**CASE NO A14-0137**

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**



**DAYA KRISTINE BELL,**
**APELLANT**

**VS.**

**STATE OF MINNESOTA**
**RESPONDENT**

# APPELLANT'S BRIEF AND APPENDIX

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## TABLE OF AUTHORITIES

CASES

## LEGAL ISSUES

1. Whether the trial court erred in not dismissing the charges for lack of probable cause at the omnibus hearing.

2. Whether the trial court erroneously construe Minn. Stat. sec. 343.21 to relieve the state of its burden of proof.

3. Whether the verdict supported by sufficient evidence.

4. Whether the prosecutor committed misconduct warranting a mistrial.

5. Whether the court's instructions on reasonable doubt was erroneous and whether its failure to give a rational hypothesis instruction was error.

6. Whether the trial court erred by not holding an omnibus hearing of whether the police identification procedure was suggestive.

7. Whether the trial court improperly restricted the Appellant's right to a complete defense by its restriction on cross-examination and its restriction on the scope of closing argument.

Apposite cases:

State v. Nissalke, 801 N.W. 2d 82 (Minn.2011);
State v. Anderson, 784 N.W. 2d 320 (Minn.2010);
State v. Billstrom, 149 N.W. 2d 281 (Minn.1967);
Stoval v. Denno, 388 U.S. 293 (1967)

## STATEMENT OF THE CASE AND FACTS

Prior to trial the Appellant moved the court for a dismissal of all charges alleging Minn. Stat. sec. 343.21 was void for vagueness and that there existed no probable cause to proceed to trial. The trial court denied Appellant's motion.

The matter proceeded to trial. During the trial the court excluded any cross-examination with regard to the police's focus on and interview of Appellant's husband as a possible suspect. (T. 128-132). It further prohibited the Appellant from arguing to the jury any rational hypothesis of innocence that another person may have committed the crime. (T.545-552).

During the trial the prosecutor elicited uncharged other acts evidence (T. 395), the exercise of Appellant's right to be silent (T.475) and disparaged the defense during rebuttal (T. 636-37). Finally the Court declined to give a rational hypothesis instruction but did give the standard instruction on reasonable doubt. (T.558-9).

## ARGUMENT

### INTRODUCTION

This is an unusual and troubling case. The conviction is defective for several principal and interrelated reasons, each fatal in itself and which collectively explain and taint the verdict.

First, as we shall show, the evidence was insufficient to even be submitted to the jury.

Second, the defense was wrongly and prejudicially foreclosed from legitimate cross-examination about to gaps in the evidence by the court's erroneous characterization as "alternative perpetrator evidence," and then from arguing legitimate hypotheses of innocence and thereby denied the rudimentary Constitutional right to present a meaningful and complete defense.

Third, these two principle errors were aggravated by prosecutorial misconduct consisting of three distinct acts: The prosecutor 1) deliberately elicited uncharged misconduct before the jury, 2) improperly invoked the appellant's exercise of her right to remain silent and 3) improperly disparaged the defense.

Fourth, the trial court denied the defendant the right to challenge the admission of an in-court identification based on suggestive procedures

which the police officer who performed them ultimately admitted were in fact suggestive.

Fifth, the state presented highly prejudicial evidence alleging the defendant drowning a dog by throwing it into a pool with a rope attached to its neck, when that incident was not charged in the complaint.

## ARGUMENT

**The evidence was insufficient to support the verdict.**

A verdict based on circumstantial evidence "must be consistent with guilt and inconsistent with any rational hypothesis other than guilt." *State v. Silvernail*, 831 N.W. 2d 594, 599 (Minn.2013). The argument as to insufficient evidence has three distinct and related components. First: the evidence does not exclude the possibility that another person killed the dogs found in the freezer, or that the dogs were in fact drowned, which is the state's theory of how they suffered. Second: the state failed to prove the essential element that the dogs were pet or companion animals (resulting from the trial court's erroneous construction of the statute and failure to dismiss for no probable cause at the omnibus hearing) Third: the state failed to prove that the three dogs the defendant in fact euthanized experienced any suffering or that any suffering was not justified.

**1. There was no evidence the defendant drowned the ten dogs found in the freezer.**

The state presented *no* evidence of who, if anyone actually drowned the dogs, and offered only *equivocal* circumstantial evidence that the dogs were in fact drowned. In order for a guilty verdict, the jury necessarily had to infer that appellant drowned the dogs by pure propensity. The only evidence that she drowned the dogs was that she had drowned a single, different dog. That incident was not even a charged count and was erroneously admitted. The state did *not* charge that incident in the complaint and did *not* seek its admission pursuant to a motion of "other acts evidence" and the procedures required under *State v. Billstrom*, 149 N.W. 2d 281 (Minn.1967). There was some question as to whether the pool-drowning incident was part of the charged conduct or an "other act" under rule 404(b). If the dog drowned in the pool was in fact one of the ten dogs found in the freezer, then this was a charged count. If that dog was not one of the dogs from the freezer, then it was 404(b) evidence that was improperly admitted. The appellant had previously objected during the omnibus hearing to the admission of such testimony by moving for a dismissal for lack of probable cause. However, the precise status of that act would depend on whether the witness could identify the dog from the pool as one of the dogs found in the

freezer. It was not possible to squarely object to it as improper *Spreigl* evidence until the witness had already testified. The uncertainty as to whether the pool incident was or was not an "other act" is structurally linked to the lack of probable cause, or what is now appealed as insufficient evidence to which the appellant clearly objected at the omnibus hearing. Because there is no evidence at all that appellant drowned any of the ten dogs in the freezer and only meager evidence that they even drowned, there is even some question regarding whether the pool incident was an "other act" or one of the charged counts. It is clear from the record that the only charged counts were the four puppies and the ten dogs in the freezer. The only reason any question arises as to the status of the pool-drowning incident –whether it is a charged or uncharged event - is because there was no evidence that appellant drowned those dogs or even that they were drowned. The only link between them is what the law forbids: the inference that the appellant had the propensity to drown dogs. Appellant clearly objected to this at the omnibus phase of the case which included an objection that propensity alone provided the barest coloration of probable cause.

2. **The evidence that the dogs were drowned was insufficient.**

If evidence is insufficient where it permits a rational hypothesis of innocence, then the testimony of the prosecution's own witness Dr. Anibal

Arnien provided an unavoidable hypothesis of innocence. He testified not only that he could not conclusively state the dogs were drowned (T. 375) but that they could have died from "a large number" (T. 368) of other causes, including that they were properly euthanized by a veterinarian. (T. 369-370). The only theory the state advanced for the cause of the dogs's suffering was drowning and the only evidence offered that they were drowned was the testimony of the pathologist who not only could *not* say the dogs were drowned but that there were many other ways they could have died that did not cause them to suffer.

3. **There was insufficient evidence that to support the convictions involving the puppies.**

Minn. Stat. sec 343.20 Subd. 3, defines cruelty as "every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death." The statute places the burden on the state to prove "unnecessary" and/or "unjustifiable" suffering or pain. This burden requires the state not simply to prove that an act caused suffering, but that the cause of the suffering was unjustified beyond a reasonable doubt. That means that in their case-in-chief the prosecution must adduce evidence that negates any possibility of necessity or justification; the state cannot simply prove that an act caused suffering and then shift the burden to the defense to provide some

necessity or justification. The statute includes as an element, proof of the negation of necessity or justification, unlike cases such as homicide where the burden is on the defendant to raise an affirmative defense of, for example, self-defense. Here, the animal cruelty statute includes "lack of necessity or justification" as an essential element of the burden of proof.

The evidence showed that appellant drowned two puppies that had had been suffering a catastrophic injury inflicted by their mother. (T.165-167. T. 443-445). A third drowned puppy was a runt. (T. 263, 285, 286,) In order to prove the acts were "unnecessary" or "unjustified" the state would have had to prove in respect of the two puppies with mortal, excruciating, injuries that there was an alternative than to end their suffering the way she did. But the state's own witness essentially conceded that given the circumstances nothing Ms. Bell did was "unnecessary" or "unjustifiable". (T. 444-445). The state's witness - Keith Streff – a senior humane investigator for the Humane Society – testified that there are in fact contingencies that cannot be foreseen and that all a person can do under the circumstances is to palliate pain. The evidence showed two puppies that were screaming with pain from their mother's ministrations that the vet was twenty-five to thirty minutes away, (T. 387), and that unlicensed people are not allowed to possess the euthanizing agent sodium pentobarbital. (T. 387). The state did

not present any evidence to the jury of lack of justification. To do so they would have had to present evidence of alternatives to what she did, why what she did was the worse of at least another possibility. Nothing in this record suggests any more humane reaction to those puppies unimaginable pain. Neither the evidence nor the law, nor common experience offers any guidance as to what a reasonable person should do when suddenly confronted with the unspeakable spectacle of baby animals whose legs have been chewed off by their mother. Absent some evidence to the contrary of a more humane alternative, surely it cannot be a *crime* (the crime of *causing* suffering) to end their suffering promptly as the appellant did.

In respect of the runt, the state failed to prove that the dog actually suffered at all. The state's witness, Dr. Sharon Dreifus, testified that it is not possible to be able to determine if a puppy suffered without knowing its physiological state at the alleged time of drowning. (T. 389-90). She explained that runts are neglected by their mother and eventually die from hypothermia. (T.390) She testified that if the runt was experiencing hypothermia it would not likely suffer by being placed in warm water. (T. 391). The state's witness to the drowning did not give any testimony in regard to the puppy's physical condition other than she was unable to notice any physical problems. (T. 263). That the witness did not observe any

visible physical problems does not mean there were not any. The witness never testified whether the puppy was moving or otherwise showing vigor or vitality. Without some sense from the witness of the puppy's physical condition, given the testimony of Dr. Dreifus about the need to know the condition, the state cannot have proven whether the puppy suffered and a fortiori whether that suffering lacked necessity or justification. The evidence offered was impressionistic, no more than the casual observation of a nineteen year old with no formal training in animal science. There was no evidence of the puppy's physiological condition from someone with the proper training and experience. The evidence was insufficient.

3. **The state did not prove the "pet or companion animal" element.**

The sole evidence offered by the state in support of the proof of the element was a blank contract created by the appellant which apparently she used to comply with the lemon laws and which characterized the subject of the contract as a "pet or companion animal". Because "pet or companion animal" is a legal conclusion, the appellant's opinion in regard to the status of any animal she sold or intended to sell is merely her opinion and not proof of the matter. *State v. Vail*, 274 N.W. 2d 127,134 (Minn.1978) ("Minnesota law requires proof of the actual identity of the substance, the defendant's

belief is not sufficient. State v. Dick, Minn., 253 N.W.2d 277, 279 (1977). The price charged and representations made by the defendant are, at best, only assertions of his belief.") The appellant's belief that what she was, or would, at some indeterminate time, selling pet or companion animals is therefore not sufficient proof. Further, and importantly, the contract offered by the state does not prove that the *particular dogs* that are the subject of the charges were pet or companion animals. The trial court erred in its omnibus determination of the legal definition which resulted in the entire matter being submitted to the jury without any actual evidence in regard to the specific dogs charged in the complaint. The court misconstrued the statute at the omnibus stage. The court adopted the state's argument that because the definition of pet is to "enjoy" (i.e. possess), and selling an animal is a means of enjoyment, then all the dogs on the Bell Kennels were necessarily pets.

This construction nullifies the legislative intent of the statute (343.20), which is to distinguish certain animals from pets. The state cited Blacks Law dictionary as authority for the definition of enjoy as "to possess". Under the definition adopted by the court, all animals possessed would be pets, for pets would be enjoyed merely by any possession at all (just as a broken arm would be enjoyed because it is possessed) The State's definition not only ignores the clear intent to distinguish classes of animals into pets

and non-pets but it also ignores the plain language of the statute that modifies the purpose of enjoyment specifically as enjoyment "as a pet[1]." The statute reads "...any animal owned, possessed, cared for or controlled by a person for the present or future enjoyment of that person or another *as a pet or companion animal.* 343.20 Subd. 6. The court's construction is faulty because it reads "enjoy" to mean the same as possess. If "enjoy" were synonymous with "possess", then the statute would read, (implausibly) "any animal, owned, possessed, cared for or controlled by a person for the present or future (enjoyment) possession of that person or another as a pet". The court failed to abide a basic canon of statutory construction that words have their plain meaning. *Am. Family Ins. V. Schroedl*, 616 N.W. 2d 273 (Minn. 2000). The word for pet means an animal kept for pleasure. Concise Oxford English Dictionary. 11th Ed. Oxford University Press. 2004. Additionally, Courts construe a statute to give effect to *all* its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *Fish v. Commissioner of Minnesota Dept. of Human Services*, 748 N.W.2d 360 (Minn. App 2008). The trial court's construction makes everything after "possess" or "own" superfluous. It would also render superfluous the specific quality of enjoyment as a pet rather than enjoyment

[1] The statute used the word pet in its definition of pet. The statute is then either circular – a pure tautology and therefore meaningless (pet is a pet), or it intends the

(in the sense of mere possession) as something other than a pet, i.e. livestock. The statute could not modify enjoyment "as a pet" without intending to distinguish, by the word pet, its general meaning from that of other types of enjoyment. Had the legislature intended for the statute to apply to all possessed animals, it could have said precisely that and nothing more. That it did say more, that it specified enjoyment "as a pet," it clearly intended to distinguish different types of enjoyment.

Even if the statute *could* be construed to make the possession of any dog held on premises for possible future sale a "pet or companion animal" the statute is ambiguous at best and must be strictly construed. The rule of lenity demands this as a constitutional matter; a matter of due process. If there is any doubt whether the legislature intended a statute to embrace certain actions, that action must regarded as not within the statute and any reasonable doubt on that particular issue must be resolved in favor of the defendant. *See State v. Walsh*,45 N.W. 721 (1880); *State v. Peck*, 773 N.W. 2d 768 (Minn.2008); *State v. McKown*, 461 N.W. 2d 720 (Minn.App.1990). The principle embodies and is based upon the notion that certain penal legislation must be clearly expressed in order to give *fair notice and warning,* of what conduct is punishable by jail. *State v. McKown, above*. The statute as construed by the trial court manifestly does not do so. If anything, the

trial court's construction of the statute appears to do the opposite: it gives a counter-intuitive reading of the general meaning of "pet" and "enjoy". To construe "enjoy" to mean only the archaic sense of possess is to broaden the scope of the statute to punish conduct that is not commonly legible in it.

