] Dr. Riley, who also performed an assessment, was unable to conduct a risk assessment for various reasons, but did find on page 8 of his report that [as read in]:

It seems more likely than not that Mr. Whitlock has experienced psychotic symptoms in the past and particularly between June and August of 2012.

[35] I should note that the offence involving Captain, at least the actual day where Mr. Whitlock attempted to euthanize the dog, was July 18, 2012.

[36] A discharge is not an appropriate sentence on the mischief charge. That single count covers repeated incidents, some of which occurred after the police had warned him to stay away from the residence.

[37] For the mischief charge, I find I agree with Mr. Hauschildt for the Crown that a suspended sentence with a period of probation is appropriate. I will get to that in a moment. I also find with respect to the assault charges that a suspended sentence is

appropriate. That is what Mr. Hauschildt for the Crown has recommended and I have to agree with him on that as well. He was suffering some increased anxiety and disordered thought patterns when he engaged in that inexplicable assault, but he had also voluntarily consumed alcohol, and he must have known by that time that there are negative effects that it would have on his mental well-being.

[38] With respect to the charge involving Captain, the German Shepherd dog, his pet, I have reviewed the materials filed and the cases provided, and I have read those. Many of the cases that involve animal cruelty, we call it, or causing unnecessary pain or suffering, involved individuals who gained some kind of perverse pleasure in torturing animals or gained some kind of sick satisfaction in harming an animal to specifically cause, for instance, distress or emotional upset to its owner, and that occurs in those domestic situations where somebody, you know, harms the dog of an ex-spouse just to get back at that person. Those individuals are deserving of harsher penalties than individuals like Mr. Whitlock in these unique circumstances.

[39] I accept that Mr. Whitlock was suffering from some kind of delusional and disordered thought patterns, and it related to his diagnosis of psychosis at the time the injuries were inflicted on his pet dog, Captain. That compromised his mental state to an extent, but not to an extent that he is not responsible for his actions. It obviously did play a significant factor in his decision making and how he had tried to effectively, as he put it, "put Captain out of his misery".

[40] By doing what he did, he caused Captain even more misery, obviously, and the results were, it is fair to characterize, devastatingly sad, if you have any compassion for loyal and defenceless creatures, like most of us have for domesticated pets.

[41] Obviously Mr. Whitlock is not advancing an argument that he is not guilty by reason of his mental disorder. He has taken responsibility for his actions in that regard by entering the guilty plea. He has admitted that he should have taken different steps. He acknowledges that this was an incredibly poor decision and that it caused harm unnecessarily. In life there are bad consequences for bad decisions and this is one of them.

[42] After reviewing all of the circumstances of both Mr. Whitlock's circumstances, which are compelling in the sense that the doctors have indicated that he had significantly disordered and disorganized thought patterns during that period of time, considering that, but as well as the offence itself, which is a very tragic one, and his role and the role that his mental health disorder did play in this tragic case, it is my finding that a jail sentence, in these circumstances, of 60 days is appropriate to meet all the principles of sentencing.

[43] He gets -- if there is one more outburst from people in the courtroom, the sheriff is going to escort you out. That is all there is to it. I am going to have some words for those folks who disagree in a minute.

[44] Under s. 447.1(1)(a) of the *Code*, I am also convinced that a lifetime ban on owning animals should be imposed on Mr. Whitlock. Mr. Whitlock, I hope, will be attending to his mental health issues, but the decision making here was so poor as to warrant this order in an effort to prevent from ever happening again a similar incident.

[45] In addition to that, there will be a probation period for the longest period of time. It needs to be some significant period of time to assist him in rehabilitating and reintegrating into the community, and to get his mental health issues sorted out, so that

he does not become any risk, either to the public or to animals for that matter.

[46] A three-year period of probation. The conditions of that probation period will be to keep the peace and be of good behaviour. He will reside, he will report to a probation officer within two days, two working days, of his release, and thereafter as directed by the probation officer.

