

## ONTARIO COURT OF JUSTICE

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

**HER MAJESTY THE QUEEN**

**— AND —**

**STEVEN BRENT PAUL MARSHALL**

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Before Justice Brophy  
Heard on 10 January 2013  
Reasons for Judgment released on 11 February 2013

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Brian R. Linley ..... for the Crown  
William S. Mathers ..... for the accused Steven Brent Paul Marshall

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**Brophy J.:**

### INTRODUCTION

[1] Steven Marshall has been charged with eight counts of animal cruelty. The crown proceeded summarily. The trial on these charges took place on 10 January 2013 and the matter was adjourned 28 January 2013 for judgment. Mr. Marshall did not attend court that day and the matter was then adjourned to 11 February 2013 for judgment.

[2] It is alleged that on or about 30 October 2011 in the town of Hanover Mr. Marshall caused unnecessary pain or suffering to a domestic cat, orange and white in colour, by abusing that cat contrary to section 445.1(1)(a) of the criminal code. Two further offences are alleged with respect to that animal, to wit: failing to provide adequate care contrary to section 446(1)(b) and killing the cat contrary to section 445(1)(a).

[3] The same offences are alleged with reference to a black and white cat, with the allegation being that those events occurred on or about 4 November 2011.

[4] Two additional charge are outstanding with reference to an allegation the Mr. Marshall on or about 3 November 2011 physically abused and injured a grey tabby cat, known as

Shana, owned by Randall Thompson, being offences under sections 445.1(a) and 445(1)(a) of the Code.

## LEGISLATION

[5] The relevant sections in the Criminal Code of Canada (emphasis added) are as follows:

*445. (1) Every one commits an offence who, wilfully and without lawful excuse,  
(a) kills, maims, wounds, poisons or injures animals that are not cattle and are kept for a lawful purpose; or  
(b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose.*

*445.1 (1) Every one commits an offence who  
(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;  
(b) in any manner encourages, aids or assists at the fighting or baiting of animals or birds;  
(c) wilfully, without reasonable excuse, administers a poisonous or an injurious drug or substance to a domestic animal or bird or an animal or a bird wild by nature that is kept in captivity or, being the owner of such an animal or a bird, wilfully permits a poisonous or an injurious drug or substance to be administered to it;  
(d) promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or  
(e) being the owner, occupier or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (d).*

*446. (1) Every one commits an offence who  
(a) by wilful neglect causes damage or injury to animals or birds while they are being driven or conveyed; or  
(b) being the owner or the person having the custody or control of a domestic animal or a bird or an animal or a bird wild by nature that is in captivity, abandons it in distress or wilfully neglects or fails to provide suitable and adequate food, water, shelter and care for it.*

## ISSUES

[6] This case involves an assessment of the evidence generally to determine whether or not the crown has proven the case beyond a reasonable doubt. This includes a review of the W.D. criteria. A specific issue is a consideration of the circumstantial evidence and whether the crown has met the burden of proving that there is no other reasonable conclusion than that the accused committed the offences. Embedded in that question is the use that may be made of the evidence from one charge as it relates to another charge.

## FACTS

Dr. Ferguson - Veterinarian

[7] On Thursday, 3 November 2011, Mr. Thompson brought to the Walkerton – Hano-

ver Veterinarian Clinic in Hanover his kitten called Shana. The kitten was seen by Dr. William Ferguson. Dr. Ferguson testified that the cat was nervous and apprehensive, was breathing rapidly and appeared to have sustained a blow to the head. The cat's left eye was bloodshot and that there was a wound under the kitten's tongue and the lower jaw seemed painful especially on the right side. Dr. Ferguson testified that this animal had received some significant trauma to the head which he thought was unlikely to have been self-inflicted.

#### Jolene Comrie - OSPCA

[8] Sometime later that day Jolene Comrie, an agent for the Ontario Society for the Prevention of Cruelty to Animals in the town of Hanover, received some information about problems with some animals in the Randall Thompson apartment that involved Steven Marshall. She attended that apartment at 511 9<sup>th</sup> Street in Hanover. When she got out of her vehicle the first person she saw was Steven Marshall. He was walking behind the apartment building and was carrying a cat wrapped in a towel.

[9] Mr. Marshall told her that the cat was in a towel because he had just given it a bath. He said that he had found the cat the prior evening prior and that someone had run over it on a bike and he took it home. Ms. Comrie examined the cat, which was black and white, and noted that it had a broken tooth, a punctured lip, swelling in its lips and gums and that it was slightly thin. However Ms. Comrie saw no other injuries.

[10] She took photographs of that animal and they were filed as exhibits. The photos confirm that the animal had a broken canine tooth on the right side.

