

DEC 04 2014

A14-0137

FILED

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

v.

Dayna Kristine Bell,

Petitioner.

RESPONSE IN OPPOSITION TO PETITION FOR REVIEW

LORI SWANSON
Attorney General
State Capitol
1100 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

JAMES C. BACKSTROM
Dakota County Attorney

By: STACY ST. GEORGE
Assistant Dakota County Attorney
Attorney Registration #0341113
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033
Telephone: (651) 438-4438

ATTORNEYS FOR RESPONDENT

STEPHEN V. GRIGSBY
ATTORNEY AT LAW
Attorney Registration #291973

5901 12TH Avenue South
Minneapolis, MN 55417
Telephone (612) 562-1150

ATTORNEY FOR PETITIONER.

TO: The Minnesota Supreme Court.

Respondent State of Minnesota respectfully requests that this Court deny review of this unpublished decision of the court of appeals, by Peterson, Reilly and Reyes.

LEGAL ISSUE

In a business where dogs are bred to be companion animals, given names, pet, and spoken to in affectionate manner, did the Petitioner commit thirteen counts of animal cruelty for killing puppies and dogs in violation of Minn. Stat. § 343.21, subd. 7?

The court of appeals affirmed the jury verdict that determined "pet or companion animal" as defined "unquestionably includes all of the dogs at Bell's kennel."

STATEMENT OF THE CASE AND FACTS

Petitioner is the owner and operator of Bell Kennels and Farm.¹ The dogs were bred to be companion animals. Witnesses testified that the animals had names. They were pet, spoken to in an affectionate manner, and the Petitioner had paperwork from the USDA that stated, "This pet is being purchased and sold strictly as a companion/pet." The Petitioner's kennel and farm had over 200 dogs; in addition to at least nineteen litters of puppies. Each kennel had two or more dogs.

In September of 2011, employee AJ came into the kennel and saw that a litter of puppies were born. They were not in a whelping box. Therefore, the puppies had fallen in between the bars of the kennel. In response, the mother dog was biting the legs off in attempt to pull the puppies up from falling into the cracks of the kennel. At least two

¹ A complete statement of facts with citations to the record is contained in Respondent's Brief to the court of appeals.

were injured. Petitioner placed the puppies without legs, alive, into a bucket of water and drowned them. The Petitioner did not check the water for its temperature.

It is evident when a bitch is going to give birth to its litter. They should be placed in a whelping or individual isolation box where they are warm, comfortable, and quiet. This is because the puppies are small, blind, and helpless. The typical size of a newborn puppy is the size of a cucumber or shorter. Given the size, the whelping or isolation box is necessary so they do not fall between the bars of the kennel. This is a common practice in the commercial breeding facilities.

On September 26, 2011, Petitioner was complaining about money issues. Petitioner took four or five dogs from the big kennels and put them in smaller travel kennels and took them down to the barn. The Petitioner told AJ that "a friend was coming to pick them up." About an hour passed, Petitioner returned to the barn without the dogs and proceeded to take more dogs with her; totaling eight to ten. All the dogs were of a smaller breed. After AJ was told to assist Petitioner in loading them, the Petitioner told AJ to go to lunch. AJ then saw Petitioner place a rope on the neck of a small black and white dog. The other end of the rope was tied to a cinder block. The witness reported that Petitioner proceeded to throw the dog and the block into the pool.

On September 27, 2011, Petitioner was bit on her right arm by a dog. Petitioner was seen taking that dog from the building. When Petitioner returned she stated "that mother fucker will never bother any of us again. I broke its damn neck."

Between September 15, 2011, and September 29, 2011, employee JI witnessed the Petitioner drown a small puppy that was not suffering and did not have anything wrong with it.

On September 29, 2011, a warrant was executed on Petitioner's property. Ten small breed adult dogs, each in individual plastic bags, were found in a freezer on the property. The appearance of the fur of the ten adult dogs lead to the conclusion that the dogs were wet when placed in the freezer. On the premises, the investigators found a pool with dirty water. The investigators located and photographed a cinder block that had a rope tied to it.

The Petitioner told the Sheriff's investigator and the Animal Human Society investigator many different versions of events regarding the animals in the freezer. Investigator Schroeder showed AJ photos of the dogs found in the freezer. AJ identified one as "Sasha" a dog that went missing about a month prior to the "pool incident." Sasha was AJ's favorite. AJ asked the Petitioner if she could take Sasha home to live with her. The Petitioner denied this request. The Petitioner told her she was selling Sasha on the internet for one hundred dollars. One day AJ came to work and Sasha was no longer there. The Petitioner said she "gave her away." She also identified some of the smaller black and white dogs as being the dogs she kenneled for the Petitioner. She saw one photo and believed it was of the dog that she saw being thrown into the pool, attached to a cinder block. She identified one dog as the dog that bit the Petitioner and AJ. She identified another as the dog that she "loaded up." The Petitioner said she was giving it away. AJ asked if she could take it home. The request was denied. She also identified one

of the dogs as the dog that recently had puppies. This was the dog that bit her puppies' legs as a means to save them. After that incident, the dog was not seen again.

