

**File No: 84108-1, 84108-2-A
Registry: Kamloops**

In the Provincial Court of British Columbia

REGINA

v.

RUSSELL ALLEN FOLK

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE HARRISON**

COPY

Crown Counsel:

A. Janse

Defence Counsel:

J. Gnitt

Place of Hearing:

Kamloops, B.C.

Date of Judgment:

November 21, 2008

[1] THE COURT: Russell Allen Folk is charged that on or about the 10th day of December, 2007, at or near Kamloops in the Province of British Columbia, he did wilfully and without lawful excuse kill a dog, the property of Donald Mayer, that was kept for a lawful purpose, contrary to s. 445(5)(a) of the **Criminal Code**.

[2] At trial, Mr. Gnitt, counsel on behalf of Mr. Folk, admitted all but one of the essential elements of the offence, specifically that Mr. Folk, on the date alleged, wilfully killed the dog owned and lawfully kept by Mr. Mayer. What Mr. Folk does not admit is that he did so without lawful excuse. That is the single issue in this case.

[3] The law requires that the burden of proof in any criminal case lies upon the Crown. That burden does not shift. There is no burden upon Mr. Folk to prove anything. Unless the Crown has proven all the essential elements of the offence and proven those elements beyond a reasonable doubt, Mr. Folk is entitled to be acquitted.

[4] Most of the evidence heard in this case was not in dispute. The dog, a Catahoula Leopard Hound named Bruno, had been purchased as a puppy by Donald Mayer in the spring of 2007 for his daughter, Lauren, a high school student. In December of 2007. Bruno was about eight months old, not yet

full grown, and was described as a mid-sized dog by Ms. Mayer. Ms. Mayer said that Bruno was a good dog who was energetic and hyper, but who was not aggressive. He had never bitten anyone, she said.

[5] Ms. Mayer gave evidence that she lived in her family home with her father and her older sister. The accused, Mr. Folk, lives across the street and one house down from the Mayer house. When the family members went out, the dog was left in the back yard.

[6] The yard was surrounded by a fence. Bruno was tethered by a chain and lead to a tree which allowed him to traverse most of the back yard. While tethered, he could reach his kennel, the back door to the house, and up to a latched garden gate near the driveway at the back of the house.

[7] The garden gate was set in a waist-high fence along the north side of the back yard and this allowed access between the driveway and the back yard. The driveway extended along the north length of the property and led from the street through the carport to the area behind the house and the gate.

[8] On December 10th, Ms. Mayer left the house for school after securing the dog to his tether. The gate was closed when she left. When she returned home at about 4:30, she and

her mother found the dog dead in his kennel still tethered, the gate closed. Given the amount of blood at the scene, they believed he had been stabbed as the necropsy later confirmed. They called the police.

[9] Scene examination demonstrated footwear tracks in fresh snow proceeding from the street, up the driveway, and along the footpath to the front door. The tracks then returned to the driveway, passed through the carport, and into the area behind the house and up to the garden gate. Whether the tracks went into the back yard was not ascertained before the scene was disturbed.

[10] There was a good deal of concentrated blood spatter in the snow in front of the kennel in a generally straight line extending out perhaps 10 feet from the kennel. There was no blood in the area of the gate, save possibly for a smear on the top of the gate itself. No blood samples were analyzed.

[11] A necropsy was performed by Dr. Lewis, a Kamloops veterinarian, whose report was admitted without need of calling the doctor. No weight or height was provided for the dog in the report. The necropsy determined that the dog had received six wounds on the left side, mostly in the chest and neck area, main of them deep and penetrating.

[12] The placement of the wounds suggested that the dog had been struck from low down or slightly underneath on the left side. Dr. Lewis concluded that from the depth of these wounds and the fact that a bone had been cut cleanly with a single blow indicated a large amount of force had been used in inflicting these injuries.

[13] The doctor was of the view that death had been caused either as a result of the bleeding or as a result of asphyxiation due to pneumothorax. Dr. Lewis commented on behaviours which may have been exhibited by the dog at the time the injuries were received, but I consider this opinion speculative and I have not taken it into account.

[14] Ms. Jessica Ten Veen gave evidence. She was a neighbour who shared a property line with the Mayers. She was home that day and said that, at about 4:30 p.m. she heard what she described as a dog screaming. It was a distressing sound and she came outside to see if it was one of her dogs. It was not. She called Bruno's name, but received no response. She described the screaming as a sound of distress which lasted about 10 or 15 seconds. She saw and heard nothing further.

[15] She described Bruno as being like all the dogs in the neighbourhood. The dogs barked. They could be noisy at times for brief periods. Ms. Ten Veen also said that she had had

dealings with Mr. Folk a couple of years previously when he had come to her front door to express concern regarding the barking of her dogs.