[11] Ms. Comrie asked Mr. Marshall to put the cat in the ground so that she could see how it moved. When the cat was placed on the ground it immediately ran to the back of the property and had no difficulty in doing so. Mr. Marshall went over and picked up the cat and left with the animal.

[12] Ms. Comrie then went into the Randall Thompson apartment, Mr. Thompson having appeared on the scene, and she saw the kitten Shana. She noted that the cat was having trouble breathing, that there was blood on its nostrils and the left eye was bloodshot. Ms. Comrie took photographs of this cat as well. Mr. Thompson advised Ms. Comrie that he had taken the animal to the vet.

[13] Mr. Thompson said that Mr. Marshall had told him that Shana had been injured by some falling boxes in the front hall cupboard while Mr. Thompson was out of the apartment. Apparently this closet was where the animal was ordinarily kept. Ms. Comrie looked in the closet and saw random boxes of books and a golf bag, but that is all.

[14] On the 6<sup>th</sup> of November a message was left with the OSPCA that the black and white cat had died overnight. This was the cat Ms. Comrie had seen 3 November 2011.

[15] Ms. Comrie's next direct involvement was on 7 November 2011. At approximately 11:30 AM Randall Thompson and Dean Pegelo attended at her office. Randall Thompson was very upset and was crying. She was told that the black and white cat was now dead and

that there was possibly another dead cat as well. Mr. Pegelo also said that his cat Shana was dead. He was wrong about this last fact as the subsequent investigation revealed.

[16] It became clear that Randall Thompson and Mr. Pegelo knew where the black and white and orange cat were buried. They agreed to go and retrieve the bodies. At around 12:10 PM they came back with the two dead cats in a bag. Ms. Comrie took the bodies to the Walkerton-Hanover Veterinary Clinic for post-mortem examinations. Dr. Adams did the post-mortems.

[17] As a follow-up Ms. Comrie called the landlord of Randall Thompson to find out what it happened to the cat Shana. She was told that because the cat had been injured and Mr. Thompson was so upset that the landlord had volunteered to take the cat to a farm so that it could live in a barn. She went to that farm to find the cat but was unable to do so.

#### Post-Mortems – Dr. Adams - Veterinarian

[18] Dr. Dennis Adams of the Walkerton-Hanover Veterinary Clinic performed the post-mortems. His evidence is that the first cat was a young orange male domestic shorthair cat approximately 1 to 2 years old. The cat was thin but not emaciated. Dr. Adams estimated that the cat had been buried for approximately one week. The post-mortem revealed that there was extensive subcutaneous and muscular bruising and a haemorrhage of the dorsal skull extending down the cervical region. There was also fracture dislocation of vertebrae at C1 and C2. The right eye of this cat had extreme sub conjunctiva haemorrhage that also appeared on the left side of the face. There was bleeding from both nostrils and the oral cavity had extensive subcutaneous haemorrhage of the upper and lower lips. An internal examination revealed extensive pericardial and pulmonary haemorrhage and fractured ribs on the left side. There was also some generalized abdominal haemorrhage and bruising most specifically around both kidneys.

[19] The second animal was a black and white male domestic shorthair cat approximately 5 years of age in moderate body condition. The time of death was approximately 2 to 3 days previous to the post-mortem. Dr. Adams noted that the upper right canine was fractured. This is consistent with the broken tooth that Ms. Comrie had observed on 3 November 2011. In this animal Dr. Adams noted that both upper lips were swollen with subcutaneous haemorrhaging. There was extensive bruising and haemorrhage sublingually extending to the back of the mouth. The tongue was also similarly affected and there was bleeding from the left nostril. The left eye had severe protruding edematous swelling of the entire dorsal aspect of the skull extending down the cervical region. Again there was a fracture dislocation of the vertebrae at C1 and C2. Haemorrhaging extended down into the shoulder region. There was also pericardial and pulmonary haemorrhage as well as sine blood in the thoracic cavity and muscular haemorrhage in the abdomen. Dr. Adams also noted that this animal had eaten the same day it had died given the state of its stomach contents.

[20] Dr. Adams concluded that with respect to both cats, given the location and severity of the lesions, the cause of death was from trauma to the head and neck region resulting in a fractured spine and concussion. Dr. Adams suggested that the broken vertebrae may have oc-

curred by a person holding the hind legs of the animals and swinging it against a wall, or hitting the animal from the side with a blunt object. However it occurred he concluded that there had been severe trauma from multiple blows. The animals died because of the shock, the bleeding out and the trauma to all of their organs.