[47] He will provide his residential address and do not change it without advising the probation officer.

[48] You are to abstain absolutely, Mr. Whitlock, from the consumption and possession of any drugs as defined in the *Controlled Drugs and Substances Act* for which you do not have a prescription for.

[49] You will have no contact, direct or indirect, with Jeff Foster or Erin Fitzpatrick or, and this will be a different provision, Madam Registrar, you will have no contact, direct or indirect, with Ms. McField, except through legal counsel, through a family justice counsellor, or pursuant to a family court order for the purposes of access.

[50] You will have no contact, direct or indirect, with Joanne Perley-McField.

[51] You are not to attend any place of residence, any place of schooling, or any place of employment for any of those individuals that should become known to you from time to time.

[52] You are not to possess any weapons as defined in the *Criminal Code*.

[53] You are to attend for and complete any assessment or treatment or counselling as directed by your probation officer, including attendance at the forensic outpatient clinic.

[54] Mr. Hauschildt, as far as the conditions go, do you have any -- are there any other conditions that the Crown is suggesting? I will hear from defence counsel in a minute.

[55] MR. HAUSCHILDT: Yes, Your Honour, the Crown initially also requested that the specific radius or area restriction around the home that Mr. Whitlock attended to in relation to Ms. Perley-McField.

[56] THE COURT: Yes, what is the address again?

[57] MR. HAUSCHILDT: It was --

[58] THE COURT: Oh sorry, the 2900 block, you are not to attend within a one-block radius of the 2900 block of West 33rd Avenue. Is that it?

[59] MR. HAUSCHILDT: Yes, Your Honour.

[60] THE COURT: And also not to attend at any Starbucks in the Province of British Columbia.

[61] MR. HAUSCHILDT: And Your Honour, the Crown was also seeking the -- the area restriction with regard to Audrey McField, the -- her workplace, which was the 3600 block of West Fourth Avenue.

[62] THE COURT: Not to attend within a one-block radius of the 3600 block of -- sorry, can you give that again?

[63] MR. HAUSCHILDT: Sorry, Your Honour, it's West Fourth Avenue.

[64] THE COURT: West Fourth Avenue, all right. Anything else?

[65] MR. HAUSCHILDT: And if the no-contact condition with Ms. McField could

specifically be Audrey McField.

[66] THE COURT: Yes, Audrey McField. I had lost her first name somewhere.

Okay.

[67] MR. HAUSCHILDT: The Crown was also seeking the *Rogers*-type conditions, Your Honour.

[68] THE COURT: Right. Is there anything else, Mr. Hauschildt?

[69] MR. HAUSCHILDT: I don't believe so, no, Your Honour.

[70] THE COURT: All right. Is there any submissions to make with respect to those requests?

[71] MR. CAMPBELL: No, I'm not opposed to the *Rogers* conditions.

[72] THE COURT: Okay, thanks.

[73] MR. HAUSCHILDT: Your Honour, the Crown is also seeking the -- a prohibition against the consumption of alcohol. I don't know if Your Honour intentionally left that out or --

[74] THE COURT: Well, no, I will add that as well. The abstention is as related to not only drugs, but to the consumption and possession of alcohol, which seems to aggravate his condition.

[75] THE CLERK: Now, Your Honour, I'm sorry, with regards to the --

[76] THE COURT: Yes, go ahead?

[77] THE CLERK: Sorry, with the attendance at the forensic outpatient clinic, is that here in Vancouver?

[78] THE COURT: Yes.

[79] THE CLERK: Thank you.

[80] THE COURT: With respect to the *Rogers* order, it is the standard wording. Take reasonable steps to maintain yourself, Mr. Whitlock, such that your mental health condition does not likely cause you to be dangerous to yourself or anybody else, and not to commit further offences. That means that you will attend as directed by your physician for medical counselling and treatment.