[16] The accused, Russell Folk, gave evidence. He testified that he is 31 years of age, single, and lives at home with his parents. He was employed at the time of these events at a veneer mill in Kamloops. He received his GED grade 12 at Westside Secondary School in Kamloops in a special education class. He said that he has a learning disability. He said that he was diagnosed with attention deficit disorder 15 years ago and had been prescribed Ritalin.

[17] Mr. Folk is of a husky build and suffers from no physical disorders or disabilities. He appeared to face no challenge in fully understanding and responding to questions either in direct or cross-examination.

[18] Mr. Folk said that he woke up on the morning of December 10th to the sound of dogs barking. He said that the Mayers' dog was barking in a really loud and frantic way. It went on for several hours without stopping.

[19] In spite of the cold weather, Mr. Folk decided to go for a hike in the Red Lake area near Kamloops for three or three-and-a-half hours as he was frequently accustomed to do. He

took with him a bottle of water and his hunting knife, the latter for protection against bears and cougars, he said. It was a one-piece knife with a five-inch blade which he carried in a sheath on his belt on the right side of his hip.

[20] When he arrived home from his hike, the Mayers' dog was still barking like crazy, he said. Normally, he would have gone into his house and removed his knife. However, on this occasion, he left his car and went directly across the street to the Mayers' house. He rang the doorbell and banged on the door quite a few times, but got no answer.

[21] Mr. Folk went around the back of the house. He said that he stepped in through the gate and shouted, "Shut up" at the dog to scare it. He hoped this would keep the dog quiet. The dog was eight feet away at the back doorstep. It was barking when he approached. Mr. Folk said he took one step inside the gate when the dog came at him.

[22] According to his evidence, the dog bit his right hand and then his left. He said that he got his knife out and stabbed the dog three or four times that he recalled with his right hand. The dog let Mr. Folk go immediately and then went over to the house to lie down, Mr. Folk guessed. From his first contact with the dog to his departure, he estimated was no more than 10 or 15 seconds.

[23] Mr. Folk then returned to his own house. His hands were badly injured to the extent that he had difficulty applying his keys to the front door. His father gave evidence that he let his son in and on seeing the injury to his hands immediately drove him to the hospital for treatment.

[24] These injuries were also observed by Corporal Dubnyk, the RCMP officer investigating. The consultation report of the surgeon, Dr. Jacoby, was admitted and reflects that Mr. Folk suffered significant dog bite injuries to both hands. Surgery was required to repair tendon damage in his left hand and Mr. Folk still suffers some loss of function and feeling in the fingers of his left hand.

[25] In cross-examination, Mr. Folk was questioned about portions of a statement he gave Corporal Dubnyk on December 11th. Mr. Folk agreed that he knew it was important that he tell the truth to the officer. He agreed that he told Corporal Dubnyk that he had "a drink or two" the morning of December 10th while he listened to the dog bark non-stop for hours, though in court he said that he meant sips as he only had one cooler.

[26] Mr. Folk agreed that he told Corporal Dubnyk that he went for a walk to get away from the barking. He said to Corporal Dubnyk that when he came back from his walk after three hours,

the barking was still going on, in his words:

It was the worst. I don't know -- I just -- I went over there, knocked on the front door. There's lights on, a TV's going, and no one answered the door, and I -- just a hell of a racket. I don't know. I guess I had enough of it, and then trying and trying and trying everything I could think of -- try to, you know, talk some sense into these people. Like they've been warned and I think four or five times. Like my dad went over there. I went over there. The bylaw officers were over there a few times and this just gets worse and I don't know. I just -- that racket, it just pushed me to the edge, I guess, over the edge. I wish to hell it didn't. I wish I could turn back time, but like I really stepped in it. The crap really hit the fan once I realized what I did.

[27] Now, Mr. Folk also agreed that he told Corporal Dubnyk soon after this in his words:

I'm just trying to think of some other way I could have resolved this, but I don't know. I wasn't going to ...

And the record here shows something indecipherable was said, and continues:

I can't move out of my parents' house. I can't afford to, but I just feel like helpless, like I have no rights or nothing.

[28] Mr. Folk said in court that he guessed these portions of his statement were true. He agreed that he felt like he had no rights when it came to barking dogs. He was pretty frustrated and angry, he said. Nothing worked to stop the dogs barking. He pretty much felt he could not live in the

house.

[29] After being shown another portion of his statement, Mr. Folk agreed that it had been December 9th that he had gone over to the Mayer house to confront the Mayers about the barking dog. That was the day before the dog was killed. Mr. Folk said he had never met the dog, though from his property he could at times see the dog standing against the gate.

[30] Mr. Folk also testified that he had made at least three complaints to the City of Kamloops Bylaw Enforcement Office about the Mayers' dog specifically and other complaints about other dogs in the neighbourhood.