Fair notice and the rule of lenity is of particular concern with regard to the meaning of "unnecessary" or "unjustifiable" suffering as applied to the euthanizing of the puppies in this case. The lack of necessity or justification was not only not proven, but their ambiguity makes proof very difficult without causing insuperable unfairness. The entire prosecution was premised on the state's contention that lethal injection is the only AVMA approved means of euthanizing dogs (T.365) and that any other method, including drowning, is prohibited by the statute. The statute does not prohibit particular forms of euthanasia outright, but requires at least one inferential step from the language of the statute in order to conclude that drowning is prohibited, because it causes *more suffering relative to other methods*. Because the statute does not refer to the AVMA standards or prohibit a particular method of euthanasia directly, the meaning of "unnecessary" and "unjustified" are ambiguous and their construction must be in favor of lenity. This would create a genuine ambiguity with regard to what person should do when faced with the unforeseeable contingency of

waking up on Sunday morning to find several puppies catastrophically injured by their mother screaming in pain and in need of immediate relief. To construe it otherwise would make person liable for punishment for an unforeseeable contingency in the normal course of operating a licit dog breeding business where there was no clear licit alternative. The statute clearly proscribes obviously gratuitous cruelty of a type that was not at issue in this case, but it does not clearly proscribe the alleged conduct of the appellant. Moreover, it does not give clear direction to what are and are not acceptable methods of euthanasia for dog breeders engaged in legal business. The statute could simply adopt the AVMA standards (as the federal statute – the Animal Welfare Act – does) or simply state directly that no one may euthanize a dog but a veterinarian by lethal injection. As obvious as it seems that no person should drown a dog, it is not that obvious since it is legal throughout the United States to kill human beings by methods which would appear to cause unnecessary suffering: electrocution (Alabama, Arkansas, Florida, Kentucky, South Carolina, Tennessee, Virginia) and by hanging (Delaware, New Hampshire, Washington) and there is the lurid body of jurisprudence that has decided that even botched electrocutions are not cruel. *See e.g. State of La ex rel Francis v. Resweber*, 329 U.S. 459 (1947). In a country where the highest court has held it is not unnecessarily cruel to

subject people to death by hanging and to be twice electrocuted, it seems rather unfair to punish a dog breeder for possibly construing a statute to permit doing something that the finest legal minds of the highest court have agreed is not unnecessarily cruel.

Because the trial court's construction of the statute erroneously conflated the very distinction the statute intended to make, the state relied on the omnibus ruling and failed to present any evidence at all that the particular dogs were pet or companion animals. Even if certain of the dogs possessed by appellant were being held for another's future enjoyment as a pet, not all necessarily were such. A dog breeder would have breeding stock that will eventually be culled and never sold as pets. The record in this case supports this. Dr. Dreifus testified that she euthanized a dog because it was old and was not suitable for enjoyment as a pet. (T. 382, lines 2-9) Keith Streff also said not all dogs owned by a breeder are pets. (T. 429 lines 10-24). The state had to prove that each dog charged in the complaint were specifically being held at that time for either appellant's enjoyment or a buyer's enjoyment as a pet. The state did not offer any evidence in regard to any specific dog. Clearly the puppies with mortal injuries and fatal defects were never going to be pets. Among the dogs found in the freezer only a single dog was identified with any certainty and there was no evidence

offered whether that dog was being held for sale to a buyer or kept as breeding stock. The rest of the dogs were not even clearly identified. If they could not even be clearly identified then they necessarily could not be further determined to be pets. The state failed to prove that any of the dogs were pet or companion animals and each of the thirteen counts must be reversed.

**Summary**

It is appropriate and useful to tabulate the elements the state was required but failed to prove:

As to the dogs found in the freezer:

1. The evidence did not prove who caused the death or indeed that anyone (other than nature) did so.

2. Corpus Delicti: A) The state failed to prove any cause of death B) Intent C) Suffering and D)That the dogs were pet or companion animals and thus failed to prove any crime by anyone, much less the appellant.

3. Venue. There was no evidence where the death occurred.

4.) Limitations. Nor was there proof of when the dogs died.

It can hardly be contended by even the most prosecutorially-minded animal lover that a citizen may be sent to jail upon mere proof that a number of canine corpses are found on her property. Yet that is all we have here.

As to the mother-maimed puppies, if we assume *arguendo,* that the evidence could support a finding that Ms. Bell ended their misery in the proper county and within the statute of limitations, there remains at least three fatal defects in the state's required showing:

There is no proof these were pets or companion animals.

There is no proof they suffered unnecessarily.

There is no proof that Ms. Bell had any licit alternative or that she had any intent or mens rea.

This deplorable situation involves and invokes the principle sometimes known as the "choice of evils" justification, analogous to the more common "necessity" defense. *State v. Johnson*, 183 N.W. 2d 541 (1971); *State v Rein*, 477 N.W. 2d 716 (Minn.1991). The appellant mercifully ended the suffering of two disastrously injured puppies; the state did not suggest, much less prove what else she might have reasonable done.

4. **The misconduct of the prosecutor aggravated the lack of evidence.**

The prosecutor committed three violations of basic and well-settled rules of which are fundamental to fairness and the violation of which deprived a defendant of a fair trial.

**1. Other acts misconduct**

The prosecutor deliberately elicited uncharged conduct and the record provides evidence it was not only deliberate, but planned to maximize damage by pure surprise. The curative instruction was inadequate. It is inadequate because under the circumstances in this case, it does not deter this kind of deliberate misconduct and actually encourages prosecutors to engage in it, for they get in the damaging evidence by treachery and then acquiesce to the curative instruction, which is in essence a legal fiction. Jurors do not actually forget they heard it; the court merely presumes for purposes of review they have done so.

The prosecutor's remarks demonstrate she planned as far ahead as the testimony of Dr. Dreifus to elicit this testimony. The misconduct consisted of eliciting from Brenton Cox, the USDA inspector that Ms. Bell told him she wrapped a live puppy in paper towels and put it in the freezer. (T. 395 lines 5-6). In response to the objection the prosecutor conceded the event was not charged (T. 402 lines 22-24). By acknowledging the other act as "404(b)" evidence, the prosecutor also implicitly conceded that this was

precisely the kind of evidence that may only be admitted through the procedure outlined in the massive body of settled jurisprudence under the *Spreigl* line of cases. The prosecutor suggested that the defense should have brought a motion in limine to prevent her from eliciting the evidence. (T. 402 lines 17-22). That is not the law. The law is the opposite: it is the state with the obligation to bring a motion for the admission of evidence under rule 404(b). *State v. Spreigl*, 139 N.W. 2d 167 (Minn.1965):

> ...we now hold that in the trial of this and future criminal cases where the state seeks to prove that an accused has been guilty of additional crimes and misconduct on other occasions, although such evidence is otherwise admissible under some exception to the general exclusionary rule, *it shall not hereafter be received unless within a reasonable time before trial the state furnishes defendant in writing a statement of the offenses it intends to show he has committed, described with the particularly required of an indictment or information*, subject, however, to the following exceptions: (a) Offenses which are part of the immediate episode for which defendant is being tried; (b) offenses for which defendant has previously been prosecuted; and (c) offenses which are introduced to rebut defendant's evidence of good character.
> (emphasis added);

*State v. Ness*, 707 N.W. 2d 676 (Minn.2006):

> The court has developed, through the many cases since *Spreigl,* a five-step process to determine whether to admit ***686*** other-acts evidence. [FN2] The steps are: (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant. Angus v. State, 695 N.W.2d 109, 119 (Minn.2005) (citing State v. Asfeld, 662 N.W.2d 534, 542 (Minn.2003).

The state did exactly the opposite of what the law requires. Moreover, it appears that the state had planned to elicit this evidence. The prosecutor stated "Again, this is not new. Ms. Dreifus testified to this two hours ago." (T. 404 line 8-9). Indeed, the prosecutor specifically asked Dr. Dreifus if she had ever advised appellant to euthanize puppies by wrapping them in wet rags and put them in the freezer. (T. 383 lines 13-15). The prosecutor could only have asked this question in anticipation of eliciting from her next witness the 404(b) evidence. The only way this information could be meaningful is if the prosecutor intended to inquire of Brenton Cox whether appellant had actually done this. It would have made no sense at all to ask this of Dr. Dreifus and elicit from Brenton Cox only whether a conversation took place between him and appellant about wrapping puppies in wet rags without the reference to the act itself. No prosecutor could have been unaware that the law requires compliance with the procedures under *Spreigl* and *Billstrom*. In this case, however, the prosecutor's spontaneous and proper characterization of this evidence as 404(b) evidence (T.402) proves that she was keenly aware of its nature and therefore of the procedure required to admit it. It was deliberate misconduct. It was a deliberate gambit: she would elicit it to prejudice the appellant and then hope for least effective remedy.

> ...misconduct results from violations of clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law. *See id.* at 301 (stating "[w]e expect that prosecutors, as well as defense counsel, are aware of our case law proscribing particular conduct as well as the standards of conduct prescribed by the ABA" and stressing impropriety of engaging in "clearly proscribed conduct"). Further, we have held that attempting to elicit or actually eliciting clearly inadmissible evidence may constitute misconduct.

*State v. Fields*, 730 N.W. 2d 777 (Minn.2007). Even if this misconduct was not deliberate, it demands a proportionate remedy. Even if a curative instruction (theoretically) may cure the erroneous introduction of evidence, it does not cure or sanction the planned, deliberate quality of the prosecutor's conduct. There may be times when a prosecutor may wish to connive to introduce damaging evidence contrary to established procedure and then accept a curative instruction as a sanction because of the way the instruction to disregard repeats ~~and amp~~lifies the evidence to be disregarded and the impossibility of ever knowing whether the jury actually disregarded the evidence or whether the instruction actually prejudiced their deliberations. In other words, the prosecutor may try to exploit the "unmitigated fiction" that "all practicing lawyers" know a curative instruction to be. *State v. Reardon*, 73 N.W. 2d 192 (1955).

It was the very weakness of the evidence in this case that provided the temptation that led to the transgression, and it also provides the reason why the case should be reversed. The misconduct was deliberate and damning.

The only effect it could have had was to create an inference that the appellant routinely drowned dogs and that her character was actually worse than the admissible evidence proved.

**2. Defendant's invocation of the right to silence**

But this was not the only instance of misconduct. The prosecutor also also violated the fundamental rule of exploiting the appellant's exercise of her right to remain silent. During questioning of a law enforcement witness about whether the appellant had actually given a dog to a person in Wisconsin the police officer mentioned that when pressed for more, precise evidence the appellant chose not to speak with the police anymore. (T. 475) The context of the conversation was whether one of the dogs found in the freezer was one appellant had told police she had given to a "Julie Knox" in Eau Claire. The police tried to locate a Julie Knox but were unable to do so, which implied that appellant had lied about giving the dog away and had really drowned it. The police officer clearly mentioned that appellant declined to speak further only in relation to his pressing of the issue of whether she had in fact given the dog away or not.

"We started to get into that conversation [about where Julie Knox is and whether there is such a person] but at some point our conversation ended and

*she chose not to speak with us anymore* and I wasn't able to verify where that was but she did state it was Eau Claire."

(T. 475-6)

It is never admissible for police to testify that a defendant "chose not to speak with us anymore" to a jury. The election not to speak is a right that is chilled when its exercise is admitted before a jury and accordingly it is error to admit it. *State v. Penkaty*, 708 N.W.2d 185 (Minn.2006). Not only does it chill the exercise of such rights but the jury may see the exercise of such rights as a "badge of guilt." *State v. Al-Nasser*, 690 N.W. 2d 744,750 (Minn.2005). In this case the mention of the appellant's wish not to speak happened during the investigation and was meant to show that her silence hampered the investigation or that she had about giving the dog to Julie Knox.

**3. Disparagement of the defense**

Finally, the prosecutor committed error during her rebuttal by disparaging the defense. In her rebuttal, after the appellant's last opportunity to argue, she told the jury:

> And I have to address this hair issue again. It's an issue of using it when it works for you. If, let's say that there had been hair taken and let's say that it matched the dog's, the response probably would have been, well, those dogs are on that property. That hair could have gotten in the pool--...(T. 636)

This is the type of abstract disparagement of the defense an speculation the law forbids. The prosecutor began by characterizing the defense as mercenary; that it uses arguments instrumentally pursuant to its abstract mandate to defend. It is misconduct because in arguing "It's an issue of using it when it works for you" it implies defendants make standard arguments in response to certain types of evidence. The prosecutor went beyond that, however, by offering hypothetical arguments the defense would have used had the state proven a match with the dog hair. These remarks are meant to urge the jury to disregard the content of defense arguments because the defense will always have some argument by its very function. It is to tell the jury that they should disregard the arguments simply because hypothetically a defendant will always tailor an argument to avoid prosecution. Implicit in these remarks is that this is only what the guilty argue. This is the kind of disparagement of the defense case law has repeatedly deemed misconduct. *State v. Griese*, 565 N.W. 2d 419 (Minn.1997); *State v. Williams*, 524 N.W. 2d 538 (Minn.1994); *State v. Bettin*, 244 N.W. 2d 652 (Minn.1976). The misconduct was objected to squarely (T. 636) and summarily overruled (T. 637). The misconduct was particularly aggravated by the fact it was a third instance of it in a weak case. The prosecution deliberately informed the jury the defendant had killed

another dog in an uncharged event, invoked her right to remain silent only when pressed by police and is willing to manufacture any argument that serves her interest. The misconduct was not clearly harmless in light of the lack of evidence.