[21] Dr. Adams also testified that on 5 November 2011 Randall Thompson had brought into his clinic the kitten Shana that had been previously seen by Dr. Ferguson. He noted that the animal still had some problems breathing and so antibiotics were recommended. There was no radiology work done on this animal by Dr. Adams or by Dr. Ferguson because of financial considerations.

[22] Both Dr. Ferguson and Dr. Adams testified as expert witnesses and no issues were raised with their qualifications as a veterinarian doctors or their ability to testify as experts with respect to veterinarian medicine and no challenge was made to their evidence.

#### Randall Thompson

[23] Randall Thompson testified. He said in 2011 he had been living in Hanover but was now living in London. He went on disability in 1984 and had lived in Hanover since 1996. In the fall of 2011 he lived in a one-bedroom apartment and allowed Steven Marshall to room with him for several months as he was homeless. Steven Marshall stayed in the bedroom and Mr. Thompson slept on the couch. (No explanation was given for that particular arrangement.) He said the only persons living in the apartment at the relevant time was himself and Mr. Marshall.

[24] Randall Thompson said that at the time he had two cats Sylvester, an older mature cat, and Shana, who was about 7 months old. He says that Steven Marshall did not bring any animals with him when he first moved into the apartment.

[25] He said that in early November he had to take Shana to the veterinarian because, in his view, she had been abused by Steven Marshall. His story is that he had stepped out of the apartment for a short time and when he came back Shana had blood all over her. He had found Shana in the storage closet where he had left her, but she now had blood all over her body. He asked Steven Marshall what had happened and Mr. Marshall told him that stuff in the closet must have fallen on the cat. Mr. Thompson says the only things in the closet were cushions, boxes and stuffed animals. Because of the injury he took the cat to the veterinarian.

[26] When he came back to his apartment he called the police and that must have been the source of the information given to Ms. Comrie that caused her to go to the Randall Thompson apartment.

[27] Randall Thompson also testified that Steven Marshall brought home an orange cat at some point in October or November. He was told by Mr. Marshall that a Steven Morris owned the cat and was abusing it and the Steven Marshall had brought it home to remove it from that situation. Randall Thompson said that the orange cat ended up dead the night that Steven Marshall brought it home. He heard Steven Marshall screaming at the cat in the bedroom at around 10 or 11 PM. He did not know what was happening. He said that he begged

Steven Marshall not to hurt the cat. When he complained about what Steven Marshall was doing Mr. Marshall told him to shut up and if he did not Steven Marshall would smash his face in.

[28] Randall Thompson says the next day he found the cat dead by the heater in the bedroom lying on the floor all curled up. Steven Marshall was in the bedroom at the time. He spoke to Steven Marshall about the orange cat, but Mr. Marshall swore up and down he did nothing to the cat. Randall Thompson says that he buried the cat in the backyard.

[29] Randall Thompson said that a few days later Mr. Marshall brought home a black and white cat. He said that he had found it ridden over by someone on a bike and that he beat up the kid who had been riding the bike.

[30] This was the cat that Ms. Comrie saw and photographed.

[31] Mr. Thompson testifies that the same day that Ms. Comrie was at the apartment the black and white cat spent the night in the bedroom with Mr. Marshall and in the morning it too was dead. Steven Marshall said to Mr. Thompson that the only thing he had done was that he tried to put the cat's jaw back in place because the jaw was broken. That was the only explanation given with respect to what had happened to the black and white cat. Randall Thompson buried the black and white cat in the same place as the orange cat, but then went to the OSPCA and spoke to Ms. Comrie and then he went back to his apartment and dug up both cats and brought them to her.

[32] In cross examination Mr. Thompson indicated there was nothing in his storage closet that could have hurt a cat.

### Steven Marshall

[33] Mr. Marshall testified. He said that he has problems with his memory, particularly dates and times. He believes he has been impacted by FAS and has been on ODSP since he was 18. He is a man now in his mid-20s. He did indeed live with Randall Thompson because he had no place else to stay and it was cheap rent. He lived there for a few months.

[34] He remembers the Randall Thompson had an adult cat named Sylvester and that cat stayed in the main room and that the kitten Shana, who was timid, was kept in the hallway.

[35] It is his evidence with respect to the cat Shana that Randall Thompson did go out shopping and he stayed in the apartment smoking a dooby. Shana was in a closet that was fairly big, approximately 4' x 6'. He says that he did nothing to Shana other than trying to coax it out of the closet.