[31] Mr. Folk understood that if bylaw enforcement was to do more than issue a written warning to the owners, they would require him to keep a detailed written account for five days running regarding the times, circumstances, and impact of the barking about which he was complaining. This may have been a challenging task for Mr. Folk alone given his learning disability. In any event, no account was kept.

[32] Dale Folk, the accused's father, gave evidence that the Mayer dog barked a lot and that, at his son's request, he had previously spoken to Mr. Mayer about it. His son had very good hearing, he said, and was greatly bothered by the

barking. He agreed he told police that the barking drove his son crazy.

[33] The issue in this case is singular. When the accused killed the dog, did he have a lawful excuse? I will now turn to the submissions of counsel. Mr. Gnitt submits on behalf of Mr. Folk that Mr. Folk's evidence can be accepted as credible. His actions that night were foolish and regrettable. It was conceded that Mr. Folk was in trespass on the Mayers' property when he opened the gate and that he should not have been there.

[34] Nonetheless, Mr. Folk was attacked by the dog and plainly suffered grievous injuries to his hands. Finding himself attacked and with few options available to him, it is submitted that he defended himself with the knife as he was entitled at law to do. Mr. Gnitt says that at the very least I should be left in reasonable doubt on the issue and that Mr. Folk is entitled to an acquittal.

[35] Ms. Janse for the Crown says that the story told by the accused in court was not credible and that this is a case where Mr. Folk out of frustration and anger simply determined to take the law into his own hands. It was submitted that Mr. Folk's evidence was contrived to exaggerate the barking of the dog and to minimize the appearance of temper on his part when

he went to the Mayers' house that night.

[36] It should be disbelieved on that basis and on the basis of internal and external inconsistencies in his evidence. His evidence that he entered the gate to shout at the dog while armed with a hunting knife was simply incredible. The only possible result was a physical confrontation with the dog with a resulting outcome that was entirely intended.

[37] I have reviewed the evidence in this case and must say that I am troubled by the evidence given by Mr. Folk. The relatively benign picture he painted in the course of his evidence in chief was substantially undercut in a number of ways by those answers which he agreed in cross-examination he made to Corporal Dubnyk on December 11.

[38] For example, in the portion of the statement put to him here, there is a great sense of his anger and frustration at his seemingly insoluble problem with the barking dog. As he said to Corporal Dubnyk, "That racket, it just pushed me to the edge, I guess, over the edge." I do not think these remarks to Corporal Dubnyk are consonant with the intention stated by Mr. Folk here that he merely wanted to shout at the dog to shut up.

[39] Neither do I find compelling the account provided by Mr.

Folk about how he came to be at the Mayer house unintentionally armed with a hunting knife. His story about arming himself with a hunting knife with a five-inch blade in order to defend himself against bears and cougars during a winter walk in this part of the country is not persuasive either as to the risk of meeting such wildlife or the efficacy of the weapon should he do so.

[40] It is hard to credit that Mr. Folk in arriving home, exiting his car, and heading directly over to the Mayers' house for yet another confrontation would have lost sight of the fact that he had a five-inch blade strapped to his hip. Though he presented himself in court as being in a reasonable frame of mind when he went over to the Mayers' house to knock on the door, it is plain from the admitted portions of the statement to Corporal Dubnyk that Mr. Folk was in a temper.

[41] Mr. Folk's account that he went around the back merely to confront the dog and to scare it by shouting at it to shut up is difficult if not impossible to accept. Mr. Folk could not explain how he felt that such an aggressive approach with the dog could possibly silence the dog other than to say that he knew owners who could control their own dogs by telling them to shut up.

[42] If one assumes that he did indeed want to scare the dog

into silence by shouting aggressively, what reason or necessity would there have been to enter the garden through the gate and to place himself at the considerable and obvious risk of attack and injury. There was no reason and no benefit to be gained unless he had another purpose such as attacking the dog, an act he was well-equipped to perform.

[43] I will make it clear that I do not accept the evidence of Mr. Folk on these points, nor am I left in any doubt by it. I am satisfied upon reflection of all the evidence that Mr. Folk killed the dog out of anger and frustration at his inability to prevent the dog from barking.

[44] Though I have rejected Mr. Folk's evidence as to the events surrounding the death of the dog, I should add that, in my view, even if his account was accepted or raised a reasonable doubt, it would not constitute a lawful excuse. Mr. Folk, as Mr. Gnitt conceded, was in trespass when he went to the rear of the house. His purpose in attending there, confronting the dog, did not justify the trespass and did not justify the further entry through the gate into the enclosure at the back of the house where the dog was tethered. If one enters an enclosure for the purpose of provoking a dog in the face of an obvious risk of attack, that cannot, in my view, provide a lawful excuse for killing the dog when the

predictable attack occurs.