The Petitioner stood trial for fourteen counts of animal cruelty. During the trial, Dr. Arnien², a veterinarian forensic pathologist testified. Dr. Arnien conducted necropsy examinations on three of the ten frozen dogs. Because the dogs were frozen and thawed, the cause of death was not able to be determined. However, none of the dogs were found to have any diseases. Dr. Arnien categorized the animals in the freezer as being companion animals. Dr. Arnien testified that any animal placed in water and in a freezer would suffer.

Petitioner was subsequently found guilty of thirteen out of the fourteen counts of animal cruelty. She appealed and in a unanimous, unpublished decision attached to the petition for review, the court of appeals rejected Petitioner's arguments and affirmed the conviction. Specifically, the court of appeals found that the dogs at Petitioner's kennel were bred to be companion animals, given names, pet, and spoken to in affectionate manner. Therefore, the Petitioner committed thirteen counts of animal cruelty for killing puppies and dogs in violation of Minn. Stat. § 343.21, subd. 7. The court of appeals determined that "pet or companion animal" as defined "unquestionably includes all of the dogs at Bell's kennel."

² The trial transcripts indicate the name is spelled Arnien, the motion transcript dated March 28, 2013, spells the name Armien.

The court of appeals also determined that the district court correctly ruled that Petitioner made “bare assertions” and did not properly raise the alternative perpetrator defense. Therefore, the district court did not abuse its discretion in limiting this evidence.

Lastly, the court of appeals determined that the “due process” argument made in its request to suppress the identification of the deceased dogs was not a proper argument. Instead, it was a foundational issue to be decided by the district court and it did not abuse its discretion.

REASONS FOR DENYING REVIEW

Petitioner requests that this Court grant review because “this case raises several issues of first impression of statewide concern.” The case does not raise any issues of first impression. Instead, it raises mere conjecture and bare assertions.

First, Minnesota defines pet or companion animals as any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion animal or any stray pet or stray companion animal. Minn. Stat. § 343.20, subd. 6. Assuming the legislature did not intend absurd or unreasonable results, Petitioner’s argument fails. Importantly, the definition includes, “any stray pet or stray companion animal.” Minn. Stat. § 343.20, subd. 6 (2006). The legislature’s inclusion of, “any stray pet” indicates that it, “does not require that the pet have tags, a color, or other observable indicia of its status as a pet.” *State v. Johnson*, A07-0537, 2008 WL 2415371 (Minn. Ct. App. June 17, 2008). Its inclusion of stray also would mean that it did not intend for the animal to only be a pet if one allows the animal in its home, pets the animal, or has an emotional attachment to it. A stray cat kept in a

barn for purposes of killing mice is deemed a companion pet or animal. This is no different than a dog kept in a kennel for purposes of breeding. It's no different than sled dogs kept outside in a kennel for purposes of pulling a sled for sport. The court of appeals stated that the statute does not so narrowly restrict what is a pet or companion animal that it would negate a dog; especially not a dog that is bred for companionship and future enjoyment of others.

Secondly, Petitioner argues that the court of appeals was incorrect when it determined that alternative perpetrator was an affirmative defense that required proper notice and evidence before it can be applied in a case.

A defendant has a right to present a meaningful defense, which "includes the right to present evidence that a third party may have committed the crime for which the defendant is charged." *State v. Jenkins*, 782 N.W.2d 211, 226 (Minn. 2010); see also Minn. Const. Art. 1 § 6. But "with that right comes the obligation to comply with procedural and evidentiary rules." *State v. Blom*, 682 N.W.2d 578, 621 (Minn. 2004). A defendant who wishes to admit alternative perpetrator evidence must first make a threshold showing that the evidence the defendant seeks to admit has an "inherent tendency to connect the alternative party with the commission of the crime." *State v. Larson*, 788 N.W.2d 25, 35 (Minn. 2010) (citation omitted) (internal quotation marks omitted). The "purpose of this foundational requirement is to avoid the use of bare suspicion and safeguard a third person from indiscriminate use of past differences with the deceased." *Jenkins*, 782 N.W.2d at 224 (alterations omitted) (citation omitted) (internal quotation marks omitted). If the appellant meets this foundational requirement,

“the court must still evaluate this [the alternative perpetrator] evidence under the ordinary evidentiary rules as it would any other exculpatory evidence.” *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004). The court of appeals ruled on well-settled law and determined the bare assertions made by Petitioner were not sufficient and not based in any evidence.

