

Case Name:
R. v. Helfer

Between
Her Majesty the Queen, and
Steven Helfer

[2014] O.J. No. 2984

Ontario Court of Justice

A. Alder J.

June 19, 2014.

(94 paras.)

1 A. ALDER J.:-- On December 13th, 2013, Mr. Steven Helfer pled guilty to one count of criminal harassment contrary to Section 264(3) of the Criminal Code of Canada, two counts of assault with a weapon, contrary to Section 267(a) of the Criminal Code of Canada, and one count of maiming a dog, contrary to Section 445(2) of the Criminal Code of Canada. The Crown elected to proceed by indictment.

2 At the time of the plea, an assessment order was made pursuant to Section 21 of the Mental Health Act and the matter adjourned for a Gardiner Hearing in respect of certain disputed facts. The Crown subsequently abandoned its application for the Gardiner Hearing.

3 On February 14, 2014, Mr. Helfer entered a plea of guilty to one count of break and enter, contrary to Section 348(1) (b) of the Criminal Code of Canada.

The Facts:

4 The first set of charges stem from an incident that occurred on October 16th 2013.

5 On that day, at approximately 12:30 p.m., the police were called to 228 Barclay Road in regards to reports that a man was beating a dog with a shovel.

6 Police attended and found a badly beaten dog in a dumpster near the townhouse complex. The dog named Breezy belonged to the accused.

7 Investigation revealed that earlier that day there had been an argument between Mr. Helfer and his mother wherein police had attended, and Mr. Helfer was removed from the premises.

8 Mr. Helfer had been living with his mother, Ms. Lacroix, at 228 Barclay Road, but Ms. Lacroix had moved out in July of 2013, and had returned that day.

9 When Ms. Lacroix returned to the residence to retrieve her belongings, she was accompanied by her daughter, Ashley Helfer, her boyfriend, Pierre Laurin, and a friend. Mr. Helfer and Ms. Lacroix began to argue at approximately 10:15 a.m., and were overheard by a neighbour. According to Ms. Lacroix, Mr. Helfer was throwing things around the unit and damaging her property. It is at this point that police were called, attended, and removed Mr. Helfer from the unit.

10 As Ms. Lacroix was packing the remainder of her belongings, Mr. Helfer returned to the residence, demanding to be let in, and saying that he wanted Breezy. Ms. Lacroix had given Breezy to him as a Christmas present. Ms. Lacroix told him that she would not let him in until the police were present. Mr. Helfer banged on and kicked the door to be let in.

11 Mr. Helfer entered the house and took Breezy. He then left the house. Two of the occupants of the house then left in a car. As they drove away, Mr. Helfer yelled at them: "I know where you live" and "this is my hood, MP!", as well as making noises to mimic the sound of gunshots.

12 The two individuals then returned and entered the residence and a few minutes later Mr. Helfer was observed kicking and pounding at the basement door, again demanding to be let in.

13 When Ms. Lacroix did not open the door, Mr. Helfer took Breezy to the front yard, where he was observed pulling Breezy by her leash. Breezy was crying.

14 Mr. Helfer then kicked Breezy against a plywood shack in the front lawn. He kicked her three to four times, and lifted Breezy up by the chain around her neck. Breezy was observed to be yelping and crying.

15 A neighbour then observed Mr. Helfer pick up a rake, and hit Breezy on the head; approximately three to four times.

16 The neighbour, Ms. Misko, then opened her door and yelled at Helfer to stop beating Breezy. She could hear other people yelling at him to stop as well, although she could not see them.

17 Mr. Helfer turned to Ms. Misko and waved the rake at her, telling her to "Stay back, you stay the fuck back."

18 Observers then saw Mr. Helfer pick up a long-handled metal shovel and advance toward Breezy. He struck Breezy repeatedly with the wide metal end of the shovel - Ms. Misko described him as hitting Breezy "over and over", meaning more than the three to four times he had kicked her, and hit her with the rake.

19 Observers stated that Breezy tried to get to her feet, but every time she tried, Mr. Helfer would hit her in the head and body with the shovel, until eventually she lay on the ground; motionless, and covered in blood.