[45] For these reasons, I find Mr. Folk guilty as charged.

[REASONS FOR JUDGMENT CONCLUDED]

**File No: 84108-1
Registry: Kamloops**

In the Provincial Court of British Columbia

REGINA

v.

RUSSELL ALLEN FOLK

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE HARRISON**

ORIGINAL

Crown Counsel:

A. Janse

Defence Counsel:

J. Gnitt

Place of Hearing:

Kamloops, B.C.

Date of Judgment:

February 10, 2009

[1] THE COURT: Russell Folk was convicted after trial of unlawfully killing his neighbour's dog, contrary to s. 445(a) of the **Criminal Code**.

[2] On December 10th, 2007, members of the Mayer family found the body of Bruno, their eight-month-old Catahoula Leopard Hound, upon their return to the family home that afternoon. The dog, who had been tethered in the back yard of the Mayer home, died as a result of six deep and penetrating stab wounds, mostly to the chest and neck area.

[3] At trial, Mr. Folk did not deny killing the dog, but put forward a defence of lawful excuse, saying that the dog had attacked him and that he had been obliged to defend himself.

[4] Mr. Folk gave evidence that the dog had been barking excessively for a prolonged period, and that he had gone over to the Mayer house to speak to the Mayers about it. Finding no one at home, he went into the back yard to shout at the dog to shut it up. He entered the yard through the gate and moved within the ambit of Bruno's tether, where, he said, he was attacked and bitten.

[5] Mr. Folk used a knife he happened to be carrying to kill the dog, he said. He suffered significant bite injuries to his hands and required surgery as a consequence.

[6] The day before the dog was killed, Mr. Folk confronted the Mayers about the noise Bruno was making. The following morning, Mr. Folk had a drink, and listened to the dog barking, non-stop for hours, as he put it. Mr. Folk then went out for a hike to get away from the barking, and when he came back from his walk, three hours later, he said the barking was still going on.

[7] He told police that it was a hell of a racket. He said that the racket had pushed him to the edge, he guessed, over the edge. He told the investigator, "I'm just trying to think of some other way I could have resolved this, but I don't know. I can't move out of my parents' house. I can't afford to, but I just feel, like, helpless, like I have no rights or nothing."

[8] Mr. Folk and his father on his behalf had made complaints about the dog to the Mayers and to the City of Kamloops bylaw enforcement office, though he had not followed through with the process required by that office for a formal complaint. Mr. Folk had also made complaints about other barking dogs in his neighbourhood, both before and after December 10th.

[9] For the reasons given in judgment, I found that the evidence established that Mr. Folk had killed the dog out of anger and frustration at his inability to prevent the dog from

barking, and that he had done so without lawful excuse.

[10] Sentence proceedings were adjourned for the preparation of a pre-sentence report and an assessment at the Adult Forensic Outpatient office in Kamloops.

[11] The psychiatric assessment prepared by Dr. Chale resulted in a diagnostic impression on AXIS I of Asperger's Syndrome, a high-functioning autism spectrum disorder. Mr. Folk's symptoms include social isolation, limited understanding of social cues, obsessive compulsive features, poor eye contact, and hypersensitivity to environmental stimuli. In respect of the last item, Mr. Folk told Dr. Chale that he had a long history of hypersensitivity to the repetitive sounds of dogs barking, birds chirping, et cetera.

[12] Dr. Chale also noted attention deficit hyperactivity disorder, and alcohol, THC abuse under AXIS I.

[13] Dr. Chale's AXIS II impression was learning disability not otherwise specified, and avoidant personality traits. Mr. Folk, who has one previous conviction for impaired driving, was also assessed for future risk of violence, using the HCR-20, a structured guide for assessing the risk of violence.

[14] Dr. Chale concluded that Mr. Folk appeared to be at relatively low risk to reoffend. The Crown takes issue with

that assessment.

[15] Dr. Chale noted Mr. Folk's lifelong problems with social integration, reflected, for example, in his employment instability and the absence of intimate relationships, as well as his dependence on his parents due to his social and financial limitations. Mr. Folk's parents have remained supportive.

[16] Dr. Chale also noted Mr. Folk's established history of self-medicating with both marihuana and alcohol. Mr. Folk has no known history of violence, and has no convictions for a violent criminal offence.

[17] Dr. Chale acknowledged that the current offence underscores the fact that Mr. Folk can, in the wrong circumstances, be extremely impulsive, but also offered his opinion that Mr. Folk appears to be motivated to avoid future legal difficulties.

[18] Dr. Chale found it a positive feature that Mr. Folk and his family have attempted to resolve the dog barking problem several times by speaking with the owners and the City bylaw enforcement office. He noted that Mr. Folk clearly regrets the offence on numerous levels, including the negative perception of him in the community, the social stigma suffered

by his parents, and to a lesser extent, the emotional suffering on the part of the neighbours.