Lastly, the Petitioner contends that the court of appeals incorrectly ruled that her arguments were not proper due process issues. First, the court of appeals determined that this argument was without merit because the due process concerns are implicated when the pretrial identification of the defendant is impermissibly suggestive. However, the court of appeals stated that the argument is really one of foundational reliability. The court of appeals correctly ruled that AJ had significant experience working with these particular dogs. Because she was informed how they died, did not undermine the reliability of her identification of the dogs with which she personally had interacted.

CONCLUSION

Respondent respectfully requests that this Court deny this petition.

Respectfully submitted,

Dated: 12-2-14

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

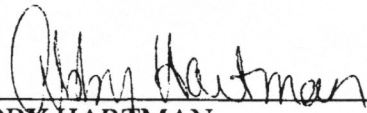
By: 

Stacy St. George
Assistant Dakota County Attorney
Attorney Registration No. 0341113
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033
Telephone: (651) 438-4438

STATE OF MINNESOTA
COUNTY OF DAKOTA

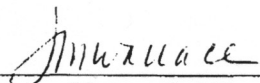
AFFIDAVIT

ABBY HARTMAN, being first duly sworn upon oath, deposes and says that on the 3rd day of December, 2014, she mailed two copies of the within Response in Opposition to Petition for Review in the matter of State of Minnesota vs. Dayna Kristine Bell, to Lori Swanson, Attorney General, State of Minnesota, 445 Minnesota St., 1100 Bremer Tower, St. Paul, MN 55101; and to Stephen V. Grigsby, Attorney at Law, 5901 12th Avenue South, Minneapolis, MN 55417, by depositing the same in the United States Mail at Hastings, Minnesota, postage prepaid.

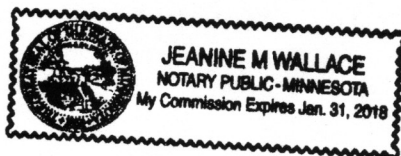


ABBY HARTMAN

Subscribed and sworn to before me
this 3rd day of December, 2014.



Notary Public



OFFICE OF DAKOTA COUNTY ATTORNEY
JAMES C. BACKSTROM
COUNTY ATTORNEY



Dakota County Judicial Center
1560 Highway 55
Hastings, Minnesota 55033-2392
Phillip D. Prokopowicz, Chief Deputy
Karen A. Schaffer, First Assistant

(651) 438-4438
Fax: (651) 438-4479 (Civil Division)
Fax: (651) 438-4500 (Criminal Division)
Fax: (651) 438-4499 (Administrative Division)
E-mail: attorney@co.dakota.mn.us

December 3, 2014

OFFICE OF
APPELLATE COURTS

DEC 04 2014

FILED

ANNMARIE S. O'NEILL
CLERK OF MINNESOTA SUPREME COURT
305 MINNESOTA JUDICIAL CENTER
25 REV DR MARTIN LUTHER KING JR BLVD
ST PAUL, MN 55155-6102

RE: State of Minnesota v. Dayna Kristine Bell
Appellate Court File No. A14-0137

Dear Ms. O'Neill:

Enclosed please find four copies of the Response in Opposition to Petition for Review in the above-entitled matter, together with an Affidavit of Service.

By copy of this letter we are serving two copies of this Response in Opposition to Petition for Review on opposing counsel and Attorney General.

Sincerely,

Stacy St. George
Assistant County Attorney

/ah

Enclosures

cc: Stephen V. Grigsby, Attorney at Law
Lori Swanson, Attorney General

Criminal Division
Kathryn M. Keena, Head

Victim/Witness Supervisor
Kelly Nicholson

Community Relations Director
Monica Jensen

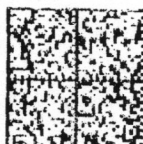
Office Manager
Jennye Croft


An Equal Opportunity Employer

Civil Division
Jay R. Stassen, Head

Child Support Enforcement Division
Sandra M. Torgerson, Head





U.S. POSTAGE  PITNEY BOWES
202 55023 \$ 002.87⁰
02 1W
0001374655DEC 03 2014

Office of Dakota County Attorney
James C. Backstrom
1560 Hwy.55
Hastings, Minnesota 55033-2392

ADDRESS SERVICE REQUESTED

TO:

ANNMARIE S. O'NEILL
CLERK OF MINNESOTA SUPREME COURT
305 MINNESOTA JUDICIAL CENTER
25 REV DR MARTIN LUTHER KING JR BLVD
ST PAUL, MN 55155-6102