5. **The court erred and violated the right to due process by restricting both the scope of cross-examination and closing argument based on an erroneous understanding of "alternative perpetrator" evidence.**

The trial court confused the admission of alternative perpetrator evidence with the proper scope of arguing inferences from what the state's evidence failed to exclude. The standard of appellate review for cases of circumstantial evidence is instructive. This court reviews cases of circumstantial evidence for whether the evidence is consistent only with guilt and inconsistent with any rational hypothesis other than guilt. This standard is mandated by the state's obligation evidence to overcome the presumption that an accused is innocent. That is not a legal fiction; it reflects the condition of freedom into which people are born, an actual fact that remains unless it is overcome proper evidence beyond all reasonable doubt. That is the precise reason why in a circumstantial evidence case, the defendant is entitled to even *hypotheses* (unproven suppositions) of

innocence. This reflects that he need prove nothing. This is to say only that the state's evidence must exclude any *and every* reason why the fact of innocence is no longer true. In essence, it is the state that must defend its theory of guilt against nothing more than the factual innocence of anyone who has pleaded not guilty. It would be a violation of the presumption of innocence to force a defendant to provide reasons why he is innocent. It would also be a violation of the presumption to prevent him from arguing to a jury rational hypotheses of innocence not precluded by the state's evidence.

In this case the court prevented the appellant from arguing that someone else killed the dogs. It reasoned that because the defense did not offer evidence that another person committed the crime appellant was precluded from arguing another person did it. (T. 552). It required the defense to limit its argument to what the state alone has admitted into evidence. "You're precluded from arguing that other (sic) specific individual did it, or anybody in the world could have done it. You're allowed to argue that the state has not proven, based on the evidence…"(T.552); and "You can argue negative inferences, you can't argue somebody else did it." (T. 553). This ruling shifted the burden from the state to the defense. It also is logically faulty. If the state has not proven that appellant in particular killed the dogs, (but the dogs were in fact killed

by a person), then this necessarily means somebody who is not the appellant did it. The set of people: "those who are not the defendant", is the universe of those who are both people and not the defendant, which is to say, everybody else. Failure of the proof to include the appellant means, as a matter of pure logic, everyone else is not excluded. The court's ruling cannot be sustained without repudiating reason itself. If the purpose of closing argument is to argue inferences not excluded by the state's evidence, then the state's failure to prove the appellant did it, creates a logical inference some one else did it. To prevent the appellant from *arguing* this defies the very purpose of closing argument and violates the right to present a *complete defense.*

The court's rulings erroneously limited the appellant's argument to only the evidence presented by the state: "You're allowed to argue that the state has not proven, *based on the evidence…*" (T.552) There are two ways to read this remark. One is it is incoherent. To be permitted to argue what the "state has not proven" would mean to argue what evidence it did *not* present. What evidence it did not present would be by definition not based on the evidence. The other way to read the statement is to require the defendant to assume a burden of proof –to present evidence – before it can argue positive inferences from it. This would preclude the defense from

ever arguing any negative inferences. Such a restriction would limit the defense from arguing what the state's evidence failed to exclude which would preclude offering in argument the very rational hypotheses of innocence by which this Court is bound to examine on review. The standard of review for circumstantial cases is identical to the type of argument the appellant had a right to make. Both are commanded by fidelity to the presumption of innocence. An appellate court can hardly examine the record for rational hypotheses of innocence the defendant was forbidden to argue before the jury.

Alternative perpetrator evidence is not implicated when the defense does not intend to introduce extrinsic evidence of alternative perpetration. A defendant has always been permitted to argue any negative inference based exclusively on the state's evidence. In a recent decision the Minnesota Supreme Court reviewed whether or not the state's evidence excluded the possibility of an "unidentified alternative perpetrator" as a possible hypothesis of innocence. *State v. Silvernail*, 831N.W. 2d 594 (Minn.2013). In so doing it cited an earlier precedent – *State v. Anderson*, 784 N.W. 2d 320 (Minn.2010), to articulate the principle that proof of the identity of the perpetrator includes the exclusion of another perpetrator. *Silvernail* and *Anderson* are directly contrary to the trial court's reasoning in this case.

*Silvernail* and *Anderson* both considered whether an alternative perpetrator could have been a rational hypothesis of innocence on the basis of the negative inferences of the state's case alone without imposing any procedural or evidentiary burden on the defense to offer notice of and seek permission of the court to argue an alternative perpetrator as the negative inference from the state's case.

The very idea of an alternative perpetrator in this case was an idea first entertained by the state. Law enforcement actually spent some time investigating whether appellant's husband had actually committed the crime. (Omnibus transcript p. 26-30). Police actually interviewed appellant's husband for the purpose of determining whether he had committed the crime. Defense counsel was prohibited by at trial from conducting cross-examination with regard to the police's own investigation of an alternative perpetrator. (T. 127-132). Cross-examination into the police investigation should have been permitted under the right to present a complete defense. *See State v. Nissalke*, 801 N.W. 2d 82 (Minn.2011):

> Our review of the record demonstrates that the district court's evidentiary rulings did not deny Nissalke the right to present a complete defense. Nissalke was allowed to present evidence challenging the State's identification of Nissalke as the perpetrator and the police **investigation** into alternative suspects. The court also allowed Nissalke several opportunities to present his alternative perpetrator theory in **cross-examination** of the State's witnesses. The court also allowed testimony that Senenfelder was a witness in other cases, that O'Gorman did not follow up on leads connecting a

federal **investigation** to Senenfelder's murder, that Agent Fier could not remember if he had followed up on the B.F. lead, and arguments in closing that there was a "second prong" of people who "also had something to gain" from Senenfelder's murder. We therefore hold that Nissalke is not entitled to a new trial based on his claim that the court's evidentiary rulings violated his right to present a complete defense.

Unlike *Nissalke,* the appellant here was completely denied the right to make even the slightest reference to the police investigation or ask a single question about it. Defense counsel squarely asserted the right to cross-examine the police in regard to their own investigation (T.127-129), and objected specifically she had a right to inquire about the police investigation the under the "right to present a complete defense." (T. 129 line 23).

6. **The trial court's reasonable doubt instruction was faulty and it erroneously failed to give a rational hypothesis instruction on circumstantial evidence.**

The trial court submitted the standard JIG to the jury on reasonable doubt. The JIG as written is faulty and the appellant asked for the grammar to be corrected.(T. 558). The court declined to correct the grammar and to give the requested instruction on circumstantial evidence.(T.559). If it is true that a jury is presumed to follow the court's instructions, *State v. Taylor*, 650 N.W. 2d 190 (Minn.2002) then it must be also true that where those

instructions are grammatically faulty, the jury could not follow them. The court gave the following instruction:

> Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

The problem with the JIG is that if read as written, it makes no sense and cannot be applied. The last two clauses in the same sentence contain two pronouns that have different antecedents. The antecedent of first "it" is a reasonable doubt. The antecedent of the second "it" is proof beyond a reasonable doubt. The repetition of the same pronoun for different antecedents makes the last sentence confusing. Read as written, the jury would have – following the rules of grammar – attributed the same antecedent to the different pronouns which would have read "A reasonable doubt does not mean a fanciful or capricious doubt, nor does a reasonable doubt mean beyond all possibility of doubt." The sentence is not comprehensible as written. The "nor" is a conjunction used to introduce the negation from a first term into the second term of a series which in this case would have been the identical pronoun "it" and which further suggests to the reader the sentence meant an identity of antecedents to the different pronouns. The sentence as written cannot make any sense because unlike

the first clause where "fanciful" or "capricious" may legitimately describe the quality of a doubt –a doubt may be either fanciful or capricious - "beyond all possibility of doubt" does not describe the quality of a doubt. "Beyond all possibility of doubt" is a prepositional phrase that does not modify the quality of a doubt –a doubt cannot have as one of its qualities to be beyond all possibility of doubt –that is simply without meaning. Rather, the prepositional phrase functions as an adjective to describe what something is: the nature of proof.

It is not logical to presume the jury followed the court's instruction and not also presume that where that instruction is incoherent the jury could have rendered a coherent application of the instruction. The expedient used in statutory construction –simply striking senseless portions of statutes – is not available as a remedy here. The instruction was actually given and the jury ordered to apply it. The application of a faulty instruction necessarily results in a faulty deliberation and the defendant was deprived of a proper deliberation on the single most important instruction of a criminal trial.

Finally, the trial court failed to give a circumstantial evidence instruction. This case is a an excellent example of why such an instruction is needed. The best argument for it was made in the concurring opinion by Justice Meyer in *State v. Anderson*, 748 N.W. 2d at 340:

The evaluation of circumstantial evidence requires the jury to closely examine the evidence and determine what inferences can and should be drawn from a minor fact or series of minor facts to establish a principal fact. The rational-hypothesis instruction directs the jury's attention to the appropriate method for evaluating this evidence. Given the frailties in Minnesota's reasonable-doubt instruction, it would be difficult for me to conclude that the instruction qualifies as a proper one, sufficient to preclude the need for the rational-hypotheses instruction as contemplated in *Holland.* Now that appellate courts review only those circumstances implicit in the verdict, the special instruction on circumstantial evidence is essential to avert undermining the presumption of innocence and to impress upon the jury the need to reach a state of certitude of the guilt of the accused.

7. **The court erred in not holding a pretrial hearing to suppress the identification of the ten frozen dogs.**

The identification of the dogs in this case should be suppressed because of its inherently suggestive nature.[2] The rule is "Admission of identification evidence derived from suggestive identification procedures violates due process." Minnesota Practice Series. Criminal Law and Procedure. Vol. 7 Henry W. McCarr. Jack S. Nordy. Westgroup. 2001. Sec. 7.3. p. 357 (citing *Neil v. Biggers*, 409 U.S. 188 (1972). At least two cases where this issue has been raised have determined that suppression does not extend to physical evidence. *See Smith v. Booker,* 2006 WL 3313763 (E.D. Michigan. Nov. 14th) and *Johnson v. Sublett,* 63 F.3d 926 (9th Cir. 1995). One case has determined that in-court identifications of inanimate objects are subject to

[2] Pages 6-9 of the omnibus transcript detail what is suggestive about the identification.

suppression if the identification procedure was exceptionally suggestive. *See Commonwealth v. Spann*, 418 N.E. 2d 328, 332 (Mass.1981).

It is important to understand the reason for the suppression of an in-court identification resulting from upon suggestive procedures. The basis is due process and not the protection of a privacy interest under the Fourth Amendment. *See Stovall v. Denno*, 388 U.S 293 (1967). In fact, in *Stovall* the Supreme Court articulated the purpose for the suppression of suggestive identification procedures. The reasoning makes irrelevant the animate or inanimate nature of the thing identified:

"A conviction which rests on a mistaken identification is a gross miscarriage of justice. The Wade and Gilbert rules are aimed at minimizing that possibility by preventing the unfairness at the pretrial confrontation that experience has proved can occur and assuring meaningful examination of the identification witness' testimony at trial."
*Id.* at 1970.

A conviction based on the mistaken identification of an inanimate object is just as intolerable as one based on the mistaken identification of a live one. *Neil v. Biggers*, explained the scheme of suppression as:

Some general guidelines emerge from these cases as to the relationship between suggestiveness and misidentification. It is, first of all, apparent that the primary evil to be avoided is 'a very substantial likelihood of irreparable misidentification.' Simmons v. United States, 390 U.S., at 384, 88 S.Ct., at 971. While the phrase was coined as a standard for determining whether an in-court identification would be admissible in the wake of a suggestive out-of-court identification, with the deletion of 'irreparable' it serves equally

well as a standard for the admissibility of testimony concerning the out-of-court identification itself. It is the likelihood of misidentification which violates a defendant's right to due process, and it is this which was the basis of the exclusion of evidence in Foster. Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous. But as Stovall makes clear, the admission of evidence of a showup without more does not violate due process.

There is no hint in these guidelines that the suppression of a suggestive identification is narrowly applicable to a person rather than an object. The repeated concern is for mistaken misidentification based upon police suggestion. In that, it is no different from asking the court to suppress a coerced statement under the due process clause because the coercion makes it unreliable and its admission might lead to a false conviction. In fact, the Court's guidelines are indifferent to *what* has been identified. Rather, the reasoning is concerned exclusively with whether the *procedures* are suggestive enough to taint in-court identification where the procedure creates an unacceptable probability of a false conviction. That is what distinguishes it from a Fourth Amendment claim where suppression is mandated by the protection of personal privacy rights. Fourth Amendment suppression excludes extremely reliable evidence to deter police violation of personal privacy rights while Fifth Amendment due process suppresses unreliable evidence for both the particular result in a case and the general

integrity of the truth-finding function. While the cases in which the rules against tainted in-court identification were developed from facts involving the suppression of identity or people, the *rules* that emerged from those facts are concerned exclusively with protecting a defendant not from the violation of his freedom to move around, to be free from a seizure, but from testimony that will lead to a faulty conviction. No case which decided against applying suppression to physical evidence tainted by suggestive procedures ever explains why it is somehow acceptable for the police to use suggestive procedures with physical evidence and not people when the end result is the same: a bad conviction. Some of the cases suggest that cross-examination is sufficient to protect defendants from the suggestiveness of procedures in respect of physical object. The same can be said of suggestive identifications of people. There is no way to distinguish bad convictions from suggestive procedures by the animate or inanimate quality of the object. The standard for suppression, can be stated simply: whether extra-judicial *police procedures* taint the *judicial process* enough to risk a false conviction. When what happens *outside court* degrades something to where it no longer belongs *in court* the Court must exclude it.