[19] He stated that Mr. Folk has expressed a willingness and interest in attending follow-up through the Adult Forensic Psychiatric Services as part of any order on which he might be placed. Dr. Chale suggested that Mr. Folk would benefit from a probation order as part of any sentence he received, and that he should be directed to attend future follow-up with Adult Forensic Services.

[20] The pre-sentence report demonstrates Mr. Folk's single previous conviction for impaired driving in Chase in 2005, for which he was fined \$600 and prohibited from driving for one year. There was no probation order attached and no convictions for non-compliance.

[21] The probation officer commented that Mr. Folk contradicted himself throughout his interview with her, giving as an example his assertion that he did not like leaving his house or going to public places, on the one hand, and subsequently indicating that he did like to go for hikes and enjoyed being in the outdoors, on the other.

[22] Mr. Folk was also contradicted by his father on the issue of his alcohol and marihuana consumption, and the reason why

Mr. Folk was asked to leave secondary school. The probation officer also noted that Mr. Folk told her that he was not consuming or using any alcohol or drugs at the time of the offence. This is in contradiction of his statement to police he had a drink or two prior to the offence.

[23] In his evidence in court, Mr. Folk said that this was an error, that he had a sip or two of a drink, amounting to one cooler the morning of the offence. There are other similar examples of contradictions in his account.

[24] With respect to the proposed interventions, the probation officer reported that Mr. Folk was not currently involved in any form of counselling, and did not like the thought of attending counselling. She commented that he does not appear to be motivated to attend for counselling in the future.

[25] She said that Mr. Folk realizes that he should never have entered the neighbour's back yard. However, Mr. Folk stated that the dog attacked him, and he believed his actions were justified because he was defending himself from harm. The probation officer observed that Mr. Folk demonstrated little concern for the suffering of the dog, and displayed little concern for the dog owner and the children affected by the death of the dog.

[26] The pre-sentence report related victim impact information from the Mayer family. The probation officer reported that they have been devastated by the death of their dog. It has created a strain on the family because the girls do not feel safe living in the neighbourhood. The youngest child seems to be having the most difficulty adjusting to the death of the dog, and no longer likes to visit her father's home.

[27] Mr. Mayer wants to sell the family home and move elsewhere. There is no doubt that the killing of their dog, Bruno, in these circumstances and in this fashion, has been a traumatic and upsetting event for the entire family.

[28] In the event of a custodial sentence being imposed, the probation officer has recommended that Mr. Folk may be a suitable candidate for an in-custody violence prevention program consisting of 10 sessions over a five-week period, focusing on anger management. At present, there is approximately a 60-day waiting list for this program.

[29] Terms were also recommended by the probation officer for supervision in the community.

[30] The Crown asserts that Mr. Folk cannot be relied upon to give a true account of himself. This is clear, it is submitted, from discrepancies between the various accounts

given to Dr. Chale, the probation officer, and the contradictions found in his own accounts, his father's accounts, and events at trial.

[31] The Crown submits that Dr. Chale's assessment that the offender is at relatively low risk to reoffend violently should be discounted because of the inaccurate picture presented by Mr. Folk and Dr. Chale's reliance on it.

[32] Mr. Folk told Dr. Chale that he had pleaded guilty to the charge of killing an animal without lawful excuse, a statement which was not accurate. Dr. Chale did not appear to be aware that Mr. Folk had been convicted at trial.

[33] As well, Dr. Chale regarded it as a positive factor that Mr. Folk had pursued avenues through the bylaw enforcement office when, in fact, he did not follow through with the documentation the bylaw office required for a bylaw prosecution.

[34] While these are accurate descriptions of real discrepancies, I am not at all convinced that they are of the sort that would significantly vary Dr. Chale's assessment, either to his diagnostic impression or his assessment of the risk of future violence. Neither party sought to call Dr. Chale personally.

[35] The Crown is seeking a jail term of three to four months, and relies on a number of cases which stress the importance of the sentencing principles of deterrence and denunciation in cases involving brutality to domestic pets. The Crown submits that a sentence served in the community, a conditional sentence under s. 742.1 of the **Criminal Code**, is not appropriate, that the court cannot be satisfied that a conditional sentence would not endanger the safety of the community, and that it would be consistent with the fundamental purpose and principles of sentencing.

[36] The violence of the attack on Bruno, and Mr. Folk's continuing complaints about other dogs in the neighbourhood, create real concerns about the risk of violent reoffence, according to the Crown. As Dr. Chale said, with respect to exposure to destabilizers, unfortunately, Mr. Folk will likely be exposed to dogs barking in the vicinity of his family home from time to time in the future. In addition, he could cross paths with domestic pets being taken for off-leash nature walks in the community.

