

Citation: R. v. Hughes
2007 BCPC 0462

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File No: 23801-1
Registry: Cranbrook

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

JOHN RONALD HUGHES

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R.J. WEBB**

Counsel for the Crown:	B. McCormick
Counsel for the Defendant:	R. Buddenhagen
Place of Hearing:	Fernie, B.C.
Date of Judgment:	September 7, 2007

[1] THE COURT: I will deal with Count 3 now. The Crown has accepted the argument of Mr. Buddenhagen that the firearm was not operational and does not meet the definition of a firearm. The Crown has accepted that argument. The Crown having taken that position, I find Mr. Hughes not guilty on Count 3.

[2] Counts 1 and 2 are going to take some time. I will give you a decision today. I am going to adjourn until 1:30.

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

[3] THE COURT: Mr. Hughes is charged with causing unnecessary pain and suffering to animals on two separate occasions, February 14th and March 5th of 2005. He was also charged with a weapons offence, Count 3 of this information, which was previously dismissed. I propose to say no more about that.

[4] The accused is alleged to have killed a cat by putting the cat into a microwave oven on February 14th. He is also alleged to have injured a second cat by throwing it against a wall on March 5th, 2005.

[5] The trial commenced on June 28th of 2006. It continued on February 1st, June 7th, July 26th of 2007, and concluded today, September 7th, a total of five days. In light of the length of time it has taken to get this matter to conclusion, it is necessary to summarize each of the witnesses' evidence. I propose to do so in the order in which they were called.

[6] The first witness was Constable Durkin, who dealt primarily with the seizure of a gun. Of some significance is the constable's evidence that when he dealt with a cat on March 5th, he noted the cat to have some glitter above its eyes, and that it was purring very minimally. The constable did not see the cat's eyes glued shut.

[7] The next witness called was Sara Kons. She testified that in February 2005, she had two cats, Mya and Ryel. She testified that during that time period, February/March of 2005, she was involved in a boyfriend/girlfriend relationship with Mr. Hughes. In the course of that relationship, Mr. Hughes told her that he hated cats, that he was terrified of cats. She says she believes that on one occasion Mr. Hughes asked her to get rid of the cats.

[8] On February 14th, 2005, she testified that she went out with Mr. Hughes to a local hockey game. They came home, after consuming some alcohol. She was drunk. She went to bed. The accused remained up playing video games.

[9] She was awakened by the accused who was calling her name. She came downstairs. The accused told her that he had "flopped" on the couch (which had a faulty leg), that the cat was underneath the couch, and that he had squished the cat. She saw the cat. She said that it was gasping for air. She believed the accused, she accepted his explanation for the injured cat. Later on, when they were no longer in a relationship, she no longer believed that the cat was injured accidentally.

[10] She confirmed that both of them were drinking that night, but could not quantify the amount. She said that when she saw the cat, (page 37 of the transcript of the first day's proceedings at line 20):

I figured it was really bad. She [that is the cat] was taking breaths.

Then she was asked:

Was there any further conversation between you and Mr. Hughes about the cat?

And she said:

Yes. I had said, "What -- what do we do?" He had said, "What do we do?" And I had told him that the only thing I knew to do was to break the cat's neck because there was no vet in town. He -- he was away in France, and I didn't know what else to do about it. I just didn't know.

[11] She then went back to bed. She fell asleep, then heard the sound of a microwave door. She went downstairs. She saw the accused holding the cat outside of the microwave. The microwave door was open. The cat had a weighted strap over top of it.

[12] She says that the accused threw the cat at her, then acknowledged that he was only a foot away. She dropped the cat. She says that the accused told her that he had put weights on the cat to hold it down. She never told the police anything about the weights in her initial statement.

[13] She says the accused put the cat in a bag and threw it away. She threw the microwave away. She says that when she looked at the microwave, she noted that the button for cooking popcorn was on. She recalls that the popcorn is a minute and 30 seconds. She says that there were 36 seconds left to go, suggesting that the microwave had been on for 54 seconds, implying that the cat had been in the microwave for 54 seconds.

[14] Despite these events, she travelled to Calgary with Mr. Hughes the same day.

[15] In cross-examination, she said she told the accused to break the cat's neck because it was suffering, suggesting, in my view, that breaking the cat's neck was designed to end the suffering. She says that she thought the cat was "not going to make it". She says, of some importance, that she asked the accused why he had put the cat into the microwave, and he said that he thought the cat would die faster that way.