20 Mr. Helfer then left the yard, returning moments later with a wheelbarrow. Mr. Helfer took off his shirt, put Breezy in the wheelbarrow, and then put his shirt on top of her. Mr. Helfer then left the yard with Breezy's body in the wheelbarrow.

21 Other neighbours had also come out of their houses when they heard Breezy yelping. They confronted Mr. Helfer as he was beating Breezy. When he placed Breezy in the wheelbarrow, they ran after him, telling him to stop. He did not listen. They saw him bring the wheelbarrow to a nearby dumpster, and saw him pick Breezy up and throw her inside the dumpster. This is where police found her.

22 Mr. Helfer then waved a rake at both the women, and told them to "Stay the fuck back. Don't come near me" and he ran off.

23 After Mr. Helfer ran off, one neighbour climbed into the dumpster to check on Breezy. She saw that Breezy was still breathing, but not moving, and bleeding badly. She stayed with Breezy until the police and Humane Society agents arrived.

24 Mr. Helfer was found by police on nearby St. Laurent Blvd. The officer could see blood on his jeans, and later found a blood-soaked red t-shirt in his backpack.

25 Breezy was transported to the veterinary hospital with life-threatening injuries. The Veterinarian report notes that the dog was in shock, and pain, when she arrived. Some of the injuries listed included: traumatic wounds to the right side of the face, deep lacerations, muscles and nerves visible, heart sounds muffled, respiratory sounds absent on one side, gashes in mouth and muzzle and right eye extensively damaged. It was also admitted that Mr. Helfer had previously abused Breezy by hitting and kicking her.

26 In regards to the break and enter offence. Sometime between the 9th of August and the 11th August 2013, Mr. Helfer broke into a residence and a number of items were stolen, totalling a loss of \$11,233.00. The house was for sale at the time, and the owners were not present. Mr. Helfer was identified through a DNA match - blood was found at the scene. A number of items were later found at Howard's Buy & Sell Pawn Shop.

The Parties Position:

27 The Crown submits a total sentence in the range of 4 years would be appropriate, suggesting 1 year for the Break and Enter, and 3 years for the offences relating to October 16th, 2014, which have been referred to throughout these proceedings, by both counsel, as 'The Breezy Incident'.

28 Defence counsel submits a total sentence of 9 to 12 months, plus lengthy probation would be appropriate; suggesting 6 months for the offences related to the Breezy Incident, and 3 to 4 months for the break and enter.

29 Both counsels agree that credit should be given for pre-trial custody. Exhibits:

30 A number of materials were filed by the crown as exhibits in these proceedings. * Media Reports and Petition:

31 These include a November 1st, 2013 Sun newspaper article, referring to an increase in reported cases of animal cruelty in Ottawa, a petition requesting that the Crown Attorney proceed by indictment in this case, and ask for the maximum penalty and requesting that this court impose the maximum sentence, and prohibit Mr. Helfer from owning, having the custody or control of, or residing in the same premises as an animal or a bird for life; as well as related documents pertaining to the petition, and a number of media articles covering the Breezy Incident.

32 The crown submitted that these exhibits; #1 to 6, demonstrate a wide spread sentiment held by Canadians consistent with the reasoning in Hansard supporting the change in the law pertaining to

animal abuse and cruelty, which in 2008 created a hybrid offence, which raised the maximum sentence from six months to five years.

33 It is important to note that these exhibits were admitted for a very narrow purpose, as their relevance is minimal. While they are indicative of the community's shock and horror with this incident, which may be a relevant factor to consider in sentencing, their relevancy ends there.

34 A petition whose purpose is to tell a court what sentence to impose, regardless of its popularity, has no place in a Canadian Courtroom. While individuals have the right and freedom to express their opinion and sign such petitions, the courts cannot be influenced by them. Sentencing is an individualized process, which requires consideration of a number of factors, principles, and objectives. Our system is not to be influenced by such public opinion, or outcry. Our system safeguards an individual's rights, and to bow to public pressure or opinion would diminish the integrity of our system, and jeopardize the core principles and rights protecting and valued by our court system. To allow such petitions to influence this court would bring the administration of justice in this country into disrepute.