In this case, the identification was in fact suggestive and this suggestiveness was conceded by law enforcement. (T.521). This concession

by the lead investigator during trial came after an admission that he informed the witness multiple times of his own theory of guilt –that they were drowned (T. 520-521), that informing a witness of the police theory taints and undermines the identification (T.518), that he informed the witness he found the dogs in the freezer on the appellant's property (T.519), and that he did not employ the procedures in this identification that he would normally apply in photo lineups in order to assure its reliability. (T. 519). Accordingly, the court should have allowed the appellant a hearing on the identification procedures in order to determine their admissibility. The identification of the dogs was critical to the state's case. That also means that any fault in the procedure was fatal to the defense case. In denying the appellant's motion for judgment of acquittal, the court specifically relied on the in-court identification of one or more of the dogs. (T.545)

## Conclusion

In few cases (fortunately) do so many things go wrong in so many crucial aspects of a prosecution. The state failed to prove not one but several elements of the offenses. But these difficulties were illegitimately remedied by first, the prejudicial reference to inadmissible misconduct and second the foreclosure of the proper defense evidence and argument. Only this explains

the otherwise unaccountable verdicts, and requires that they be reversed and judgment of acquittal entered.

Date 4-10-14

Stephen V. Grigsby #291973
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612 562 1150

## CERTIFICATION

I, Stephen V. Grigsby, hereby certify that I prepared this brief using Microsoft Word version 14.2.0 and in Times New Roman and the word count is 9,350 words and thereby complies with Rule 132.01.

# APPENDIX

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

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State of Minnesota,

Court Case No:

Plaintiff,

NOTICE OF MOTION
AND MOTION

Vs.

Dayna K. Bell:

Defendant.

---

TO: the above-court, the presiding judge and the County Attorney:

NOTICE OF MOTION

Please be advised that the Defendant, by and through his attorney, Robert D. Miller, hereby moves the Court for the relief specified below, and demands a hearing on the same as provided by the Minnesota Rules of Criminal Procedure:

MOTION

1. Requiring the prosecution to make disclosures required by Minnesota Rules of Criminal Procedure, 9.01. and requiring the prosecution to disclose the names, addresses and prior record of convictions within the prosecutor's actual knowledge of persons whom the prosecution intends to call as witnesses at the trial and the following:

2. Disclosing and allowing an opportunity to inspect and reproduce any relevant written or recorded statements made by witnesses to agents of the prosecution. And disclosing and allowing the opportunity to inspect and reproduce any relevant written or recorded statements made by the defendant.

4. Disclosing the substance of any oral statement made by the defendant, whether before or after arrest, which the prosecution intends to offer in evidence at trial and disclosing and allowing the opportunity to inspect and duplicate any papers, documents, photographs, and tangible objects which the prosecution intends to introduce as evidence at the trial.

6: Requiring the prosecution to make any and all disclosures of any relevant and material information which may possibly relate to the guilt or innocence of the defendant.

which may negate or reduce the culpability of the offenses charged, or which may mitigate punishment, and which is not disclosed pursuant to No. 3 above, pursuant to Brady v. Maryland, 373 U.S. 83 (1973) and United States v. Agurs, 427 U.S. 97 (1976).

7. To suppress any and all evidence taken as a result of search and seizure, together with any evidence obtained as a result of search and seizure, on the grounds that such was seized in violation of the defendant's constitutional and statutory protection against unreasonable searches and seizures and to suppress any and all evidence taken as a result of confessions, admissions, or statements in the nature of confessions made by the defendant, together with any evidence obtained as a result of confessions, admissions, or statements in the nature of confessions made by the defendant on the grounds that any use of such evidence in any manner, would be in violation of the defendant's constitutional and statutory rights, to suppress any and all evidence obtained as a result of identification procedures used during the investigation, together with any evidence obtained as a result of identification procedures used during the investigation on the grounds that any use of such evidence, in any manner, would be in violation of defendant's constitutional and statutory rights.

8.. Restraining the prosecution from attempting to introduce into evidence at the trial on the general issues and evidence obtained as a result of search and seizure confessions, admissions, or statements in the nature of confessions made by the defendant, or as a result of identification procedures used during the investigation on the grounds that the notices filed by the prosecuting attorney are vague, ambiguous, and in specific, all to the prejudice of the defendant and contrary to the meaning of the Minnesota Rules of Criminal Procedure 7.01.

9. Restraining the prosecuting attorney from attempting to introduce at the trial on the general issues, any evidence that the defendant has been guilty of additional misconduct and crimes on other occasions on the grounds that such evidence is not admissible under any of the exceptions to the general rule of exclusion, and on the additional grounds that the prosecution's notice, required by decisional law of this state, is not specific enough and does not specify the exception, was not included as required by the State's Rule 9 disclosures, the evidence is more prejudicial than probative, and is

remote.

10. Directing the prosecuting attorney to identify and produce any informants who supplied or contributed information to the prosecution which led to the issuance of a complaint against the defendant on the grounds that:

A. the privilege of non-disclosure of any informants must give way and disclosure of the identity of an informer is required where disclosure is essential or relevant and material and helpful to the defense of the accused or lessens the risk of false testimony or is necessary to secure useful testimony or is necessary to a fair determination of the cause; and that disclosure is necessary in many instances and particularly in this case, as a means available to afford this defendant an opportunity to establish that if informants did exist, that the information supplied to the prosecutor by them was inaccurate or misrepresentative.

11. Restraining the prosecution from making any reference at trial to prior convictions, if any, of the defendant, or attempting to introduce evidence of such.

12. For any and all such other orders as will promote a fair and expeditious trial.

13. To suppress any and all evidence specified above, on the grounds that the initial stop, frisk, detention, arrest, seizure or search of the defendant by the police was made without the officer having probable cause to believe that a crime was committed and that the defendant was involved in crime and/or without the officer having reason to believe that the defendant was armed and currently dangerous and involved in criminal activity within the meaning of Terry v. Ohio, 392 U.S. 1 (1968) and that therefore the evidence specified above is inadmissible as a result of said initial stop, frisk, detention, arrest, seizure, or search conducted in violation of the defendant's constitutional and statutory protection against unreasonable searches and seizures.

14. For a combined evidentiary and contested probable cause hearing in advance of trial pursuant to State v. Florence, 306 Minn. 442, 239 N.W.2d 892 (1976).

Date: 4/18/12

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# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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July 18, 2012

Mr. Robert D. Miller
2915 Wayzata Blvd.
Minneapolis, MN 55405

**Re:** ***State v. Bell***
**Dakota County Court File No.: 19HA-CR-1294**

Dear Mr. Miller:

This will acknowledge receipt of your motion dated July 1, 2012 by which you advise this office of a challenge to the constitutionality of Minn. Stat. § 343.21, subd. 7 in the above-entitled matter. The Attorney General has decided not to intervene at this time, but reserves the right to do so should the matter be appealed.

Very truly yours,

JOHN S. GARRY
Assistant Attorney General

(651) 757-1451 (Voice)
(651) 282-5832 (Fax)

cc: Dakota County Court Administrator
Dakota County Attorney's Office

AG: #3048007-v1

FILED DAKOTA COUNTY
CAROLYN M. RENN, Court Administrator
JUL 19 2012

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STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

Court File No: 19HA-CR-12-1294

State of Minnesota,

Plaintiff,

v.

Dayna Kristine Bell,

Defendant.

**MEMORANDUM OF LAW**

## FACTS

On September 27, 2011 the Dakota County Sherriff's Department received a report of cruelty and maltreatment of animal by Defendant. (Compl. Pg. 7). Defendant is the owner and operator of Bell Kennels and Farm. Id. Three former employees reported various incident of Defendant mistreating the dogs. Id. It was reported that Defendant grabbed two dead puppies and two injured puppies and placed them in a bucket of water. Id. Defendant proceeded to place another bucket on top of that one. Id. The second bucket contained water and a Clorox bottle for weight to hold the top bucket drown thereby drowning the puppies. Id. After about fifteen minutes Defendant placed the four puppies, all now dead into a plastic garbage bag and then threw the bag into the garbage. Id.

On September 26, 2011 Defendant was complaining about money issues. Id. Defendant took four dogs from the big kennels and put them in smaller travel kennels and took then down to the barn. Id. About an hour passed, Defendant returned to the barn without the dogs and proceeded to take two more dogs with her. Id. A witness saw Defendant place a rope on the neck

of a small black and white dog. Id. The other end of the rope was tied to a cinder block. Id. The witness reported that Defendant proceed to throw the dog and the block into the pool. (Compl. Pg. 8).

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

Sometime in late September Defendant was witnessed placing another puppy in a bucket of water. Id. Another bucket containing a bottle of Pine Sol was placed on top of the first bucket to hold the puppy doe in the water. Id.

On September 29, 2011 a warrant was executed on Defendant's property. Id. A blue bucket and a cinder block with a rope tied were located on the property. Id. In addition 10 small breed adult dogs, each in individual plastic bags were found in a freezer on the property. Id. The appearance of the fur of the 10 adult dogs lead to the conclusion that the dogs were wet when placed in the freezer. Id. Defendant claimed to know nothing about the dogs found in the freezer.

The defendant's primary veterinarian reported that in 2011 she euthanized two adult dogs for the defendant.

## ARGUMENT

### I. MINN. STAT. § 343.21 IS NOT VOID-FOR-VAGUENESS.

The void-for-vagueness doctrine requires that "a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007) (citing *Kolender v. Lawson*, 461 U.S. 352, 357

(1983)). Courts will presume that in enacting Minn. Stat. § 343.21, "the legislature did not intend to violate either the United States Constitution or Minnesota Constitutions." *State v. Ness*, 819 N.W.2d 219, 224 (Minn.App. 2012). Minnesota courts "will uphold a statute unless the challenging party demonstrates that it is unconstitutional beyond a reasonable doubt." *Id.*

"To succeed in a facial challenge to vagueness outside the context of the First Amendment, a complainant must demonstrate that the law is impermissibly vague in *all* its applications." *Dunham v. Roer*, 708 N.W.2d 552, 568 (Minn.App. 2006). The rationale for requiring complete vagueness is that "[a] 'facial' challenge ... means a claim that the law is 'invalid *in toto*-and therefore incapable of any valid application.'" *Id.*

"[W]hen a defendant is charged with conduct that the state may constitutionally prohibit, it is no defense that the statute may conceivably be unconstitutionally vague as applied to other situations." *State v. Campbell*, 756 N.W.2d 263, 269-270 (Minn.App. 2008), *review denied* (Dec. 23, 2008). Minnesota courts will consider whether Defendant "*actually* received fair warning of the criminality of [her] conduct from the statute and whether the state *actually* enforced the statute against [her] in an arbitrary and discriminatory manner." *Id*; see also *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982) ("A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.")).

**A. Minn. Stat. § 343.21 Provides Fair Notice.**

In defining the degree of certainty and definiteness required of a statute, Minnesota courts require that "ordinary people [be able to] understand what conduct is prohibited." *Newstrom*, 371 N.W.2d at 528. Further, "where a statute imposes criminal penalties, a higher standard of certainty of meaning is required." *Id.* (*citing Kolender*, 461 U.S. at 358 n. 8, 103 S.Ct. at 1859 n.

8). "The most important factor in determining the degree of certainty required, however, is whether the law threatens to inhibit the exercise of constitutionally protected rights." *State. City of Minneapolis v. Reha*, 483 N.W.2d 688, 691-92 (Minn. 1992)

Minn. Stat. § 343.21 subd. 7 (2012) holds that "No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals. Minn. Stat. § 343.21 subd. 3 (2012) further defines "cruelty" as "every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.

Defendant argues that the word "unjustifiably" renders the statute vague, because there is no definition of "justifiable," and claims that every case which classifies an action as justifiable or unjustifiable is making new law. In the unpublished Minnesota case *State v. Weber*, No. C4-94-1145 WL 238940, at 2 (Minn.App. 1995), the appellant made an identical claim, yet the court held that the statute was constitutional. The *Weber* court stated that "[i]n essence, appellant objects to having the courts perform their function of interpreting statutory language by applying statutes to specific cases. The trial court appropriately performed the function allotted to it by the court system." *Id.* Furthermore, "although there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls, that difficulty does not provide sufficient reason to hold the challenged language too vague to define a criminal offense. *State v. Davidson*, 481 N.W.2d 51, 56 (Minn.1992).

In this case, Defendant admitted to drowning at least four puppies. The statute specifically states any every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death. Taking away the issue and language about pain or suffering, the defendant still clearly knew that her act of putting puppies into water and holding them dog was an act that would result in death. Wetting adult dogs in some fashion being

drowning or otherwise and then then placing them into a freeze is also an act that would clearly result in death. Those animals certainly suffered unnecessary or unjustifiable pain and suffering however that is not even the biggest down fall of the defendant's argument. It is inconceivable that the defendant would assert that she did not know that holding puppies down in water would result in their death. The defendant's argument fails miserably.

Additionally, Police interviewed Defendant's primary veterinarian. The veterinarian reported that in 2011 she euthanized two adult dogs for Defendant. If Defendant was unable to differentiate between a justifiable or necessary euthanasia and an unjustifiable or unnecessary euthanasia, there would be no reason to have the veterinarian euthanize some dogs but not others. The veterinarian helps determine whether the dog needs to be euthanized and is able to do so in a humane and legal way. Allowing anyone, especially dog breeders, to euthanize any dog they choose for any reason is exactly the kind of unjustifiable behavior targeted by the statute. Defendant highlights in her memorandum at page 5[1] that a penal statute must contain "sufficient definiteness that ordinary people can understand what conduct is prohibited". The statue does have sufficient definiteness for the ordinary person and certainly for person who has been a breeder for 35 years. Defendant's argument is essentially that the degree of common sense a breeder should apply is lower than that which an average citizen should apply. While the law does not hold breeders to a higher standard certainly someone who declares herself as having "some expertise in the area" as she does on page 9 of her memorandum, should have a level of common sense necessary to read and understand the statute as written. Furthermore, defendant argues that in order for her to have known that drowning was cruel statute would have to list drowning. Under this line of reason the legislature would have to enact a statue listing every possible mean by which an animal could be killed. This argument lacks logic and practicality and

was addressed in *Weber* at *2. The statute as written provides fair notice.

