

Summary of Transcript of Officer David Behan

Officer Behan has been an animal control officer for approximately twenty five years.

He testified that it is the policy of Toronto Animal Services to impound animals that are prohibited in Toronto. He testified that once a prohibited animal is taken to a shelter and is impounded, it becomes the property of the City of Toronto. It is then up to the administrative powers (management) to decide what to do with the animal.

Officer Behan was asked on what basis Darwin became the property of the City of Toronto and on what basis the City had the right to withhold returning Darwin to his owner. "Only that we have protective custody provisions in the by-law, City of Toronto...". "We hold an animal in protective custody until we decide what we're going to do with it or what the parties, the administrative parties decide what they're going to do with it".

Mr. Behan was asked to identify those sections of the by-law which applied and he referred to the protective care section 349-9 which requires a person to pay a sheltering fee before they can redeem an animal. The definition of protective care is "the temporary keeping of an animal to a maximum of five days as a result of an eviction, incarceration, medical or fire emergency or any other situation that the executive directors deem appropriate". Mr. Behan agreed that he never informed Ms. Nakhuda that the City of Toronto was holding Darwin under protective care nor did he inform her that they could only hold him for a maximum of five days. Mr Behan never spoke to an executive director about holding Darwin.

With respect to Yasmin Nakhuda, he agreed that she had made it clear from the moment she got to Animal Services that she wanted the monkey back. By the time he arrived at Animal Services, he knew that Ms. Nakhuda was on her way to claim him and that it was crystal clear that she was coming to claim him. He knew that he would be dealing with an animal owner that would be emotional and he realized from his past experience that the situation would be uncomfortable or upsetting. He knew the owner would be upset because Animal Services had already concluded, even before she arrived, that they would not give Darwin back to her that day because it was a prohibited species

When Yasmin arrived at Animal Services, officer Behan greeted her and asked her to go into the lunch room where she could meet with officer Behan, officer Fiorillo and her husband. Once they were in the room, Yasmin asked for her monkey back and asked to see him. Officer Behan said that she could not have her monkey back and that she could not see him. Officer Behan then went to speak with his supervisor to find out whether or not the supervisor would allow Yasmin to have her monkey back.

Supervisor Instructs Officer Behan “To Try And Get Yasmin To Sign A Surrender Form”

330 Q. But you were relying on directions from your supervisor on what to do?

A. Yes. I was.

331 Q. And the dilemma was whether to give her back the monkey or not, wasn't it?

A. Basically, yeah.

332 Q. And the way to avoid giving her the monkey back would be if she signed the surrender, right?

A. I guess, yes. That's one way.

333 Q. That's why your supervisor wanted you to get her to sign the surrender?

A. I suppose it's possible that could be.

293 Q. Ms. Nakhuda made it clear from the moment she got there that she wanted the monkey back?

A. That's correct.

294 Q. And someone in your office had to decide whether they would give it back to her or not?

A. That's correct.

295 Q. Who made that decision?

A. Supervisor, I guess, at the time.

296 Q. So you spoke to him?

A. Yeah.

297 Q. And he gave you your marching orders?

A. More or less.

298 Q. Which is: You're not giving the monkey back.

A. "See if you can get the monkey signed over." That was Mr. Bandow's words to me.

427 Q. And when you say you couldn't give it back to her that day, in your mind did you think you could give it back to her at all?

A. I was leaving it up to the powers that be. I mean, I have (note reporter missed the word "no") experience to do that, to allow that. That's why I contacted my supervisor.

464 Q. Is it fair to say that you said words along these lines that you could not return the animal back to them. You had to speak to your supervisor as "We've never had to deal with this type of situation before"?

A. Yeah. It sounds like a pretty good -- what took place to the best of my recollection.

465 Q. And I understand it was around that time that you left the room? I gather to speak with your supervisor?

A. Yes.

476 Q. Did you leave the meeting to speak to your supervisor leaving the clients, Yasmin and her husband, with the impression that you were trying to find out whether you could give the monkey back to her? Was that the purpose of leaving to make the call?