[36] He also agrees that he got an orange cat from Steven Morris. He brought the cat home because it was being mistreated by Mr. Morris. The cat did stay in the bedroom with him but he did not injure it in any way. The worst thing he did was yell because the cat was hissing and scratching at the door. He also says that he threw a pillow at the door because of the cat's behaviours. He also says that he had the cat for a few days, that is to say it did not

die overnight. He does admit that the cat was in his room the whole time as far as he knows. Indeed Mr. Marshall says he kept the door shut to keep the cat away from the older cat Sylvester that was in the apartment. Mr. Marshall says that he did go visiting friends but came back every couple of hours. He says that he came home on one occasion and found the orange cat dead. This was in the midafternoon. He did nothing to the cat.

[37] He agrees as well that he brought home a black and white cat that he had picked up off the road after been hit by a bike. He proudly announced in court that he had beaten up the kid who had ridden the bike.

[38] He agrees that he met with Ms. Comrie as she described. He says that he did not take the black and white cat to the veterinarian as he said he would because he thought it was getting better and he did not have any money anyway. He says that the black and white cat was at his house for two days. He disputes what Mr. Thompson says about him saying that he had adjusted the jaw of the cat. He says that what he said was that he had checked the jaw because it seemed tender.

[39] He also took exception to Mr. Thompson's evidence with reference to what happened when he says Mr. Thompson told him not to hit the cat. His evidence is that in response to Mr. Thompson he said that he was not hitting the cat, just yelling at it. Mr. Marshall then says that what he said was that if Mr. Thompson really thought he was going to hit the cat that perhaps he should go over and hit Mr. Thompson. He said he had this response to Mr. Thompson because he did not like someone saying that he would hurt his own cat.

[40] In sum, he stated categorically that he did not injure any of the cats.

[41] In cross-examination he conceded the black and white cat ended up dead after staying overnight with him but that he assumed the cat died because of internal injuries. He also said that he had a hard time remembering things

[42] He emphasized in cross-examination that he was not always home, with the implication being that there might have been other persons harmed the animals.

[43] In cross he also indicated with respect to the Shana that he was the only one home when the cat was injured, but that his involvement with the cat was when he tried to coax it out of the storage room because he heard boxes shifting. He stated that he could not hurt the cat because he could not reach it.

[44] Mr. Marshall's evidence is consistent with the evidence of Randall Thompson as to the presence in the orange cat and the black and white cat and their deaths. Mr. Thompson does not say that he actually saw Steven Marshall hit or maltreat either of those animals. What he does say is that the animals spent the night in the bedroom with Mr. Marshall and the next morning they were dead. Mr. Marshall says the same thing. Mr. Marshall's point of departure is that he says he did not do anything to harm the animals.

## ANALYSIS

[45] Mr. Thompson was a good witness. He became emotional when he was testifying about the injuries to the animals. He is a man with obvious cognitive limitations. However he functions very well, was clear in his evidence and was not shaken in cross-examination and his story is corroborated by the other witnesses, including for that matter the evidence of Steven Marshall. His evidence is credible and reliable.

[46] Mr. Marshall is a difficult witness because of what appears to be some self-reported problems with his memory as a result of fetal alcohol syndrome. His testimony was delivered in a straightforward fashion that seemed to lack understanding or insight into what had happened. It is also noteworthy that he became defensive with Mr. Thompson when accused of hurting the animals. This defensiveness transferred into threats to punch Mr. Thompson for falsely accusing him and displayed an emotional and immature reaction to what obviously was a traumatic event involving the death of the cat.

[47] I have considered Mr. Marshall's exculpatory evidence in light of the principles in the *R. v. W. (D.)* [1991] S.C.J. No. 26. His evidence is not believable. It is not consistent with the facts that have been proven, he admits to difficulty with his memory and he has demonstrated that he has a bad temper. Simply put I do not believe him. Nor does his evidence leave me with any reasonable doubt when looked at in conjunction with all of the evidence taken as a whole. His story or explanation or statement that he did not hurt the animals is incredible. There is nothing about that evidence that raises a reasonable doubt. That leaves the final question - has the crown proved the case beyond a reasonable doubt on the totality of the evidence?

[48] The charges against Steven Marshall depend upon circumstantial evidence. A conviction based on circumstantial evidence requires the trier of fact to be satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts. See *R. v. John* (1970), 2 C.C.C. (2d) 157 (S.C.C.) 166 and *R. v. Cooper* (1977), 34 C.C.C. (2d) 18 (S.C.C.).

[49] Circumstantial evidence is to be considered in context, not in isolation. The strength of the inference to be drawn from an item of circumstantial evidence depends upon its relationship to the rest of the evidence. See *R. v. White* (1996), 108 C.C.C. (3d) 1 (Ont.C.A.) and *R. v. Uhrig*, 2012 ONCA 470.