### B. Minn. Stat. § 343.21 Does Not Encourage Arbitrary and Discriminatory Enforcement.

"A statute authorizes or encourages arbitrary and discriminatory enforcement when it lacks adequate standards restricting the discretion of the governmental authority that applies it." *State v. Ness*, 819 N.W.2d 219, 221 (Minn.App. 2012) (citing *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966)). "The courts have determined that it is this second prong of the void-for-vagueness doctrine that is of greater importance." *Id.*

Defendant is charged under Minn. Stat. § 343.21 subd. 9(d) (2012) which requires that Defendant *intentionally* violate Minn. Stat. § 343.21 subd. 7 (2012). Therefore, the statute inherently limits the enforcement of this particular part of the animal cruelty statute to Defendants who intentionally violate the statute. There was also no arbitrary enforcement here because the police investigated only after three separate witnesses came forward to file complaints about Defendant's cruel treatment of the dogs.

## II. THE PENTALY PHASE OF MINN. STAT. § 343.21 APPLIES IN THIS CASE.

Defendant also claims that the penalty phase of Minn. Stat. § 343.21 does not apply to her because the dogs she breeds are not her pets. However. Minn. Stat. § 343.20 subd. 6 (2012) defines "pet or companion animal" 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, or any stray pet or stray companion animal." So, while Defendant may not be keeping the dogs as her pets, she is keeping them to be sold to others as pets. The word "another" which the defendant omitted from the definition on page 10 of her memorandum is pinnacle to this issue. The defendant further offers the Webster's definition of "pet". This should not be confused with

the applicable statutory definition provided in Minn. Stat. § 343.20 subd 6. Under this definition the puppies in the defendant's care, the puppies that the defendant drown are pets.

As for the adult dogs found in the freezer, the defendant claimed to have no knowledge of those dogs or how they ended up in the freezer. Therefore, the defendant is not in a position to assert that those animals were not pets or stray pets or stray companion animal to someone, perhaps to the mystery person who place those wet dogs in her freezer. Thereby those animals still meet the definition of pet as defined in Minn. Stat. §343.21.

Dated: 11/30/2012

Respectfully submitted,

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By _____
Jessica A. Bierwerth
Assistant County Attorney
Attorney I.D. #:0337808
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1560 West Highway 55
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[1] Defendant did not number the pages of her memorandum so the page references assigned by the state in discussing the memorandum presume that page titled "Memorandum in Support of Motion to Dismiss" is page number 1.

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

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STATE OF MINNESOTA,

Plaintiff,

vs,

DAYNA KRISTINE BELL,

Defendant.

Court File No.: 19HA-CR-12-1294

OMNIBUS ORDER

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The above-entitled case came on before the Honorable Tim D. Wermager, Judge of District Court, for Omnibus hearing on November 16, 2012 at the Dakota County Judicial Center, Hastings, Minnesota.

Defendant is charged with sixteen counts of animal cruelty, all felonies, in violation of Minn. Stat. § 343.21, subd. 1, subd. 9(d) for conduct that occurred on or about various dates in September, 2011 in Dakota County.

Defendant moved the Court to dismiss the charges on the basis that the statutory provisions Defendant allegedly violated are unconstitutionally vague, specifically that the term "cruelty" is unconstitutionally vague. Defendant also moved the Court to dismiss the charges for lack of probable cause to believe the offense was committed on the basis that Defendant's conduct did not violate the statute as the animals involved in this matter were not pets or companion animals.

Defendant appeared in person and was represented by Robert D. Miller, Esq. Jessica A. Bierwerth, Assistant Dakota County Attorney, appeared on behalf of the Plaintiff.

**Based on the files, records, and proceedings, the Court makes the following FINDINGS OF FACT:**

1. Defendant is the owner and operator of Bell Kennels and Farm located in Dakota County, Minnesota. Defendant has been involved in this business for at least thirty-five years.

2. On September 27, 2011, the Dakota County Sheriff's office received reports of various incidents of Defendant mistreating dogs from three of Defendant's former employees.

3. It was reported that Defendant placed two dead puppies and two injured puppies in a bucket of water, and drowned the living puppies by placing a second bucket (weighted with water and a bottle of bleach) on top of the first. Approximately fifteen minutes later, Defendant then allegedly placed the four dead puppies in a garbage bag and placed the bag in the garbage.

4. On September 26, 2011 a witness reported that Defendant was complaining about money issues. It was reported that Defendant took four dogs from the "big kennels" and transported them to the barn in smaller travel carriers. The witness asked Defendant what she was doing and Defendant indicated that "this is a one stop shop." After an hour had passed Defendant returned without the four dogs and took two more dogs with her.

5. A witness observed Defendant place a rope on the neck of a small black and white dog. The other end of the rope was tied around a cinder block. The witness reported that Defendant threw the dog and the block into the pool.

6. On September 27, 201 , Defendant was bitten on her right arm by a dog. A witness reported that Defendant took the dog away, and returned stating "that motherfucker will never bother any of us again" and that she had broken its "damn neck."

7. Sometime in late September of 2011, Defendant was witnessed placing another puppy in a bucket of water. A second bucket (weighted with a bottle of Pine Sol) was placed over the puppy to drown it.

8. On September 29, 2011, a warrant was executed on Defendant's property. A blue bucket and a cinder block with a rope tied around it were located on the property. Ten small breed adult dogs each in individual plastic bags, were found in a freezer on the property. The appearance of the furs on these animals led to the conclusion that the dogs were wet when placed in the freezer.

9. Defendant's primary veterinarian reported that in 2011 two adult dogs were euthanized for the defendant.

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**Based upon the foregoing Findings of Fact the Court makes the following:**

**CONCLUSIONS OF LAW:**

1. Minn. Stat. § 343.21 is not unconstitutionally vague.
2. The penalty phase of Minn. Stat. § 343.21 applies to this case.

**Based upon the foregoing Findings of Fact and Conclusions of Law, the Court makes the following ORDER:**

1. Defendant's motion to dismiss the charges on the basis that the statutory provisions the Defendant allegedly violated are unconstitutionally vague is hereby **DENIED**.
2. Defendant's motion to dismiss the charges based on the inapplicability of the "penalty phase" of the statute to this case is hereby **DENIED**.
3. The matter shall remain scheduled on January 16, 2013 at 1:30 p.m. at the Dakota County Judicial Center, Hastings, Minnesota for a settlement conference.
4. The Memorandum of the Court is incorporated by reference.

Dated: 1/17/13

Tim D. Wermager
Judge of District Court

## MEMORANDUM

### VAGUENESS

Both the United States and Minnesota Constitutions require statutes which provide the basis for criminal prosecutions to meet due process standards of definiteness. State v. Newstrom, 371 N.W.2d 525, 523 (Minn. 1985). If a statute's prohibitions fall below such standards of definiteness, then it is void for vagueness. State v. Century Camera, Inc., 309 N.W.2d 735, 744 (Minn. 1981) (citing Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)). However, "a statute is presumed to be constitutional, and the burden is on the challenger to prove a constitutional violation beyond a reasonable doubt." State v. Hyland, 431 N.W.2d 868, 871 (Minn. Ct. App. 1988); Minn. Stat. § 645.17(3) (2006) ("the legislature does not intend to violate the constitution of the United States or of this state"). Accordingly, courts should exercise extreme caution before declaring a statute void for vagueness. Getter v. Travel Lodge, 260 N.W.2d 177, 180 (Minn. 1977).

"The purposes of the void for vagueness doctrine are to put people on notice of what conduct is prohibited and, more importantly, to discourage arbitrary and discriminatory law enforcement." City of Edina v. Dreher, 454 N.W.2d 621, 622 (Minn. Ct. App. 1990) (citing Kolender v. Lawson, 461 U.S. 352, 357 (1983)). The United States Supreme Court has stated that "the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender at 357. That is not to say that "mathematical precision" is required. State v. Simmons, 158 N.W.2d 209, 211 (1968). It is enough if the statute is not so vague that "persons of common intelligence must necessarily guess at its meaning or differ as to its application." State v. Kager, 382 N.W.2d 287, 289 (Minn. Ct. App. 1986).

The failure of the legislature to define a term or phrase does not itself render the statute void for vagueness, but rather suggests an intention to have the phrase defined by common usage and common sense. See State v. Iverson, 664 N.W.2d 346, 351 (Minn. 2003) (stating that "[i]n the absence of a statutory definition, we must rely on the obvious meaning of the terms"). Furthermore, "[t]he fact the challenged statute may be phrased in somewhat general language does not make it unconstitutionally vague." State v. Willenbring, 454 N.W.2d 268, 270 (Minn. Ct. App. 1990); State v. Christie, 506 N.W.2d 293, 301 (Minn.

1993). A statute will not be declared void for vagueness and uncertainty where the meaning of the statute may be implied or where it employs words in common use, words commonly understood, or words having an unmistakable significance in the connection in which they are employed. Century Camera, Inc., 309 N.W.2d at 744. Ultimately, "[t]he root of the vagueness doctrine is a rough idea of fairness." Colten v. Kentucky, 407 U.S. 104, 110 (1972).

In the case at hand, Defendant contends that the statutory provisions she allegedly violated are unconstitutionally vague (and susceptible to arbitrary enforcement) and thus deny due process of law. Minn. Stat. § 343.21, subd. 7 and subd. 9(d) read as follows:

> Subd. 7. Cruelty.
>
> No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.
>
> Subd. 9. Penalty.
>
> (d) A person who intentionally violates subdivision 1 or 7 where the violation results in death or great bodily harm to a pet or companion animal may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $5,000, or both.

When fundamental rights are not involved, as is the case here, vagueness challenges must be examined in light of the defendant's actual conduct. State v. Becker, 351 N.W.2d 923, 925 (Minn. 1984); State Dep't of Pub. Safety v. Elk River Ready Mix Co., 430 N.W.2d 261 (Minn. Ct. App. 1988). "A person whose conduct is clearly prohibited under a statute cannot make a successful vagueness challenge on that statute." State v. Christie, 506 N.W.2d 293, 301 (Minn. 1993) (citing Parker v. Levy, 417 U.S. 733, 756 (1974)). Accordingly, Defendant must show that Minn Stat. 343.21, subd. 7 and subd. 9(d) "lack specificity as to h[er] own behavior and not as to some hypothetical situation." State v. Kager, 382 N.W.2d 287, 289 (Minn. Ct. App. 1986). She cannot complain of the vagueness of the law as applied (or potentially applied) to others. State v. Grube, 531 N.W.2d 484, 490 (Minn. 1995); see also Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982). Furthermore, a statute should not be found impermissibly vague merely because it is possible to imagine some difficulty in determining whether certain marginal fact situations fall within its language. In re Ramey, 648 N.W.2d 260, (Minn. Ct. App. 2002).

Specifically, Defendant argues that Minn. Stat. § 343.21, subd. 7 is unconstitutionally vague because it fails to define with the necessary constitutional specificity, what is cruel in a dog breeding operation. Minn. Stat. § 343.20, subd. 3 defines "cruelty" to mean "every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death." Defendant, however, cites the dictionary for a definition of the word cruel and argues that the word cruel can be defined, in part, as "an animal-like or savage cruelty that is altogether unfeeling...the complete absence of those qualities expected of a civilized human being...." In support of her position, Defendant cites a case from the Kentucky Court of Appeals where that Court reasoned that *civil* liability in dog destruction cases should only be found where the conduct was outrageous, extreme, and atrocious, going beyond all possible bounds of decency so as to be utterly intolerable in a civilized community. Ammon v. Welty, 113 S.W.3d 185 (Ky. App. 2003). Thus, Defendant argues that Minn. Stat. § 343.21, subd. 7 and subd. 9(d) are unconstitutionally vague because the legislature, if it desires to make it a crime to drown dogs, should say that it is a crime to drown dogs in specific language.

Obviously, this Court is not bound by the *Ammon* Court's decision, and that case is less useful because it involved the imposition of *civil* liability in dog destruction cases. Moreover, the Court finds Defendant's alleged actions to be completely absent of those qualities expected of a civilized human being. The alleged actions are unfeeling, savage, outrageous, extreme, atrocious, and go beyond all possible bounds of decency so as to be utterly intolerable in a civilized community. Indeed, it strains credulity to believe that any human being would believe that Defendant's alleged acts were somehow "justifiable."

Furthermore, "[r]egardless of whether [Defendant] knew that [her] conduct was at risk, [her] vagueness challenge fails because the standard for overcoming a vagueness challenge is a reasonable-person standard." In re Molnar, 720 N.W.2d 604, 615 (Minn. Ct. App. 2006) (quoting Maynard v. Cartwright, 486 U.S. 356, 361 (1988)). Here, this Court concludes that the term "cruelty," as used in Minn. Stat. § 343.21, subd. 7, is defined with sufficient precision such that ordinary people would have no trouble understanding the conduct prohibited. It is this Court's opinion that any rationale, civilized human being should realize that committing actions like those alleged to have been perpetrated by Defendant would be defined as "cruel" by any other rationale, civilized human being. As noted above, a statute is constitutional as long as "persons of common intelligence" do not

have to guess at its meaning and application. Kager, 382 N.W.2d at 289. Accordingly, Minn. Stat. § 343.21 is not void for vagueness and Defendant's motion to dismiss the charges on this basis is denied.

INAPPLICABILITY OF "PENALTY PHASE"

Defendant argues that Minn. Stat. § 343.21, subd. 9(d) does not apply. According to Defendant, the statute allegedly fails to apply to her as she is involved in an operation that temporarily handles animals for the purpose of selling them. Defendant argues that the animals she sells are not pets or companion animals. However, Defendant's argument concerning the inapplicability of the penalty phase fails to acknowledge the existence of Minn. Stat. § 343.20, Subd. 6. which defines a pet or companion animal to include "...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, or any stray pet or stray companion animal." Thus, the Court declines to adopt Defendant's argument on the inapplicability of Minn. Stat. § 343.21, subd. 9(d).