[37] The defence does not take issue with the principles set out in the cases, but asserts that regard must be had not only to the circumstances of the offence, but those of the offender. It is submitted that Mr. Folk does not pose a

threat to the community and that, in his circumstances, incarceration is not a sentence which would gain either him or the community any benefit.

[38] The defence submits that if there are contradictions in what Mr. Folk has said, they are not borne out of any attempt to mislead, and do not detract from Dr. Chale's view that this offender is at relatively low risk to reoffend violently.

[39] I have been provided with a number of cases. **R. v. Campbell Brown** [2004], Alberta Journal Number 2001, neutral citation, [2004] ABPC 17. The offender in this case, who had no record, shot a neighbour's dog she believed to have destroyed a duck and two geese. Upon a guilty plea, she received a suspended sentence and 18 months' probation.

[40] **R. v. Jones** [1997], Ontario Journal Number 1288, a case from the Ontario Court of Justice. In that case, the youthful first offender beat a dog over 15 to 20 minutes, causing such injuries that the dog was in a cast for eight or nine weeks. He was sentenced to 45 days and probation for 12 months.

[41] **R. v. Zeller** [1998], Alberta Journal Number 351; neutral citation [1998] ABPC 19. In that case, the offender killed a 16-week-old puppy in the course of a domestic argument by hitting it with a shovel. He was sentenced to 60 days.

[42] **R. v. Wicker** [2007] ABPC 129. The offender in that case put his cat into a tub of scalding water which caused injuries so severe that it had to be euthanized. Notwithstanding his guilty plea, and what was described as a remorseful acknowledgement of responsibility, the offender received 90 days in jail.

[43] In **R. v. Hughes**, an unreported decision of Judge Webb of the Provincial Court in Cranbrook given September 7, 2007, Registry Number 23801, the offender threw a cat into a wall, causing a small amount of bleeding. The injury resolved without veterinary care. The offender received a six-month conditional sentence.

[44] **R. v. Stuart**, an unreported decision of the Provincial Court made by Judge Bastin on January 29th, 2008, in Vancouver, Registry Number 196079, the offender killed a 15-week-old puppy with a hammer after being bitten several times. The offender received a 30-day sentence in addition to 22 days' time served, and a fine of \$1,000.

[45] The case of **R. v. Bastarache**, unreported decision of Judge Rohrmoser of this court, April 18th, 2008, Kamloops Number 82388. In that case, the offender beat his dog for about a half an hour before onlookers intervened to stop him. The accused, who was absent during sentencing, received a 30-

day sentence in the absence of any mitigating information.

[46] **R. v. Piasentin** [2008], Alberta Journal Number 629, neutral citation [2008] ABPC 164. In that case, the offender received a five-month conditional sentence and two years' probation for beating a four-month-old puppy to death as a result of house-training problems.

[47] It is clear from reading these cases that in recent years the courts have imposed serious sentences in cases which involve unlawful injury or death to family pets. This trend has been amplified by more recent changes to the **Criminal Code**. As these changes were proclaimed in force only after the commission of the instant offence, I will not review those provisions.

[48] The Crown is correct to say that jail is the frequent sentence for offences such as these, and that where the owner is convicted, there is an aggravating factor akin to breach of trust to be taken into account. That aggravation is not present here. There is an aggravation here, and that is the violence of the assault.

[49] Frequently, the courts have refused to allow conditional sentence orders as being inconsistent with the fundamental purpose and principles of sentencing, specifically, deterrence

of others and denunciation of a crime that most people properly find reprehensible.

[50] The **Criminal Code** provides guidance to sentencing in s. 718 and the **Criminal Code** sections which follow. I have had regard to all of them, and accept that the denunciation of unlawful conduct, and the deterrence of this offender and others of a like mind from committing such offences, are particularly important considerations in this case.

[51] Mr. Folk, would you please stand.

[52] This offence, which you have committed, was a brutal and cruel assault on a family pet. It was absolutely unwarranted and unjustified. As a result of your attack on the dog, you have brought public shame to yourself, embarrassment to your family, and worse yet, you have traumatized the Mayer household, in particular, the two daughters of that family, who will undoubtedly struggle for years with what you did to their dog on December the 10th.

[53] Mr. Folk, an offence such as this might easily draw a sentence of three or four months in jail, as the Crown has sought here, or, indeed, more. However, I am instead going to impose a conditional sentence order upon you for a term of six months, to be followed by two years' probation.

[54] I am going to do that for several reasons. The first is that I consider that for someone with your particular set of disabilities, you would likely be in for a very hard time in a correctional centre.

[55] Secondly, I do not think that your presence in the community, under the terms of the orders which I will place you on, you will constitute a danger to the safety of the community. In this regard, I accept Dr. Chale's view that you are at relatively low risk for violent reoffence.