[16] With respect to the March 5th, incident, Sara Kons says that she was out drinking. She came home. The accused was on her couch sleeping. She noticed cat fur in the house. The accused told her the cat had ran away. They argued. The accused left because of the argument. She then noted there was blood spattered throughout the residence; in the bathtub, on the carpets, in the stairwell. She confirms that Mr. Hughes was scratched and bleeding. She says she thought the blood on the stairwell belonged to Mr. Hughes.

[17] I pause to say that none of the blood found in the house was analyzed. I have no way of knowing whether the blood belonged to the cat or to Mr. Hughes. Ms. Kons later found the cat in the basement. She says the cat was coughing and sneezing blood. She said that underneath the cat was wet. She said that the cat's eyes were shut, that there appeared to be nail polish on its eyes. She said there were signs of missing fur on the cat. She said that both eyes remained shut until the nail polish was peeled off.

[18] That is not consistent with the evidence of other witnesses.

[19] She testified in cross-examination that the cat, the second cat, did recover. The cat was not taken to a veterinarian. The Fernie vet was in France at the time, and she did not take the cat to Cranbrook, an hour's drive away, to have it treated.

[20] The next witness was Tonya Smith. She testified to the incident on March 5th. She says that she arrived at Sarah Kons' residence with others. She noted blood throughout the house, blood on the walls, droplets on the floor. She says that they were looney-sized, significantly smaller than Ms. Kons had testified. She says she noted nothing upstairs. She looked in the bathtub. Apparently, she did not see the blood that others were referring to as being in the bathtub. She says that when the cat was found downstairs, she noted that there was "only a little blood" on the cat's nose. In cross-examination, she confirmed that the only injury that she observed on the cat was a little blood on it's nose. She says that the cat was purring when she saw it on March 5th.

[21] The next witness was Amanda Race. She testified that she had known the accused since high school. She dealt with him in the early morning hours of March 5th. She went to his residence. She entered without permission. She saw Mr. Hughes sitting on the stairs with a gun in his hands. He pointed the rifle at her when she entered the house. She took it away. They talked. Mr. Hughes told her he had put the second cat in the basement in Ms. Kons residence. She passed that onto others. The cat was located in the basement.

[22] She said that the accused had been drinking. She was not clear how much he had had to drink. She says that Mr. Hughes told her that he had thrown the cat against the wall then put it in the basement. She said that he was mad because Sara was out drinking with her friends.

[23] She says that the accused also told her that the first cat had attacked him on February 14th and that he got mad and put it in the microwave. She says, again of some significance, that she took his gun away from him, because she was afraid he may harm himself.

[24] After dealing with Mr. Hughes, she went to Sara Kons' residence. She saw the cat there. She noted that it was wheezing and coughing up blood, and that it had a bit of glitter on it's eyes.

[25] In cross-examination, Ms. Race admitted that her initial statement to the police failed to mention any conversation that she had with Mr. Hughes about the cat and the microwave. She admitted that when this alleged conversation occurred, she had consumed between 10 and 15 beer. She acknowledges that moments before this conversation occurred Mr. Hughes did not appear to be comprehending what the conversation was about.

[26] She says that Mr. Hughes told her that the cat had attacked him on March 5th, 2005.

[27] The next witness was Alicia Phillips. She talked about the incident on March 5th. She said when she saw the cat at Ms. Kons' residence the cat had nail polish above its eyes. She said that the cat's eyes were open, inconsistent with what Ms. Kons recalls about the cat's eyes being glued shut.

[28] She says that Mr. Hughes told her that the cat had attacked him and he threw it into the basement. She said that she held onto the cat, that the cat was motionless, that the cat just laid in her arms, and that after a couple of days it was her understanding that the cat was fine. She said the cat, when she was dealing with it, did not need any cleaning up.

[29] The next witness was Constable Matchim. He took photographs of the house, of the scene. These photographs did not turn out. He recalled seeing the cat but did not recall any sparkles or glitter on the cat.

[30] The Crown next called Constable Veltmeyer. He testified to a conversation that he had with Mr. Hughes. The conversation was not recorded. It was not recorded properly in his notebook either. He says he is certain that in the course of this conversation, Mr. Hughes said

something about *throw* and *cat*, that those two words were used in the comments made by Mr. Hughes.

[31] I will say this about Constable Veltmeyer's evidence: He was honest, he was candid, he has a poor recollection. I can say nothing more about it. I am putting no weight whatsoever on the statement attributed to Mr. Hughes on that occasion.