TDW

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT
Court File No: 19HA-CR-12-1294

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State of Minnesota,

Plaintiff,

v.

Dayna Kristine Bell,

Defendant.

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**STATE DISMISSAL OF COUNT III & COUNT IV**

The State of Minnesota hereby dismisses Count III and Count IV of the Complaint in the above referenced case.

Dated: April 15, 2013.

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By _____
Jessica A. Bierwerth
Assistant County Attorney
Attorney I.D. #0337808
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Hastings, MN 55033
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|---|---|
| STATE OF MINNESOTA | DISTRICT COURT |
| COUNTY OF DAKOTA | FIRST JUDICIAL DISTRICTS |
| State of Minnesota,<br>Plaintiff,<br>v. | Case No. 19HA-CR-12-1294<br>**Motion to Suppress the Identification of the Frozen Dogs and to Dismiss for Lack of Probable Cause and Memorandum of Law in Support of Motion to Dismiss** |
| Dayna Bell | |

TO: The Court and the Dakota County Attorney; Dakota County Judicial Center,1560 Highway 55, Hastings, MN 55033

Please Take Notice, that the defendant through her attorneys Robert Miller and Stephen Grigsby hereby move the Court as follows:

1. For an Order to Dismiss all counts on the ground they lack probable cause to proceed to trial.

2. For an order to conduct an evidentiary hearing that the identification procedure because it was unduly suggestive and to suppress any in-court identification based on the procedure.

Dated 2-15-13

2-15-13

Stephen Grigsby #291973
5545 Second Avenue South
Minneapolis, MN 55419
(612) 562-1150



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## Argument and Memorandum

The purpose of a probable cause hearing is to protect a defendant from having to stand trial who is unjustly or improperly charged. *State v. Rud*, 359 N.W. 2d 573 (Minn.1984). The motion must be granted unless there is "substantial evidence admissible at trial in the record which would justify denial of a motion for a directed verdict of acquittal." *State v. Florence*, 239 N.W. 2d 893 (1976). The record for the probable cause hearing may contain "reliable hearsay in whole or in part." *Id*. at 902.

This matter comes before the Court after originally being scheduled for Jury trial on February 4th, 2013. After review of the evidence, there is insufficient evidence by which the State can proves the charges beyond a reasonable doubt.

### The State has no evidence the dogs were pets[1].

The defendant is charged with 16 counts of felony cruelty to animals under Minn. Stat. sec. 343.21. A pet is defined under Minn. Stat 343.20, Subd. 6. As "Pet or companion animal" includes 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, or any stray pet or stray companion animal."

The evidence in this case demonstrates that the defendant was involved in the commercial sales of dogs. A dog may certainly be a pet or companion animal

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[1] As an attachment I have included some materials from the USDA handout on its regulations as they pertain to the operation of dog dealers. It exempts from licensure "Any person who breeds and sell dogs directly to pet owner, at retail for the buyer's use as a pet." In order to be licensed which Ms. Bell was under the USDA, she had to have been certified as one who has dogs which are not exclusively pets.

and if the defendant was holding these dogs for other's future enjoyment, then the definition would apply. A dog may also be sold to another party as a service animal, a lab animal or working animal such as a rescue dog, or canine police dog. A dog is not identical with a pet. The criteria for a pet involves the statutorily specific requirement that the animal be in fact one held for another's enjoyment or for that person's enjoyment. The legal definition is also consistent with the Dictionary definition. According to the Concise Oxford English Dictionary, 11th edition, Oxford University Press, 2004 a pet is a "domestic animal or tamed animal or bird kept for companionship or pleasure." The question before the Court is not whether a dog is or is not generally a pet but whether the specific dogs that form the basis of the charges in these specific 16 counts were actually held by the defendant for her own enjoyment or the future enjoyment of another. The defendant was licensed at the time she was charged as a wholesaler of animal under the Federal Animal Welfare Act which governs the sale of animals. In the materials it distributes to the license holder it specifies that one can only be regulated if one is a dealer which it defines as "...any person who buys or sells any dog for use as pets, for research or teaching purposes, or sells dogs wholesale for hunting, security or breeding." See attached. The AWA only exists because of the fact that dogs have other socially recognized purposes than only the enjoyment of a person. In this case the State has no evidence and it appears never sought to obtain any to attempt to prove the dogs it used as the basis for the 16 counts were in fact pets.

**10 Counts Frozen Dogs**

Distinct from the issue of whether the dogs were pets, the State has no evidence to avoid a motion for judgment of acquittal that Dayna Bell either unjustifiably killed or cause suffering to the dogs supporting these ten counts.

There are no witnesses who observed the death of those dogs. There were, according to the State's own evidence, other people who lived at the residence who could have done it. Additionally the State cannot even prove that the dogs found in the freezer were dogs that the defendant had while they were alive. In other words, the defendant was certainly in possession of the dogs after they had been frozen, but there is no evidence of the dog's provenance. They could have been being held for rendering by the defendant for another person for a fee.

Further the University of Minnesota examined three of the ten dogs and could not determine a cause of death. The State's charging theory is that the dogs were drowned and the drowning caused unnecessary suffering. But they cannot prove beyond a reasonable doubt that the dogs were in fact drowned. Their own expert' opinion precludes this proof. The necropsy report does not simply fail to reach a conclusion, it reaches the conclusion that no cause of death can be determined. It opines that "Freezing and postmortem artifacts preclude any interpretation. The cause of death of these dogs stays inconclusive on postmortem examination." See Report. This is not a case where the examination was aborted or did not take place. It did and the results of the examination conclude positively that there is not proof of drowning. If the drowning cannot be proven then the State cannot prove cruelty.

The only evidence that the State would have is to ask a jury to infer from the single act a witness claims to have observed the defendant attempting to drown a single dog, that she therefore acted consistently with this propensity and drown the others. This argument would be forbidden under Minn. R. Evid. 404(b). The rule against other crimes evidence is clear. Jack Nordby, in Criminal Law and Procedure, Minnesota Practice Series, Third Edition, Vol. 8 West Group, 2001, p.447, clarifies this rule that even where other crimes evidence is admissible it may never be used to make the argument a person acted in conformity with a specific trait of character: "Note that this part of the rule is mandatory and has no exceptions. Such evidence may *never* be used *for that purpose*." The only argument by which the State could even argue that the defendant herself drowned the dogs would be to infer it from a prior alleged act.

Further, the definition of cruelty involves in Minn. Stat. sec. 343.20, subd. 3 defines cruelty as "every act, omission or neglect which causes or permits unnecessary or unjustifiable pain, suffering or death." Lack of justification is an element of cruelty. Unlike a murder case where the intentional cause of death of another person is sufficient in itself to alleged a case of murder and the burden is then on the defendant to offer a justification, here lack of justification is a burden of proof for the State. Because the State not only has no evidence that the defendant herself killed the dogs or caused them to suffer by drowning, neither does it have any evidence as to whether there would have been justification. They simply would have to assume the lack of justification. The State has no evidence either way and therefore they cannot meet their burden. The State would have to show that the

dogs, if the defendant killed them had not warranted being euthanized from some physiological defect or defect of temperament. To not require the State to prove lack of justification would shift the burden to the defendant to prove justification and violate due process.

A final matter with regard to the frozen dogs is that the State has evidence that the defendant was observed attempting to drown a dog. It has a witness who would presumably would testify to that. If that is found to be true, then there is no way to know whether or not that same dog was among those whose bodies were found frozen in the freezer. Unlike a murder trial where the identity of the decedent is normally proven, here there is no evidence that what the witness observed was the same as one of the ten dogs in the freezer because no witness or other evidence is able to identify the dogs in the freezer or the dog that the witness claims she saw the defendant trying to drown. Because the State cannot prove that dogs in the freezer are distinct from the dog being drowned, there is no way to eliminate the real possibility that the defendant has been charged twice with the same act. The only solution is for the State to either dismiss the entire class of ten counts involving the frozen dogs or dismiss the count involving the allegation the witness observed the defendant drown a dog. The State cannot charge both classes of counts with subjecting the defendant to a double jeopardy violation.

**Count Involving the claim of the broken neck**

No person in Minnesota may be convicted on her own uncorroborated confession. Minn. Stat. 643.03. One count under which the defendant is charged involves a claim that she broke a dog's neck because it bit her. No evidence exists

that this actually happened, nor was any body recovered nor examined to determine that the statement was accurate. Even if one presumes this statement to be true there is no corroboration that it in fact happened. Even if it did happen, there is no evidence what the informal remark was meant precisely to mean. Lets assume for a moment that the defendant in fact said this, that she broke the dog's neck. The defendant herself would not even know if she had in fact done this because she has no qualification to accurately assess her own act towards a dog. Further, there is no evidence from such an informal remark about its manner of death to infer the dog suffered. It could have died painlessly and immediately. In order to prove the charges the State would have to provide some, even minimal corroboration, not only that this in fact happened, but that the procedure it claims that the defendant admitted actually caused the dog suffering and was not a humane means of death. It cannot infer suffering from death alone, it has to offer some evidence on which it could prove the suffering beyond a reasonable doubt. The kind of evidence it would have to offer would be testimony by some person that suffering actually happened. It could only do this by first proving that the act happened (and it has no evidence of this) and to prove how the specific physiological effect of the procedure necessarily caused suffering. It cannot do this without some examination of the body of the animal to confirm through physical evidence that the manner of death involved prolonged, and therefore unnecessary pain.

The State has no evidence with regard to this count whether if the dog was killed if it was without justification. Certainly a dog that bites people could justifiably euthanized. *See Sawh v. City of Lino* Lakes, 823 N.W. 2d 627 (Minn.2012)(nothing inherently improper about euthanizing problem dogs). So could any dog that worries livestock. Minn. Stat. sec. 347.03- DOGS MAY BE KILLED. Further a person may kill any dog that suffers from hydrophobia or that may attack another person while out of its cage. Minn. Stat. sec 347. 15. This statute does not require that a dog have actually attacked another while out of its cage, but merely that it may. In order to survive the motion to dismiss, the State would have to proffer evidence that each dog it alleges the defendant killed could not have been killed for any of the reasons for which she would have been permitted to kill it, including the possibility it attacked people. The State would have to prove lack of justification beyond a reasonable doubt and this would include proving there was no possibility any of the dogs suffered from hydrophobia (they have no evidence of this) or to prove beyond a reasonable doubt none of the dog worried livestock or prove beyond a reasonable doubt none would ever have attacked another person. The only evidence the State has is the observations of part-time employees who do not have sufficient knowledge of the circumstances in which the dogs, if the defendant killed them, were killed. In other words, they cannot prove lack of justification with regard to any count.

Further the decision to euthanize a dog has no legal standard. There is no definition of justifiable or not justifiable. In order for the State to prove this, it would have to have enough evidence to *exclude any possible* justification for killing a

dog. The employee cannot provide sufficient reasons from what she observed to exclude all other reasons why a dog owner may have decided to put one down. There is nothing that specifically prohibits a dog owner from a decision to have a dog killed. The absence of an exhaustive and plenary list of justification makes it impossible for the State, under the facts of this case, to prove. A person may do anything not prohibited by a specific legal prohibition. This includes a decision to put down a dog for any of one's own personal reasons which the law does not specifically prohibit.

Additionally, there is also no way to determine if the dog which is the basis of the count involving the claimed admission of a broken neck was also one of the ten unidentified dogs found in the freezer. The problem is here the same as the last section. Because the charges in this case do not identify specific dogs there is no way to determine whether or not this count is also being charged twice. It must also be dismissed for that reason as well as all the foregoing.

**Counts Involving Four Puppies**

The final class of counts involves the what the State has enumerated in the probable cause section as puppies one through four. According to the probable cause section the State alleges that the defendant placed two puppies whose legs had been severely injured in a bucket with water with two other puppies that appeared to be dead and the placed another bucket on top of that in order to drown them. Assuming that any trier of fact would credit this testimony, the counts involving these two puppies also cannot support a conviction. First, to reiterate an earlier argument: because these are puppies and there is no evidence, especially due

to the injuries of their legs, that they would have survived or that they ever would have been being held for pets either for the defendant or another. But the most critical issue is here that these two puppies were suffering from severe injuries. In order for the State to prove these two counts as acts of cruelty it would have to have specific evidence of the physical condition of the puppies for at least two reasons. First, evidence would have to establish the state of health of these puppies to determine whether or not the manner of death caused a net surfeit of suffering or a deficit. Depending on the physical condition of the puppies, whether or not they were, when the defendant encountered them, actually suffering a large amount of pain determines whether or not the manner of death was more humane than prolonging their suffering by taking them to the nearest veterinary service to have them euthanized. Without evidence, for example, of how long it would have taken to bring the puppies to a vet or have a vet come to the premises to euthanize them there is no evidence that these two acts actually caused any more suffering from drowning than would have been spared by a vet visit. In fact, depending on the condition of the puppies, taking them to a vet may have unconscionably prolonged the suffering of the puppies depending on their condition. This condition is not known to the State and therefore they cannot prove that the act of drowning these two puppies was an act of cruelty. There are times on farms, which are often far from immediate services that the custodian of animals has to make decision regarding the health and welfare of animals. As we can see in this case, when the State comes in and prosecutes it essentially second guesses the decision of a person who had to make a decision under the immediate circumstances where an animal

may be suffering. It has no evidence whether the act was humane or not because it has no evidence of the state of well being or pain in which the puppies existed at the time. Accordingly, it has no evidence therefore whether the act of drowning them caused on balance net suffering or net mollification of suffering. If the laws are written to prohibit drowning of puppies under any circumstances, then a person may know precisely what she may or may not do. Here the laws only prohibit cruelty and essentially require a person like the defendant where there are lots of animals being born with defects, or succumbing to injuries shortly after birth there is the possibility of prolonging the suffering by taking them miles to a vet. People on farms in Minnesota have seen how cruel nature itself can be. What is really problematic here however, is for the State to use the cruelty laws, which requires them to prove cruelty defined as unnecessary suffering, beyond a reasonable doubt, to try to enforce what it ultimately would like to see as a prohibition against drowning puppies under any circumstances. In doing so, in second guessing the condition of those puppies without *any evidence* at all of how deeply they had been suffering, they risk confusing an act of humane treatment, an act designed to mitigate the suffering of the animals with a felony act to for which the defendant could be imprisoned. In order to prove cruelty the State cannot try to conjure it from pure inflammation of the senses; they cannot prove it by simply asking a trier of fact to accept on faith, without any evidence, that the drowning of the puppies must have been cruel because any one that would drown a puppy has cold blood. The facts of farm life are harsh. Animals suffer. And there is not always, as the State would like this Court to believe, a certain procedure to avoid suffering.