[56] Thirdly, I consider that the appropriate principles of sentencing in these particular circumstances can be met with a sentence served in the community.

[57] And fourthly, I believe that with the support of your parents, you will likely be compliant with the terms of the order that I make. I will caution you that you will want to take very great care that you abide by the terms of the conditional sentence order that I make, or you will run the risk that your conditional sentence order will be terminated, and the remainder of your sentence will be spent in custody. Do you understand that?

[58] THE ACCUSED: Yes, sir.

[59] THE COURT: A conditional sentence order then will run

for six months and the terms will be as follows: You will be obliged to keep the peace and be of good behaviour, and appear before the court when required to do so by the court.

[60] You are to report in person to a conditional sentence supervisor today at the probation office located on the ground floor of this building, and you shall thereafter report as and when directed by the supervisor and in the manner directed by the supervisor.

[61] You are to remain within the jurisdiction of the court unless written permission to go outside the jurisdiction is obtained from the court or the supervisor.

[62] You shall notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

[63] I will advise you, Mr. Folk, that this document will be drafted up; you will sign it; you will have it explained to you, if you require it, by the conditional sentence supervisor; and you will have a copy with you to take away. But you must adhere to the terms of this, or you will run the risk of having your sentence terminated and your sentence being served, in its entirety, in the correctional centre.

[64] THE ACCUSED: Yes, Your Honour.

[65] THE COURT: I will refer to certain numbers now for the benefit of the clerk. Under paragraph 302(c): you shall reside at a residence approved by the supervisor, and you shall not change your residence at any time without first obtaining the written consent of the supervisor.

[66] 302(b): You shall obey the rules and regulations of your residence. So if your mother or father give you an instruction, you are to follow that. If you do not follow their reasonable instructions, you will be in breach of your conditional sentence order.

[67] THE ACCUSED: Yes, Your Honour.

[68] THE COURT: Under 304, you are going to be under house arrest for the first three months of the order. That means that your movements are going to be restricted and you are to stay within your home, except as provided.

[69] Under 304, you are to remain within your residence, or the back yard of your residence, at all times except as follows: between the hours of 9 a.m. and 11 a.m. each Monday and Thursday in order to attend to your personal business, providing that you are in the company of either your mother or your father on those occasions.

[70] (b): At any time with the written consent of the supervisor. Such consent is to be given only for compelling personal, family, or employment reasons.

[71] (c): When travelling directly to or returning directly from your place of employment, or while in the course of your employment. You shall provide the supervisor with written proof of your employment if requested to do so.

[72] And (g), when travelling directly to or returning directly from a scheduled court appearance or a scheduled appointment with your supervisor, or any appointment made for you by your supervisor, including counselling, therapy, or attendances to Forensic Outpatient Services.

[73] 306: You shall present yourself at the door to your residence when any peace officer or supervisor attends there for the purpose of determining your compliance with the house arrest conditions of this order.

[74] Now, those last two provisions that I have referred to, the house arrest and the house arrest checks, will be enforced for three months. The other provisions will last for the term of six months.

[75] 307: You are to have no contact or communication, or attempt to have contact or communication, by word or gesture,

directly or indirectly, with Donald Mayer, Stevie Mayer, or Lauren Mayer. Is that understood?

[76] THE ACCUSED: Yes, sir.

[77] THE COURT: 311: You are not to attend at or be within 10 metres of 1520 Westmount Drive, Kamloops, B.C. Do you understand that?

[78] THE ACCUSED: Yes, Your Honour.

[79] THE COURT: Under 315(a), you shall not possess or consume any alcohol or drugs, except as prescribed for you by a physician. Do you understand that means that you are not to drink anything; you are not to smoke marihuana.

[80] THE ACCUSED: Yes, sir.

[81] THE COURT: Under 316, you shall not enter any liquor store, beer and wine store, bar, pub, lounge, or other business premise where the primary commodity sold is liquor.

[82] Under 322, you shall not possess any weapon as defined in s. 2 of the **Criminal Code of Canada**. I will read that definition to you:

A weapon means any thing used, designed to be used or intended for use

(a) in causing death or injury to any person, or

(b) for the purpose of threatening or intimidating any person

and without restricting the generality of the foregoing, includes a firearm.

[83] Under 325, you are not to possess any knife, except for the purpose of preparing or eating food.

[84] THE ACCUSED: Yes, sir.

[85] THE COURT: I am going to direct that you attend for counselling. Under 327, you shall attend, participate in and successfully complete any assessment, counselling, or program as directed by the supervisor. Without limiting the general nature of this condition, such assessment, counselling, or program may relate to anger management, alcohol or drug abuse, and such full-time attendance program as may be directed by the conditional sentence supervisor, and may include attendance at such psychological, medical, or psychiatric counselling or assessment through the Adult Forensic Psychiatric Clinic as directed by your supervisor.