[32] On the third day of trial, Mr. Hughes testified in his own defence. With respect to the February 14th incident, he said it did not occur, he was in the United States. Today that alibi was withdrawn.

[33] With respect to the March 5th incident, Mr. Hughes says he was at Sara Kons' residence, that she went out that night, that he stayed behind and watched a hockey game on TV while drinking beer. He said he had a run-in with the cat, that he picked it up to play with it, and that it scratched him. He said that in trying to shake the cat free of him, it came loose, and it bounced off the floor and hit the wall.

[34] He said he got up to get another beer and noticed that there was some blood where the cat was laying. He said he then tried to clean the blood from the cat. He wiped the cat with a cloth and he suspected that the cloth may have had some glitter makeup on it.

[35] He testified that when he learned that Sara was coming home, he put the cat, which was still bleeding, into the basement to avoid any conflict with Ms. Kons. He then says he passed out on the couch. He next recalls Sara Kons and others arriving at the residence.

[36] He confirms there was conflict with Sara that evening, that he went home. He acknowledges pointing a gun at Amanda Race when she attended at his residence. He says he was afraid. He denies having any conversation with her regarding the February 14th incident. He says he did not put the cat into the microwave. He says he picked up the cat on March 5th to have something to sit with while he watched the hockey game.

[37] In cross-examination, he initially denied going to Calgary with Sara Kons on February 14th to get his passport. Later he corrected himself and said that he may have. He acknowledged that it was more humane to break a cat's neck than to put it in a microwave. He agreed that it would be cruel to put a cat in a microwave.

[38] He says that he was playing with the cat when it scratched him, and later on he went upstairs to check on the cat.

[39] Linda Hughes, Mr. Hughes' mother, also testified in Mr. Hughes' defence. She said that they, that is her and her son, were in the United States on February 14th, and that he could not have been involved in the incident described. As mentioned previously, that alibi was withdrawn earlier this morning.

[40] Her cross-examination started on June 1 and continued on July 26th. In that period, something occurred that caused her to backtrack on her alibi. The cross-examination that continued on July 26th started with some relatively innocuous questions as follows: The first question was, "You said you stayed overnight with your son on February 10th?" Her response was, "Well, I believe that's what we did." The second question was, "Your daughter played hockey in the United States during that time period?" And her response was, "I believe my son was with me."

[41] I will say no more about her evidence than this: I reject it entirely. It was evidence designed, in my view, to assist her son. It failed. She overstated the certainty on the dates. It was designed, in my view, expressly to assist her son. It was perhaps wilfully blind from a mother's perspective, but it is of absolutely no assistance to this court.

[42] I also say that in rejecting her evidence, I am mindful that disbelieving her does not necessarily result in me disbelieving her son.

[43] This is a fact-driven case in which the accused has testified. An analysis of these facts necessarily incorporates the Supreme Court of Canada's decision in *R. v. W.(D.)*. It requires me to consider the evidence of the accused. If I believe it or if it leaves me with a reasonable doubt then I must acquit the accused. I will examine that evidence first.

[44] As noted, the evidence of Linda Hughes has been rejected entirely. The effective cross-examination of Linda Hughes results in no weight being given to that evidence. That portion of the defence case is rejected. As mentioned earlier, disbelieving her does not factor into my consideration of her son's evidence.

[45] Mr. Hughes testified that he was with his family in the United States on February 14th, 2005, that he did not put the cat in the microwave, that he did not tell anyone that he did. He says with respect to the second incident on March 5th, that he picked up the cat to watch a hockey game and the cat attacked him. He tried to get the cat off. In trying to shake the cat off, the cat ended up bouncing off the floor and into the wall. Later, when he got up to get another beer, he noticed the cat was bleeding. He made efforts to clean up the cat. Later, he says, "I went upstairs just to check on the cat. I picked it up again, but this time it didn't attack me or scratch at me."

[46] With respect to the evidence of Mr. Hughes, I must say this: I disbelieve him. The evidence of February 14th is not correct. The alibi that he tried to put forward, with the assistance of his family, was wrong. That was acknowledged this morning. His evidence of picking up the cat on the 5th of March, 2005, to watch TV, of petting it, of checking on it later upstairs, after the cat had attacked him, is simply not credible. He dislikes cats. He avoids cats. He would not pick up a cat in the first place. He certainly would not pick up the cat after the cat had attacked him and scratched his arm. I reject his evidence in its entirety.

[47] Having rejected the evidence of Mr. Hughes, finding that it is not accepted and does not raise a reasonable doubt, the next question is has the Crown proven its case? Does the Crown's case stand on its own?