Victim Impact Statements:

35 Also filed by the Crown was a letter from Ms. Lacroix's doctor, expressing concerns for her mental health if she were to be involved in her son's court case. As a result, the crown filed a statement written by the police investigator in this case, Det. Kerr, which refers to statements made to her by Ms. Lacroix, with the understanding that they would be presented to the court.

36 Ms. Lacroix told the officer how the incident took about 15 minutes, but how in that time she saw her sons' whole life relived and seemingly lost; from a smiling little boy full of promise, to a son who had clearly done wrong. She said she could not explain why he did it, yet at the same time expressed feeling partly responsible for his actions. She also spoke of her love and hope for her son.

37 The OSPCA agent, Lynne Hammond, also filed a victim impact statement. She wrote of the emotions she felt that day, of her questioning why she continued in her career; as it all seemed useless. She described how she cried uncontrollably when she got home that evening, and how she still re-lives that day; the sights, smells and sounds.

38 Also filed was a statement of the cost associated with the treatment and boarding of Breezy. Together they totalled \$11,025.64. Donations to a fund set up for Breezy more than covered this amount. Also filed was an update on Breezy's condition. She was adopted on March 11, 2014. She will require ongoing medical care for her eye, and a determination will be made whether the eye needs to be removed. She does not see from that eye. She is, however, said to be doing well in her new home, and is calm, but also playful and affectionate.

39 In regards to the break and enter offence, a victim impact statement was filed by Ms. Gesnot on behalf of herself and her family. She spoke of sleepless nights, of a loss of security, of concerns for the safety and security of her children. She also spoke of being worried every time they leave home; that they will return to find their home has been broken into and finally, of a general loss of trust in people. She noted the financial cost to her family was the \$1,000.00 deductible; the rest was covered by insurance.

Section 21 Report:

40 The Section 21 report was prepared by Dr. Ward of the Royal Ottawa Health Care Group.

41 In regards to the Breezy incident, Mr. Helfer told Doctor Ward he first kicked the dog because his mother told him not to, and then that he "freaked out." He said he messed up.

42 The report Provides some background information about Mr. Helfer. Both the court and Dr. Ward also had the benefit of being provided with three prior pre-sentence reports, two when Mr. Helfer was a youth, and one from 2009 when he was an adult. They provided background information about Mr. Helfer. He is 24 years old. His parents separated when he was 2 years old and CAS became involved when he was 3 years old.

43 He moved back and forth from his mothers' and foster care, and in 2001 became a crown ward. His mother had issues with alcohol. At the age of 16, he returned to live with his mother.

44 In 2002 he was referred for a psycho educational assessment and diagnosed with Attention Deficit Disorder, and treated with medication. He was given a diagnosis of Learning Disabilities.

45 In 2007 he had another psychological assessment. His full scale IQ was 76, which is in the borderline category, and working memory and processing were extremely low.

46 In regards to employment, he has had odd jobs; the longest being 3 months. He said he had trouble fitting in with groups at work, so he would quit.

47 When asked about family relationships, he denied recent increased conflict with his mother. He said he has a slight relationship over the phone with his half-brother, who is in a halfway house, and has little, if any, relationship with his younger sister. His father passed away when he was 19 years old; he expressed anger because he was in jail when his father died.

48 In regards to substance abuse, no issues were reported in regards to alcohol. Mr Helfer did report smoking marihuana daily; no issues with other drugs, except a past problem with codeine.

49 When asked about his temper, he said that 'half the time I walk away', but at the time of the Breezy incident, he was angry about having been left alone all summer to take care of the house and felt overwhelmed; that is why he was more angry and argumentative with his mother.

50 Dr. Ward administered the Hare Psychopathy Checklist to provide an objective measure of future risk. Mr. Helfer's score was 20/40; which she describes as a moderate score, which puts him at the 40th percentile compared to other adult male offenders.