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The State also cannot prove the counts relating to puppies three and four. Puppy three is alleged to have been found in a bucket dead. No witness observed that puppy before it had been placed in the bucket. No evidence suggests that the puppy was alive before it was placed in the bucket. Normally, it would be reasonable to infer that the puppy was placed in the bucket while it was alive and that it died by drowning in the bucket. But the State's own evidence shows that even dead puppies were at times placed in buckets. For example in the second paragraph of the Statement of Probable Cause, the state represented to the Court that "Bell grabbed the two dead puppies and the two injured puppies and placed them in a bucket of water. Then she proceeded to place another bucket on top of that one." There are two reasons to place dead puppies in a bucket of water. The first is to assure that they are in fact dead to prevent placing a merely unconscious puppy in a plastic bag and then into the garbage to await rendering. Without a physical examination, it is not possible to determine with certainty whether a puppy is in fact dead, unconscious, comatose or catatonic. The second is to disinfect the puppy that is dead in case it has transmissible disease. Because no person saw how puppy three died, or the condition it was in before it was placed in the bucket, there is no evidence it was subjected to cruelty and to allow this charge is to risk the distinct possibility that an entirely innocent act has been made to appear sinister merely by the emotional nature of the circumstances. To allow this charge is to confuse the mere *possibility* puppy three was dealt with cruelly, with proof that it in fact was and to reverse the burden of proof and presume the defendant guilty on mere possibility.

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Puppy number four involves another instance of an allegation of drowning. This count also suffers from lack of evidence of the puppy's condition, specifically because in this case the State itself offers evidence that the motive of the defendant was to put the puppy out of its misery. In its probable cause statement the State represented to the Court that "Witness #2 questioned Bell about this and was told the puppy was not going to live, *so she needed to put it out of its misery.*" Additionally when another employee asked the defendant about the puppy the witness "was told by Bell that the puppy was born a week earlier and was not doing well, so she did not *want to see it suffer.*" Lets assume for a moment that these statements had not been made, that the only evidence observed by the witnesses was a dead puppy in a bucket. The witnesses would have merely assumed that the death of this puppy was a gratuitous act of cruelty because they did not have all the facts, namely whether or not the puppy was indeed suffering and needed immediate mitigation of that suffering. What this illustrates is the dangers of making assumptions without evidence. Unfortunately, the State's theory mimics the assumptions of the witnesses; essentially adopts what defects of evidence led the witnesses to conclude the puppy should not have been drowned. The point is that without evidence of the condition of that puppy there is no way to prove whether the act of drowning it on balance aggravated or mitigated the suffering of that animal. This count also risks, because of the absence of evidence, the confusion of an act of the humane abatement of suffering with an act of gratuitous cruelty and must also be dismissed because the State cannot prove cruelty beyond a reasonable doubt.

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## Identification Procedure

On the day of trial, the police conducted an identification procedure in which it showed a witness photographs of dogs that had been found in the freezer of the defendant. The witness claims to have identified several of the dogs in the freezer as those which she recalls giving to the defendant and which the witness claims she observed, at least one, being drowned in a pool. The identification is tainted by the suggestiveness of the procedure for several reasons and the Court should not permit an in-court identification based on the photographic display.

First, the pictures were taken on the premises where the witness worked. In the pictures are background features that clearly identify the premises and therefore suggest to the witness the context in which the pictures were proffered to her for identification. The witness would have understood from this they were being offered to her for the purpose of confirming the accusation she had already made against the defendant.

Second, the procedure did not follow any of the protocols which normally guarantee some objectivity in the identification procedure. When a witness is asked to identify a photograph, police include the suspect as one of others who have similar features in an array to determine if the witness can distinguish the person from others who have similar features. Here, the witness was given photographs which are replete with suggestive features of the crime itself, namely frozen dogs wrapped in bags which the witness had already have seen used in the kennel and were coated with ice which suggests dogs frozen after they had been drowned. The proper procedure would have been to have the witness look at each dog in an array

of photographs of dogs with similar features to determine if she was able to distinguish it as the same as the one actually found by police in the freezer. Moreover each photograph should have been placed on a background that did not suggest that the frozen dogs were taken from the defendant's property.

Because there has been no hearing on this yet, the record is incomplete and the defendant reserves any further argument until the record has been thoroughly developed and closed.

SVG.

# University of Minnesota

*Veterinary Diagnostic Laboratory*
*College of Veterinary Medicine*
*1333 Gortner Avenue*
*St. Paul, MN 55108*

*1-800-605-8787*
*612-625-8787*
*Fax: 612-624-8707*
*e-mail: vdl@umn.edu*
*www.vdl.umn.edu*

**Accession Number:** D11-042743

**Veterinarian:**
Dr. Kim Culbertson
Animal Humane Society-Golden Valley
845 Meadow Lane North
Golden Valley, MN 55422

**Owner:** AHS OFFICER KEITH STREFF
GOLDEN VALLEY, MN
**Site:**
**Received:** 09/29/2011
**Reference:**
**Species:** Canine
**Breed:** Mix
**Age:** **Sex:**
**Weight:**

**History:** (Per submitter) Suspect drowning

**Specimen:** 10 frozen dog's carcasses were submitted for postmortem examination. Necropsy was performed on 3 carcasses.

**Necropsy:**

Dog #1 - 9.5 kg, adult, Female. Microchip identification was not detected using a universal microchip scanner.

Body Condition Score was 3.5/5 (1 = emaciated and 5 = obese). The animal showed advance postmortem autolysis and freezing artifacts. The stomach contains undigested food.

Dog #2 - 7.2 kg, adult, Male. Microchip identification was not detected using a universal microchip scanner.

Body Condition Score was 3.0/5 (1 = emaciated and 5 = obese). The animal showed advance postmortem autolysis and freezing artifacts. Lungs were hyperinflated. The stomach was empty.

Dog #3 - 8.3 kg, adult, Female. Microchip identification 4B015F0D79 was detected using a universal microchip scanner.

Body Condition Score was 4/5 (1 = emaciated and 5 = obese). The animal showed advance postmortem autolysis and freezing artifacts. Lungs were hyperinflated. The stomach contains dry undigested food.

**Histopathology:**

Dog #1 - Lungs, liver, kidneys, spleen and heart: There was advance postmortem autolysis and freezing artifacts. Diffusely, the alveolar space and vessels of the lungs were filled with a homogeneous eosinophilic fluid. There was pigmentation of the renal tubular epithelium. No other significant lesions were observed.

Dog #2 - Lungs, liver, kidneys, spleen and heart: There was advance postmortem autolysis and freezing artifacts. No significant lesions were observed.

Dog #3 - Lungs, liver, kidneys, spleen and heart: There was advance postmortem autolysis and freezing artifacts. Extensively, the alveolar space and vessels of the lungs were filled with a homogeneous eosinophilic fluid. There were multifocal areas of fibrosis. Kidneys and liver showed diffuse congestion. In addition the liver had hepatocellular degeneration. No significant lesions were observed.

**Diagnosis:** See comments.

**Comments:** Freezing and postmortem artifacts preclude any interpretation. The cause of death of these dogs stays inconclusive on postmortem examination.

Anibal G. Armién, DVM, MSc, PhD, Diplomate, ACVP

— Report —

Fax (763)5220933 Ph (763)5224325

| Fax: | Final: | Written: 10/20/2011 | Addendum: |
|---|---|---|---|

USDA

EXPIRATION DATE: JANUARY 3, 2012

**United States Department of Agriculture**

**Marketing and Regulatory Programs**

**Animal and Plant Health Inspection Service**

**Animal Care**

This is to certify that DAYNA BELL

is a licensed under the CLASS B DEALER

# Animal Welfare Act

**(7 U.S.C. 2131 et seq.)**

Certificate No. 41-B-0265

Customer No. 322965

Deputy Administrator

USDA

EXPIRATION DATE: JANUARY 3, 2013

United States Department of Agriculture

Marketing and Regulatory Programs

Animal and Plant Health Inspection Service

Animal Care

38

This is to certify that DAYNA BELL

is a licensed under the CLASS B DEALER

# Animal Welfare Act

(7 U.S.C. 2131 et seq.)

Certificate No. 41-B-0265

Customer No. 322965

Chester A. Gipson

Deputy Administrator

Previous editions are obsolete

USDA

EXPIRATION DATE: JANUARY 3, 2012

**United States Department of Agriculture**

**Marketing and Regulatory Programs**

**Animal and Plant Health Inspection Service**

**Animal Care**

This is to certify that DAYNA BELL

is a licensed under the CLASS B DEALER

# Animal Welfare Act

**(7 U.S.C. 2131 et seq.)**

39

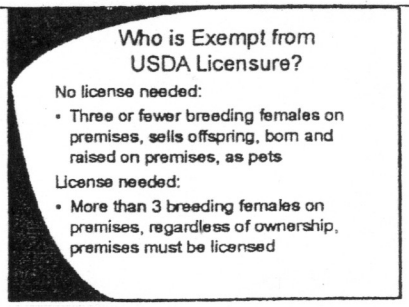
Certificate No. 41-B-0265

Customer No. 322965

Deputy Administrator

APHIS FORM 7007 (NOV 99) *Previous editions are obsolete.*

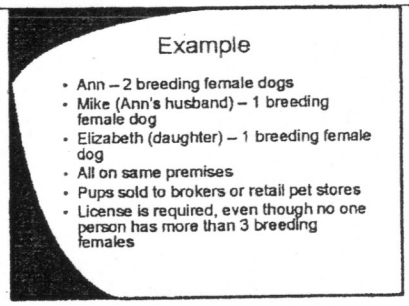
Slide 26




The following people are exempt from USDA licensure
Any person who has three or fewer breeding females on the premises and who sells pups which were born and raised on the same premises as pets is exempt from licensure.

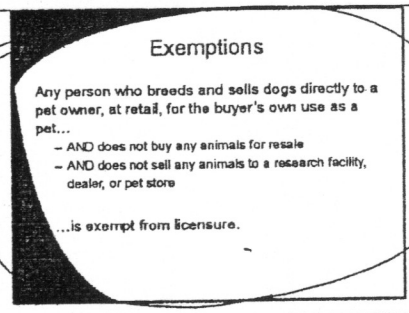
However, if more than three breeding females (including breeding females of other mammalian pet species, such as cats, 'pocket pets' or exotics) are on a premises, regardless of who on the premises owns them, the premises will require a license.

Slide 27

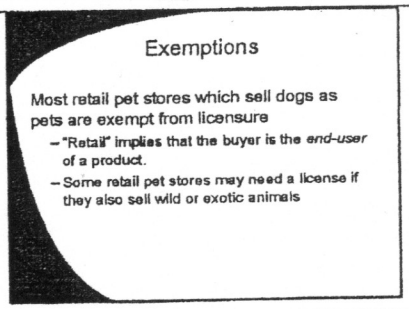



Ann owns two breeding female dogs, her husband Mike owns one breeding female cat, and their daughter Elizabeth owns one breeding female dog. If they share a premises and sell pups to "middle men" or retail pet stores they would be required to have a Class A license for the premises, even though any one person does not own more than three breeding females.
We will discuss the different types of licenses a bit later in the presentation.

Slide 28

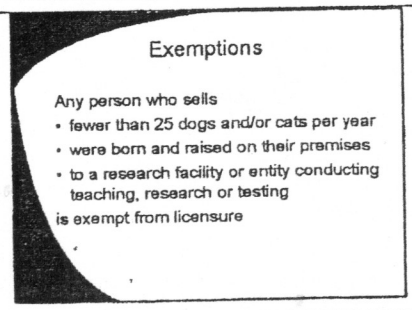



Slide 29



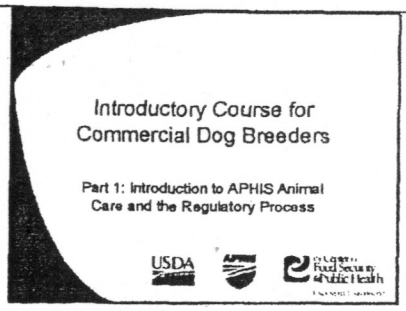

Retail pet stores which sell dogs as pets are exempt from licensure
"Retail" implies that the buyer is the *end-user* of a product.
For example, a person who buys a dog from a retail store, does so with the intention of keeping the dog as their own pet. In this example, the end-user is the pet owner, and the product is the dog.

Slide 30



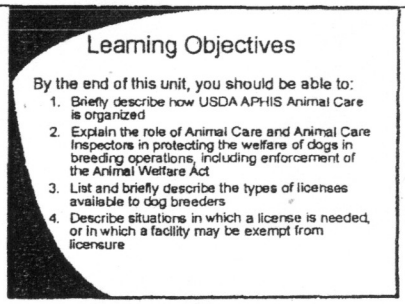

Any person who sells fewer than 25 dogs per year, which were born and raised on their premises, to a research facility or entity conducting teaching, research or testing, is exempt from licensure
However, if 25 or more dogs and/or cats per year from a premises are sold into research, teaching or testing, the premises will require a license, regardless of who on the premises owns the dogs/cats.