[86] Now, I want to ask you, Mr. Gnitt, whether your client is consenting to a Rogers order?

[87] MR. GNITT: I would appreciate if you would spell that out to him first.

[88] THE COURT: All right. Mr. Folk, a Rogers order is an order that would require you to keep yourself in such a condition that your disabilities would not likely cause you to cause -- to be a danger to yourself or to others, or to commit further offences.

[89] It would require that you would agree that you would attend upon Dr. Chale for the purpose of receiving medical counselling and treatment, which I have not ordered to this point, as may be recommended, except that you would not be required to submit to any treatment. But, if you did not consent to treatment, then your doctor -- you would be obliged to notify your supervisor, and your doctor and the physician would be notifying one another that you had refused to take medication.

[90] MR. GNITT: Your Honour, I think the usual -- it may not do any good, but it certainly won't do any harm, so I think it's -- out of an abundance of caution --

[91] THE COURT: Well, I do not -- that is --

[92] MR. GNITT: That's a good thing.

[93] THE COURT: That is why I am questioning you about this, Mr. Gnitt. I think --

[94] MR. GNITT: I think that's a good idea.

[95] THE COURT: -- out of an abundance of caution, it would be a good idea. I do not know whether anybody is going to prescribe anything for you, or order you any treatment. But I will then, with your consent, include, Madam Clerk, under 328, the following: You will take reasonable steps to maintain yourself in such a condition that you will not likely be caused to conduct yourself in a manner dangerous to yourself or anyone else, and it is not likely that you will commit further offences.

[96] At the direction of the supervisor, you will attend from time to time upon Dr. Chale, or such other doctor as you may be recommended, for the purpose of receiving such medical counselling and treatment as may be recommended, except that you shall not be required to submit to any treatment or medication to which you do not consent. If you do not consent to any form of medical treatment, or medication prescribed or recommended, you shall so notify the supervisor.

[97] You shall provide your treating physician with a copy of this order, and the name, address, and telephone number of the supervisor. You shall instruct your treating physician that if you fail to take medication as prescribed, or fail to keep appointments, the physician is to so advise your supervisor

immediately.

[98] Now, I am going to add a term to this, that you are prohibited from owning or having custody or control of any animal or bird, or staying or residing in the same premises as any animal or bird.

[99] THE ACCUSED: Yes, sir.

[100] THE COURT: All right. Now, that is your conditional sentence order. That will apply for a term of six months.

[101] Following that, you will be on probation for a period of two years. The probation order will contain similar terms, and I will express now what those are.

[102] The statutory terms will require that you keep the peace and be of good behaviour.

[103] You are to appear before the court when required to do so by the court, and you shall notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or probation officer of any change in employment or occupation.

[104] Before the conclusion of your conditional sentence order, you are to report to the probation officer in person at the probation office at the ground floor of this building, and

after that as and when directed by the probation officer.

[105] THE ACCUSED: Yes, sir.

[106] THE COURT: You are likely to find that your conditional sentence supervisor and your probation officer are the same person, but that will be a matter for the probation office.

[107] The terms of your probation order will contain the same terms as your conditional sentence order, except that the house arrest and the house arrest check provisions will not be included, and all references to your conditional sentence supervisor will be replaced with references to your probation officer.

[108] There is a victim fine surcharge which is set as a statutory matter. You will need time to pay that, will he?

[109] MR. GNITT: Wouldn't need a lot of time, Your Honour.

[110] THE COURT: Well, we will give you two months to pay the victim fine surcharge. You will be advised of that amount by the registry. You can have until March 31st, 2009, to pay that.

[111] MR. GNITT: Thank you, Your Honour.

[112] THE COURT: You will need to attend across -- downstairs and across the hall to the registry to sign your conditional sentence order and your probation order, as well as acknowledgement of time to pay on your victim fine surcharge.

[113] Mr. Folk, before you leave here today, I want you to understand that this is a very serious offence that you have committed. I have cautioned you several times about the possible impact of breaching that conditional sentence order. You may find it a hard order to comply with, but that is your job. If you cannot comply with it, you can rest assured that you will be spending time in custody at the Kamloops Regional Correctional Centre.

[114] THE ACCUSED: Yes, sir.

[115] THE COURT: I have told you I do not think that you would find that an enjoyable experience, and I expect, Mr. Folk, to hear no more from you on this and that you will complete your sentence as required, and that you will do it without adding the burden, any burden to yourself, to your parents, or to your neighbours. Is that clear?

[116] THE ACCUSED: Yes, Your Honour.

[117] THE COURT: All right, Mr. Folk. You are free to go.

[118] THE ACCUSED: Thank you.

[119] MR. GNITT: Thank you, Your Honour.

[120] MS. JANSE: Thank you, Your Honour.

(REASONS CONCLUDED)