[81] You also provide consent to your physician to tell your probation officer if you are not submitting to treatment or taking your medication. You will provide a copy of this order to your treating physician and instruct your doctor that if you fail to take your medication or keep your appointments, they can advise your probation officer immediately. Do you agree to do that?

[82] All right.

[83] I should note a few things, because this -- we sit in these courts every day and we deal with the most terrible tragedies that have befallen people and children, and yet these courtrooms are largely empty every day of anybody who even cares anything about those matters. But the connections obviously that people form with their animals are the longest and strongest and most powerful relationships in many people's lives. I understand the emotions that are involved. I understand that there is a great interest for that reason. Pets are people's soul mates and, you know, even surrogate children sometimes.

[84] However, it does not excuse and it does not make any of the death threats or

threats of bodily harm or assertions that people are going to take the law into their own hands any better, and it does not absolve people from their responsibility in following the law in a civilized democracy. It is quite disturbing to me, and it should be to everybody, that this tragedy would precipitate further acts and talks of violence.

[85] I understand and I hope that those people are in the smallest of the minority, but they still should be rebuked in the strongest of terms. Many people wish to express their sadness over this tragedy and hope that something will be done to prevent similar ones from happening again. The lifetime ban that I have issued in this case is designed to address that hope, and it is expected, now that this matter has been concluded, that Mr. Whitlock will be allowed to make his amends to the community without fear of being physically harmed by criminal vigilantes who are intent on avenging Captain's suffering, because that cannot be tolerated in a civilized democracy such as the one we enjoy living in.

[86] Those are my comments.

[87] I want to make one further, just before we finish. The imposing of a sentence as this one, when I have taken into account Mr. Whitlock's mental illness, that bothers a lot of people. It should not, because mental illness has always -- and I do not make the law, I apply it -- it has always played an important role in assessing what an appropriate sentence is and it always will affect the degree and significance of somebody's moral blameworthiness and what kind of punishment that they deserve.

[88] People who disagree with taking that into account are simply not asking themselves the right questions. I am sure if their children were afflicted with a similar disorder, they would expect the judge to take those things into account as well.

[89] All right.

[90] MR. CAMPBELL: Just one question.

[91] THE COURT: Yes.

[92] MR. CAMPBELL: For clarification, the sentence is 60 days with --

[93] THE COURT: Sixty days, he gets credit for his time served, and he has served 53 days.

[94] MR. CAMPBELL: Thank you.

[95] THE COURT: That means he has got seven days left.

[96] MR. HAUSCHILDT: Your Honour, with regard to the assault conviction, it is also a secondary DNA designated offence. The Crown was seeking a DNA order in that case.

[97] THE COURT: Yes.

[98] MR. HAUSCHILDT: There also a s. 110 firearms order, as well. The Crown is seeking that for a period of 10 years.

[99] THE COURT: For the -- which offence was that?

[100] MR. HAUSCHILDT: Sorry, it's the assault offence, Your Honour.

[101] THE COURT: Yes.

[102] MR. HAUSCHILDT: Information 228933-2-C.

[103] THE COURT: Yes.

[104] MR. CAMPBELL: Not opposed to that, Your Honour.

[105] THE COURT: All right. There will be a DNA sample that is required. That will be taken while you are in custody, Mr. Whitlock.

[106] Under s. 110, there is a ban on the ownership of any firearms or things or devices that are listed under that section for a period of -- what was that you were requesting, Mr. Hauschildt?

[107] MR. HAUSCHILDT: The minimum is five years, Your Honour, I believe, and the maximum would be 10 years.

[108] THE COURT: Yes, it should be --

[109] MR. HAUSCHILDT: The Crown was seeking 10 years.

[110] THE COURT: It should be 10 years. All right.

[111] THE CLERK: Your Honour, does the probation cover [inaudible/not near microphone] --

[112] THE COURT: The probation covers all of those, yes, those three informations.

(REASONS CONCLUDED)