[50] In this case it is clear that the orange cat and the black and white cat were in Mr. Marshall's room when they died. There was no opportunity for anyone else to interfere with the animals and the animals were relatively healthy before they spent the night in Mr. Marshall's room.

[51] There is nothing in the evidence to suggest that the orange cat had been injured in any significant way prior to Mr. Marshall bringing it home. With respect to the black and white cat, Mr. Marshall reports that the animal was run over by a bicyclist. However Ms. Comrie saw the cat in the afternoon and, save and except a punctured lip, a broken tooth and swollen gums, it did not appear to be injured. Indeed when put on the ground it moved properly and with no visible difficulties.



[52] The post-mortem evidence is that the animals had been bludgeoned to death. The extent of the injuries and their broken necks speak to a high level of violence.

[53] We also have the evidence of Randall Thompson that Steven Marshall was upset with at least the orange cat and there is the evidence of Steven Marshall that he was screaming at the orange cat and was throwing things.

[54] There is also the similarity of the injuries, especially the broken necks. This is a form of similar fact evidence, but the acts are virtually the same and they add to the strength of the inference that they were done by the same person. This makes it even more unlikely that it could be anyone other than Steven Marshall as there was no one else identified as having access to the apartment once, let alone twice. There simply was no one else around, other than Randall Thompson, who had any opportunity to inflict the injuries.

[55] There is no evidence that suggests that Randall Thompson committed these acts. Indeed there is the evidence of Steven Marshall that the animals were kept in his room where they expired. Moreover Mr. Thompson's actions and demeanour throughout indicates how upset and horrified he was by what had happened.

[56] In my view it is absolutely clear that Steven Marshall inflicted harm on these animals causing their deaths when they were in his room. His lack of memory about having caused the harm may be a result of memory loss with respect to a traumatic incident or it may be purposeful. What role fetal alcohol syndrome played cannot be determined. But what can be concluded is that on the basis of the circumstantial evidence there is no other reasonable inference that can be drawn other than that Steven Marshall brutalized and killed these two cats.

[57] The evidence with respect to the cat Shana requires further analysis.

[58] I have considered what use I can make of my findings with respect to the orange and black and white cat in deciding the charges as they relate to the cat Shana. This is not a case where the classic similar act dictum applies. Similar act evidence concerns typically arise when previous convictions are presented to point the finger at an accused. See *R. v. Johnson* 2010 ONCA 646. That is not the case here.

[59] Instead it is necessary to look at this incident alongside all of the other evidence in the case. See *R. v. Roks* [2011] O.J. No. 3344. The facts need to be looked at as a whole. In other words the court is not taking convictions or facts from unrelated matters and drawing conclusions from them, but rather there is an assessment of the total set of facts that are in play in this set of charges, all of which are closely related in time and allegation.

[60] The evidence of the two veterinarians and Ms. Comrie confirm that the cat had been hurt in a significant way. Is it possible that items in the closet had simply fallen on Shana and caused her injuries? The cat was in a closet where there were some things that could have fallen on it. Ms. Comrie says that there were some boxes of books and a golf bag in the closet. Mr. Thompson says there was nothing in the closet that could have injured the cat. Dr. Ferguson says that the injuries looked like a blow to the head. It is difficult to see how any of

these things falling on the cat would have caused the injuries that have been described.

[61] Mr. Marshall was alone with the Shana. There was no one else who had an opportunity to cause it any harm. The injuries seem more than what would happen from simply a box falling on the cat. The injury is described as a blow to the head. This is consistent in kind, if not degree, with the blows that were inflicted on the other animals. There is the evidence of Mr. Marshall interacting with the animal and there is his obvious animus towards animals that were in his care.

[62] Taken as a whole the evidence satisfies me that the only reasonable inference that can be drawn is that the injuries to Shana were caused by Mr. Marshall.

## CONCLUSION

[63] Mr. Marshall killed the orange cat and the black and white cat in a cruel and vicious manner contrary to section 445(1)(a) of the Code. He also caused unnecessary pain or suffering to those animals by abusing them contrary to section 445.1(1) (a) of the criminal code. Finally he failed to provide adequate care for those animals contrary to section 446(1)(b).

[64] It is also the finding of this court that Mr. Marshall physically abused and injured a grey tabby cat, this being the cat known as Shana owned by Mr. Thompson, being offences under sections 445.1(1)(a) and 445(1)(a) of the Code.

[65] For all of these reasons, in my view the Crown has proven all of the charges beyond a reasonable doubt and there will be findings of guilt on all counts.

[66] I need to hear from counsel about any Kineapple issues.

**Released: 11 February 2013**

Signed: “Justice Brophy”