51 Her diagnosis are as follows:

1. AMID: results in difficulty coping, impulsivity, and low frustration tolerance
2. Learning Disorder and Deficits in terms of problem solving, reasoning and working memory: These, in combination with his AMID, result in impairment in executive functioning and also likely in social areas.
3. Cannabis Abuse
4. Antisocial Personality Disorder

52 In conclusion, her opinion and recommendations are that Mr. Helfer's actions in beating his dog appear to have been the result of an overwhelming aggressive impulse, during which he was enraged, and took out his frustration on the closest "object" at hand. She notes that this is indicative of a significant failure of empathy, however, finds that it does not appear Mr. Helfer lacks empathy

overall for animals and other people. She does note, however, that it is concerning that this violent act is part of a pattern of previous violent acts.

53 She states that, in her opinion, Mr. Helfer has been quite marginalized, has difficulty maintaining healthy relationships, and in day to day functioning. She notes his strengths as his willingness to work, and his ability to feel an attachment to some individuals; including his grandmother, father and to a lesser extent, his mother.

54 She recommends treatment for his ADHD, and anger management, and notes it is important that he have adequate support and supervision once released from custody.

Criminal Record:

55 Also filed with the court was Mr. Helfer's criminal record.

56 As a young person, Mr. Helfer has 21 convictions from 2004 to 2008; 15 of which are for failure to comply. One for break and enter, two for simple assault, one for assault with a weapon, and the others for mischief, possession of stolen property, and drug possession. His sentences ranged from probation, C.S.O., deferred custody, to short custodial sentences.

57 His only adult conviction was in 2009 for one count of forcible confinement; he received a sentence of 53 days and 12 months probation.

Mr. Helfer's Comments:

58 When asked if he wished to say anything, Mr. Helfer apologized to the people impacted by his actions. He was clearly upset and emotional when he spoke, and apologized. He had also expressed remorse during a previous court appearance; saying he was sorry.

Pre-Trial Custody:

59 Mr. Helfer has been in protective custody since his arrest on October 16th, 2013, for a total of 246 days of pre-trial custody.

60 He has been the subject of threats from individuals because of this incident, some of which are quite violent and disturbing. The Crown referred to the sticks and stones adage, however, by making these comments some individuals have committed criminal offences, and such comments do nothing but fuel more anger and do not serve any useful purpose.

Case Law:

61 Both counsel, in their submissions, referred to a number of cases. I do not intend to review them in any detail.

62 The Crown provided a number of stark horror cases, which I do not consider applicable in this case.

63 The Crown also provided excerpts from the Parliamentary Debates concerning Bill C-50, the act to amend the Criminal Code relating to the cruelty of animals, which resulted in the legislative amendments in 2008 increasing the maximum sentence, and creating a hybrid offence. The excerpts note that "the overarching objective of this legislation is to have the justice system treat animal cruelty offences more seriously, which is consistent with society's moral condemnation of the abuse and neglect of animals." They also speak of the correlation between acts of animal cruelty, and other forms of criminality.

64 The Crown also provided Court of Appeal decisions that stand for the proposition that when Parliament chooses to increase the maximum penalty for an offence, the court must respond accordingly, and this includes an increase in the typical sentence. As noted, the maximum penalty for animal cruelty offences went from 6 months to 18 months if the crown election is summarily and added the option of electing by indictment with a 5-year maximum.

65 As sentencing is an individualized process, most cases can be distinguished on their facts.

66 Cases, however, may be useful in providing guidance as to the importance of the various principles and objectives of sentencing for specific offences.

67 In regards to animal cruelty, the cases provided by counsel emphasize that these offences violate one of the basic tenets of our society, and are considered by most to be morally reprehensible. Denunciation and deterrence must be emphasized. The cases also recognize that more severe penalties must be imposed given the 2008 legislative changes.

68 I have reviewed the animal cruelty cases provided and the range of custodial sentences imposed is between 30 days and 9 months. In all cases, the Crown's election was summarily.

69 In regards to the cases relating to criminal harassment - they again illustrate that a wide range of sentence is available, and the particular circumstances of the offence and the offender will determine the appropriate sentence.