[48] In considering that, I make the following findings of fact:

Count 1

The accused sat on the cat by accident. He injured the cat accidentally. The accused was told by Sara Kons to kill the cat, to break its neck. Both Mr. Hughes and Ms. Kons thought that the cat was dying. The purpose of killing the cat was to end the cat's suffering. The accused did put the cat into the microwave for some period of time. The cat died that evening. The accused told Sara Kons at the time that he thought the cat may die faster in the microwave. I accept that the accused disposed of the cat and that Sara Kons disposed of the microwave. I find as fact that the accused and Sara Kons travelled to Calgary later that day for the purposes of obtaining his passport.

[49] In considering the evidence of Amanda Race and her recollection of the March 5th conversation that she attributes to Mr. Hughes, I find that she is wrong in what she recalls. She

says that she had drunk 10 to 15 beer before talking with Mr. Hughes. She did not tell the police initially that the accused made any comments about the cat and the microwave. She stated that the accused did not appear to comprehend all of the events that night. All of these factors make the reliability of her recollection of the conversation suspect. I do not think she was lying; I think she was mistaken.

COUNT 2

[50] With respect to the March 5th incident, I make the following findings of fact: The accused, Mr. Hughes, injured the cat by throwing it into the wall. The accused did not apply any glitter makeup with any intent to injure or cause pain or suffering to the animal. If it was applied at all, it was done accidentally. If there was any glitter makeup present on the cat, it was a small amount and it did not glue the cat's eyes shut. I accept the evidence of Constable Matchim, Alicia Phillips, and Amanda Race in that regard.

[51] Having made those findings of fact, I must determine whether or not the Crown has proven its case on each of the two counts.

[52] In dealing with Count 1, the February 14th incident, I start with the following proposition: I am satisfied that in most, if not all circumstances, putting a healthy cat into a microwave will amount to causing unnecessary pain and suffering to that animal. I am also mindful of this: In the case at bar, the cat was already seriously injured. The cat was then killed to end its suffering. It was not killed to cause it suffering; it was killed to end its suffering. The accused accidentally injured the cat by sitting on it. He told Sarah Kons this immediately. He did not flee from that situation. He called her. She told him to kill the cat. More precisely, she said:

And I had told him that the only thing I knew to do was to break the cat's neck because there was no vet in town. He was away in France, and I didn't know what else to do about it. I just didn't know.

[53] He then put the cat into the microwave for some period of time, less than a minute. The cat did die. There is no evidence as to the cause of death. There is no evidence that putting the cat out of its misery is better accomplished by breaking its neck than killing it in a microwave.

[54] The annotations in *Martin's Criminal Code*, s. 446, says as follows:

"Unnecessary" in this context means that man in the pursuit of his legitimate purposes is obliged not to inflict pain, suffering or injury which is not inevitable taking into account the purpose sought and the circumstances of the particular case.

[55] The accused told Sara Kons that he thought the cat would die faster in the microwave. In cross-examination two years later, he agreed that it may be more humane to break its neck than to put it in the microwave. It is not clear that he knew that at the time. It is not clear whether or not Mr. Hughes is correct when he says that.

[56] I am left with this. Mr. Hughes was drinking that night. He accidentally injured the cat. He admitted up to it. He called out for Sara Kons. He was told to kill the cat. He chose a method, (arguably not the most humane, but with no evidence supporting that argument) and killed the cat by putting it into the microwave. The purpose of his act was to end the cat's suffering, not to cause suffering.

[57] In my view, on these circumstances, on these facts, I am not satisfied beyond a reasonable doubt that the accused's acts of February 14th were criminal. I am left with a doubt. I find him not guilty on Count 1.

[58] With respect to Count 2, the incident of March 5th, 2005, for reasons that remain entirely unclear to me, Sara Kons again chose to leave the accused alone with her remaining cat. The evidence establishes that the cat was fine when she left and that the cat was injured on her return.

[59] The accused's version of what occurred has been rejected. As said earlier, I do not believe for a moment that he picked up the cat to pet it. He lied to Sara Kons about the location of the cat when Sara Kons returned. The cat was clearly injured, it was bleeding, it was gasping when Sara Kons returned. These injuries to the cat lasted for a couple of days. Fortunately, this cat recovered.

[60] In all of these circumstances, I am satisfied beyond a reasonable doubt that the accused did cause unnecessary pain and suffering to the cat on March 5th, 2005. I find him guilty of Count 2.

(REASONS CONCLUDED)