A. No. No.

477 Q. So you didn't give them that impression?

A. Not that I'm aware.

478 Q. By that point you'd already told them that they're not getting the monkey back?

A. I don't know if that was my exact words but yes. We had discussed that.

479 Q. So then why did you go need to speak to your supervisor if you had already told them they're not getting the monkey back?

A. Get clarification.

480 Q. On what?

A. On what? To make sure we had the power and authority to do that and how the supervisor wanted me to handle the situation.

481 Q. I take it in your conversation with the supervisor about whether you had the power or authority his answer was, "Try to get them to sign the surrender form"?

A. Yeah.

482 Q. So that's what you tried to do?

A. Uh-huh.

484 Q. None of the suggestions involved giving back the monkey?

A. No. They did not.

485 Q. Or suggesting to them that they could have the monkey back in a few days?

A. No. No.

How Did the Officer Get Yasmin to Sign the Surrender Form?

487 Q. Okay. But sir, they're there to claim the monkey. They're not there to give it up as we've agreed so surely you just saying, "Will you please sign this surrender form" is not going to get them to sign the form. You must have said something to --

A. Yeah. It's a prohibited animal and it's not supposed to be in the City of Toronto.

488 Q. And that you're not going to give it back to them?

A. Basically, yeah. Not at this time.

490 Q. When you asked Yasmin to sign the surrender form what was her immediate reaction?

A. She was upset. She was still in tears.

491 Q. She didn't want to sign the form?

A. No.

492 Q. And you asked her again?

A. Yeah. I believe so.

519 Q. So when your supervisor said to try and get her to sign the surrender form you've mentioned to me that you reiterated to her that monkeys are prohibited under the Toronto bylaw. What else did you suggest to her would be a good reason to sign the form?

A. I can't think of anything else. It might be bigger than this. I don't know what Provincial legislation there is or not and I don't so I was trying to be honest about that.

520 Q. That's fine. So you would have suggested to her that there might be repercussions with provincial legislation?

A. Yeah but not with City of Toronto.

Was There Any Evidence of Abuse?/Did Yasmin Love Darwin?/Was Darwin Happy to See Yasmin At Animal Services Or Was He Afraid Of Her?/Was Yasmin Correct When She Decided It Would Be Too Hard On Darwin For Her To Visit Him At The Story Book Farm?

Officer Behan was asked whether there was any evidence of abuse when Darwin was picked up. He said that Darwin seemed to be fine when he observed Darwin at the shelter. He was asked whether Darwin looked like he had been abused. He said "No, I couldn't say so". "No". He testified that Yasmin was crying "through most of the conversation". He said the meeting lasted thirty minutes. He said it wasn't until near the end of the thirty minutes that she signed the surrender form.

509 Q. Okay. Now, you mentioned that Yasmin was emotionally upset and crying during parts or all of the meeting. As I understand it you were quite understanding of her

situation. You felt some sympathy for her situation?

A. Absolutely.

510 Q. Because she was going to be separated from her pet?

A. Absolutely.

511 Q. And it was clear to you that she had very significant affection for Darwin?

A. Yes. It was.

525 Q. Did you offer to let her see Darwin at any point before she signed the surrender form?

A. No. No.

526 Q. Why is that?

A. Because she was very emotional and separating -- if you take an animal back and reunite them with their owner again it's going to be that much more difficult to separate them if you do that. The animal was already separated so therefore leave well enough alone. Do not stress the animal out and do not stress out the owner anymore or the caregiver.

527 Q. Did you witness the moment when Darwin and Yasmin were reunited that day?

A. Yes. I believe so. Yeah.

528 Q. How did Darwin react to seeing Yasmin?

A. Very excited. Yeah.

529 Q. Did she assist Animal Services in caring for Darwin that day?

A. She assisted Animal Services in taking his diaper off and actually washing him, I think. Yeah.

530 Q. I take it she was pretty emotional about all that, too?

A. Yes, sir.

531 Q. Did she appear to be a woman who wanted to surrender her monkey?

A. No.