The Appropriate Sentence:

70 In determining the appropriate sentence for these offences, the Court must take into account the purpose of sentencing, and the principles and objectives outlining in Section 718, 718.1 and 718.2 of the Criminal Code.

71 These include that the sentence be proportionate to the gravity of the offence, and the degree of responsibility of the offender; that it denounce unlawful conduct, deter the offender and others, assist in rehabilitation, promote a sense of responsibility, acknowledge the harm done, and reflect both the aggravating and mitigating factors.

72 The Court must balance these principles and objectives, while being mindful that the weight to be given to them may vary in certain cases and circumstances, and that in some cases they may be at odds with one another.

73 While the principle of totality of sentence is relevant in this case, I will deal with the break and enter separately from the offences stemming from the Breezy incident, as it is quite distinct.

74 In regards to that offence, what is aggravating is that it is a break and enter into a dwelling house where a substantial amount of property is stolen.

75 Also aggravating is the impact on the victims, and the fact Mr. Helfer has a prior youth conviction for break and enter. Mitigating factors include his plea of guilty, his age and his background.

76 Deterrence and denunciation are of paramount importance. A person has the right to feel safe in their home.

77 That sense of security is broken when someone breaks in, goes through individual's personal belongings, and takes their property. This is a serious offence that requires a custodial sentence. In all the circumstances I find a sentence in the range of 6 months would be appropriate for the break

and enter, however in considering the principle of totality of sentence , the sentence on the break and enter will be 4 mths consecutive to the sentences I will be imposing for the other offences.

78 Turning to what is the appropriate sentence for the offences of October 16th, 2013.

79 Aggravating factors include:

- * The particular circumstances surrounding the commission of these offences. All four offences occurred in the context of a harassment scenario, with Mr Helfer's mother being the victim.
- * Mr Helfer's harassment of his mother and inappropriate behaviour began earlier in the day and despite the police attending the residence and giving him the opportunity to leave without charges, he chose to return - angry, upset, and violent and turn his anger towards his dog.
- * The extreme degree of violence and brutality exhibited by Mr. Helfer on the dog - it involved repeated blows with a shovel, and a rake, as well as kicks, which continued until the dog no longer, moved. The injuries were life threatening and there is no doubt the dog was in severe pain.
- * The fact Mr. Helfer then put the dog in a wheelbarrow and dumped her in a garbage dumpster.
- * The fact this is a type of breach of trust. Mr Helfer was Breezy's owner; when one chooses to be a pet owner, one assume at the very least some basic responsibilities to that animal.
- * The fact that this was a senseless attack committed purely out of anger towards his mother.
- * His response including the assault and threats to those who attempted to intervene and stop the attack on the dog.
- * And his prior criminal record; particularly the convictions for violent offences;

80 There are also a number of mitigating factors including:

- * The pleas of guilty;
- * That he has expressed remorse for his actions;
- * That he cooperated with the section 21 assessment, although he may have attempted to minimize somewhat.
- * That he is a youthful offender;
- * That there is only one prior adult conviction on his criminal record which stems from a 2008 incident; and there is therefore a five year gap;
- * That he has had a very difficult childhood - background.
- * That he has untreated AMID, learning disabilities, and deficits in terms of problem solving, reasoning and working memory;
- * That Dr. Ward does not believe that overall he lacks empathy, and believes he is capable of feeling attachments to some individuals; and
- * That Dr. Ward also believed the attack on the dog was the result of an overwhelming aggressive impulse. Although this is not necessarily mitigating, it suggests that Mr Helfer is not an individual who takes pleasure in planning and torturing animals which would have been aggravating and of grave concern to the

court as the risk of reoffending would have been greater and likely less manageable.

81 It is important to remember that this is not only about an attack on a dog, it is about a mother who was terrorized by her son, and about neighbours who witnessing the brutality displayed by the accused tried to intervene, only to themselves be assaulted and become victims.

82 This is not to say that what Mr. Heifer did to his dog is not serious. His actions towards Breezy are deplorable, barbaric and cruel. It is difficult to imagine how a person could repeatedly hit a defenceless dog - their own pet - despite its cries and then callously dump it in a dumpster. A dog is not garbage, it is not an object, yet as Dr. Ward's report noted, for Mr. Heifer it was at that moment simply an object upon which he violently unleashed his anger.

83 This type of behaviour must be denounced. When parliament enacted the changes to the Criminal Code provisions respecting animal cruelty, they did so to reflect our society's view towards animal abuse and cruelty. Those who inflict pain on animals, those who are deliberately brutal towards animals will face harsher sentences than in the past, as our society considers this behaviour morally reprehensible and the courts must attempt to denounce and deter this behaviour.

84 However, the court must not lose sight of the other principles of sentencing applicable in this case, nor of the mitigating factors.

85 Mr. Heifer is young; he has plead guilty, has expressed remorse, has only one adult conviction on his criminal record, and has a five-year gap between that entry and these offences. He is a young man who has faced many obstacles and challenges in his life, it has not been easy, and he has been marginalized. As Dr. Ward reports, his executive functioning is impaired. She also notes however that he is capable of demonstrating empathy although clearly not on the day of these offences.

86 While these factors do not excuse Mr. Heifer's actions, they do somewhat diminish his moral blameworthiness and suggest that rehabilitation is an important consideration in this sentence.

87 In all the circumstances I have concluded that the appropriate sentence for the Section 445(2) offence - maiming the dog, is 2 years. For the harassment offence the sentence is 6 months and for each of the assault with a weapon offences, 3 months. As these offences are all closely related, and taking into consideration the principle of totality, the 6-month and 3-month sentences are to be concurrent to the sentence for the section 445(2) offence.

88 As noted, Mr. Heifer has 246 days pre-trial custody for which I will give him credit at 1.5 for 1 for a total of 369 days.

89 Therefore, the 2-year sentence on the Section 445(2) will be a sentence of 361 days as of today, and the record will reflect the pre-trial custody. The 4 months sentence on the break and enter charge will be consecutive. The custodial portion of the sentences will be followed by a three-year term of probation, with the following conditions:

STATUTORY CONDITIONS:

- * Keep the peace and be of good behaviour
- * Appear before the court if and when required to do so
- * Notify the court or your probation officer in advance of any change of name, employment, occupation or address

OTHER CONDITIONS:

- * REPORT in person within 2 working days of your release from custody to a probation officer and be under the supervision of a Probation Officer or a person authorized by the Probation Officer to assist in your supervision and report at such times and places as that person may require you to do so
- * RESIDE only at an address approved by the probation officer,
- * Not ASSOCIATE or COMMUNICATE directly or indirectly with: Amanda Misko, Myrna McNab, Ms. Gesnot or any member of their family.
- * Not ASSOCIATE or COMMUNICATE directly or indirectly with Rachel Lacroix except with her consent, which can be revoked at any time.
- * As directed by your Probation Officer, attend for any assessment, therapy, treatment and/or counselling and/or any program with respect to: any area deemed appropriate by your probation officer
- * Sign any form(s) required by your Probation Officer to monitor your attendance and/or progress at any such assessment or counselling or therapy sessions.

90 In addition, there will be an order pursuant to Section 447.1(1) of the Criminal Code prohibiting Mr. Helfer from owning, having the custody or control of, or residing in the same premises as an animal or a bird for a period of 25 years. The Crown had requested a lifetime prohibition. However in light of the opinions and recommendations contained in the section 21 report and Mr Helfer's young age , I am satisfied that a 25 yrs prohibition is appropriate both in regards to risk management and as a punitive provision.

91 There will also be an order that Mr. Helfer provide forthwith a sample of his DNA and the criminal harassment conviction carries a mandatory section 109 weapons prohibition for 10 years.

92 There will also be a section 738 order of restitution for \$1,000.00 payable to Mrs Gesnot.

93 In light of the fact that donations more than covered the costs associated to Breezy's care there will be no restitution for those costs.

94 In regards to the victim fine surcharge - I will give Mr. Helfer 30 months to pay as he will remain in custody for some time and will have no source of income.

A. ADLER