Slide 1

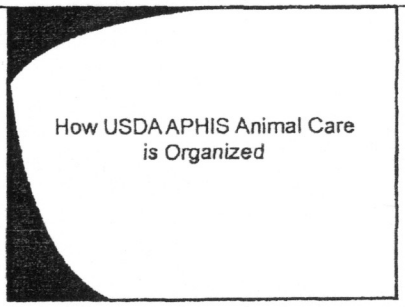



This presentation will discuss the process involved in becoming a USDA licensed dealer.

Slide 2

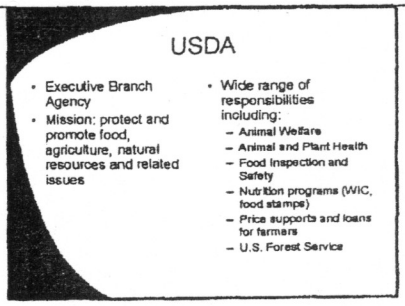



Slide 3



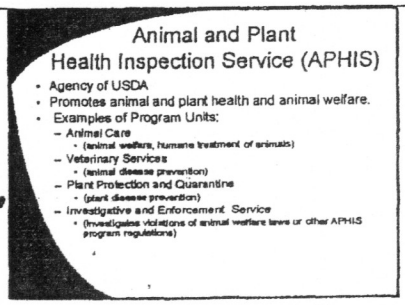

This section will provide an overview of Animal Care's role in regulating Animal Welfare. First, we will start with a brief overview of where Animal Care fits in the federal government and then we'll talk about the Animal Welfare Act and Animal Care's role in overseeing the provisions of the AWA.

Slide 4




Animal Care is part of the United States Department of Agriculture, which is part of the Executive Branch of the federal government. The executive branch enforces the laws made by Congress. USDA's mission is to protect and promote food, agriculture, natural resources and related issues. The USDA is a big agency and is responsible for a lot of things, a few of which are listed on this slide: Animal Welfare, Animal and Plant Health, Food inspection and food safety, Nutrition programs such as WIC and food stamps, price supports and loans for farmers and the U.S. Forest Service.

Slide 5

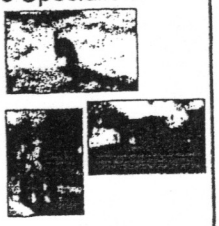



USDA is organized into several agencies. Animal Care is part of the Animal and Plant Health Inspection Service (APHIS), the agency which protects and promotes animal and plant health, and administers the Animal Welfare Act. APHIS has a number of program units. Some of these include:
Animal Care (animal welfare, humane treatment of animals)
Veterinary Services (animal disease prevention)
Plant Protection and Quarantine (plant disease prevention)
Investigative and Enforcement Service (legal actions taken against persons who break animal welfare laws)

Slide 21

## Animal Care Specialists

Special expertise and experience:
- Birds
- Elephants
- Marine mammals
- Exotic cats
- Non-human primates



In addition to Animal Care Inspectors, Animal Care also employs experts on the care and handling of exotic species including birds, elephants, marine mammals, exotic cats and non-human primates.

Slide 22

## APHIS Inspections: Your Responsibilities

Ensure that:
- The facility is in compliance with the Animal Welfare Act at all times, and is ready for visitors
- Paperwork is correctly complete, up-to-date, and available for review by Inspectors

*Photo: USDA:APHIS: A.Eaglin*

Slide 23

## USDA Licensing of Facilities

Slide 24

## Licensing with the USDA

Any person who is an animal dealer must have a USDA license
- Dealer: any person who buys or sells any dog for use as a pet, research or teaching subject, or sells dogs wholesale for hunting, security or breeding.
- Retail pet stores are not considered dealers, unless they sell dogs to research facilities, exhibitors or other pet stores.

A dealer is any person who buys or sells any dog for use as pets, for research or teaching purposes, or sells dogs wholesale for hunting, security or breeding. Retail pet stores are **not** considered dealers, unless they sell dogs to research facilities, exhibitors (like a carnival or zoo), or other pet stores.

The following may require a license:

Any person who acquires a dead animal and then sells it.

Any person who acquires a dead animal or its parts from a USDA licensed dealer or municipal, county, or state pound/shelter and then sells it.

Contact USDA APHIS Animal Care as it relates to exemptions to the above.

Slide 25

## Who Needs a License?

A license is required if:
- Produce dogs/cats for:
  - Research
    - Sell 25 or more dogs/cats per year
  - Wholesale distribution to retail pet stores or exhibition
    - Four or more breeding female dogs and/or cats
- Sell any dog not born and raised on your premises for research

A license is required if

1. You produce dogs or cats for research and sell 25 or more dogs or cats per year for the purposes of research or teaching,
2. You sell dogs or cats for wholesale distribution to retail pet stores or exhibition. Wholesale distribution is the sale to "middle men" or retail stores, NOT sales directly to pet owners. License is required if you have four or more breeding female dogs and/or cats on your premises, and sell puppies/kittens wholesale for use as pets or in exhibitions.
3. You sell a dog or cat not born and raised on your premises for research

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0579-0036. The time required to complete this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FORM APPROVED OMB NO.: 0579-0036

No license may be issued unless a completed application has been received (7 U.S.C. 2132-2143), and the applicant is in compliance with the standards and regulations Section 2133.

U.S. DEPARTMENTOF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

# APPLICATION FOR LICENSE

*(TYPE OR PRINT)*

X RENEWAL

DO NOT USE THIS SPACE- OFFICIALUSE ONLY

SEND THE COMPLETED FORM TO:
USDA APHIS ANIMAL CARE
Eastern Region
920 Main Campus Drive
Suite 200
Raleigh, NC 27606-5210
(919) 855-7100

| LICENSE NO./CUST NO | RENEWAL DATE | FEES | |
|---|---|---|---|
| | | AMOUNT | DATE RECEIVED |
| 41-B-0265<br>322965 | 3-Jan-2012 | | |

1. NAME(S) OF OWNER(S)AND MAILING ADDRESS
Dayna Bell
3066 310th St E
Northfield, MN 55057

COUNTY: Rice TELEPHONE (651) 334 - 7784

2. ALL BUSINESS NAME, LOCATIONS, AND ALL SITES HOUSING ANIMALS *(P. O. Box not acceptable)*
3066 310th Street East
Northfield, MN 55057
County: Rice 651-334-7784
TELEPHONE ( )
DAKOTA COUNTY

3. IF PREVIOUSLY LICENSED – NAME AND ADDRESS

PREVIOUS LICENSE NO.: 41B0265

4. NAME AND ADDRESS OF OTHER BUSINESS(S) HANDLING ANIMALS IN WHICH APPLICANT/LICENSEE HAS AN INTEREST
N/A

5. TYPE OF LICENSE
☐ A -Dealer *(Breeder)* ☒ B – Dealer ☐ C - Exhibitor

6. DATE OF LAST BUSINESS YEAR

| FROM | | | | | | TO | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| MO | | DAY | | YEAR | | MO | | DAY | | YEAR | |
| 0 | 1 | 0 | 1 | 1 | 1 | 1 | 2 | 3 | 1 | 1 | 1 |

7. NATURE OF BUSINESS *(Check item that describes nature of your business)*

| | | |
|---|---|---|
| ☐ A – Zoo | ☐ B - Aquariums | ☐ C – Auction |
| ☒ D – Breeder | ☐ E – Pets | ☐ F – Roadside Zoo |
| ☐ G – Circus | ☐ H – Animal Acts | ☐ I – Carnival |
| ☐ J – Drive thru Zoo | ☐ K – Pet Store | ☒ L - Broker |

8. TYPE OF ORGANIZATION
☐ Partnership ☐ Corporation ☒ Individual
☐ Other *(Specify)* LLC

9. LIST OWNERS, PARTNERS, AND OFFICERS

| NAME AND TITLE | ADDRESS |
|---|---|
| DAYNA BELL | OWNER |

10. DEALER ONLY
CLASS A (BREEDER) – LINE 'D' = ½ OF LINE 'C'
CLASS B (DEALER) – LINE 'D' = LINE 'C' LESS THE AMOUNT PAID FOR THE ANIMAL(S) (Sections 2.6)

| | |
|---|---|
| A: TOTAL NO. OF ANIMALS PURCHASED IN THE LAST BUSINESS YEAR | 12 |
| B: TOTAL NO. OF ANIMALS SOLD IN THE LAST BUSINESS YEAR | 263 |
| C: TOTAL GROSS DOLLAR AMOUNT DERIVED FROM REGULATED ACTIVITIES (SALES, BOOKING FEES, COMMISSIONS, ETC.) | 52,673.00 |
| D: DOLLAR AMOUNT OF WHICH FEE IS BASED *(Sections 2.6 and 2.7)* | 485.00 |

11. EXHIBITOR ONLY *(No. of animals holding now or held during the last business year, whichever is greater)*

| | |
|---|---|
| DOGS | RABBITS |
| CATS | NONHUMAN PRIMATES |
| GUINEA PIGS | MARINE MAMMALS |
| HAMSTERS | WILD OR EXOTIC MAMMALS |
| OTHER *(I.e., farm animals) (List Species and No.)* | |

CERTIFICATION

I hereby make application for a license under the Animal Welfare Act 7 U.S.C. 2131 et seq. I certify that the information provided herein is true and correct to the best of my knowledge. I hereby acknowledge receipt of and certify to the best of my knowledge I am in compliance with all regulations and standards in 9 CFR, Subpart A, Parts 1, 2, and 3. I certify that I am over 18 years of age.

| 12. SIGNATURE | 13. NAME AND TITLE *(Type or Print)* | 14. DATE |
|---|---|---|
| Dayna Bell | DAYNA BELL, OWNER | 12/20/11 |

APHIS FORM 7003
(JAN 1995) *(Previous editions are obsolete)*

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT
Court File No: 19HA-CR-12-1294

State of Minnesota,
Plaintiff,

v.

Dayna Kristine Bell,
Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF PROBABLE CAUSE AND THE DENIAL OF DEFNDANT'S MOTION TO SUPPRESS IDENTIFICATION**

## INTRODUCTION

A contested hearing was held on November 16, 2012 before the Honorable Judge Wermager. The defense alleged that the statutory provisions the defendant is charged under are unconstitutional and penalty phase of the statute is inapplicable. The parties subsequently submitted written memorandums of law. On January 14, 2013 the Court denied the defendant's motions. The matter was set for trial on February 4, 2013. On February 4, 2013 the defendant appeared for trial and requested another contested omnibus hearing alleging additional contested issues. The defendant asserts the dogs in defendant's care are not pets or companion animals. This issue is substantively identical to the issue defendant previously raised but categorized as a challenge to the penalty phase of the statue. Defendant's second issue is a motion requesting the Court suppress the identification of the dead dogs found on defendant's property in her freezer. A hearing was held on March 28, 2013.

## FACTS

On September 27, 2011 the Dakota County Sherriff's Department received a report of cruelty and maltreatment of animals by Defendant. (Compl. Pg. 7). Defendant is the owner and operator of Bell Kennels and Farm. Id. Three former employees reported various incidents of

Defendant mistreating the dogs. Id. It was reported Defendant grabbed two dead puppies and two injured puppies and placed them in a bucket of water. Id. Defendant proceeded to place another bucket on top of that one. Id. The second bucket contained water and a Clorox bottle for weight to hold the top bucket drown thereby drowning the puppies. Id. After about fifteen minutes Defendant placed the four puppies, all now dead into a plastic garbage bag and then threw the bag into the garbage. Id.

On September 26, 2011 Defendant was complaining about money issues. Id. Defendant took four dogs from the big kennels and put them in smaller travel kennels and took then down to the barn. Id. After about an hour, Defendant returned to the barn without the dogs and proceeded to take two more dogs with her. Id. A witness saw Defendant place a rope on the neck of a small black and white dog. Id. The other end of the rope was tied to a cinder block. Id. The witness reported that Defendant proceed to throw the dog and the block into the pool. (Compl. Pg. 8).

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

Sometime in late September Defendant was witnessed placing another puppy in a bucket of water. Id. Another bucket containing a bottle of Pine Sol was placed on top of the first bucket to hold the puppy down in the water. Id.

On September 29, 2011 a warrant was executed on Defendant's property. Id. A blue bucket and a cinder block with a rope tied to it were located on the property. Id. In addition 10 small breed adult dogs, each in individual plastic bags were found in a freezer on the property. Id. The appearance of the fur of the 10 adult dogs lead to the conclusion that the dogs were wet

when placed in the freezer. Id. A forensic pathologist of animals from the University of Minnesota and the a veterinarian with the Minnesota Animal Humane Society report dogs would experience drowning similar to how humans experience it. (T[1]. at 20-21).

Defendant gave three different statements. In the first statement Defendant knew the dogs were in the freezer and the dogs were euthanized by her vet. (T. at 23). In the second statement, Defendant had no idea how the dogs got into the freezer. (T. at 24). In Defendant's third statement Defendant said her husband drowned the dogs. (T. at 25). Defendant's primary veterinarian reported that in 2011 she euthanized two adult dogs for the defendant. (Compl. Pg. 8). Both where large breed dogs. (Id.) The veterinarian knew nothing about the dogs found in the freezer. (Id.)

A witness indicated that one of the dogs in the freezer was the small black and white dog that she saw Defendant throw into the pool. (T. at 37-38). The witness also indicated that one of the dogs in the freezer was the dog defendant claimed to have broken the neck of. (Id.) As a result of the identification the State is dismissing counts 3 and 4 of the criminal complaint. A formal dismissal was filed contemporaneous with this memorandum.

## ARGUMENT

### I. THE DOGS HELD AND SOLD BY BELL MEET THE DEFINITION OF PETS OR COMPANION ANIMALS.

The dogs in this matter meet the Minnesota statutory definition of pets or companion animals. Pursuant to Minn. Stat. § 343.20 subd. 6, pets or companion animals include 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.

[1] "T" refers to the transcript of the contested omnibus hearing held on March 28, 2013. The transcript was consecutively paginated.

In assessing whether or not the dogs found by the Dakota County Sheriff's Department are pets or companion animals the Court must look at the language contained in the definition, specifically, the word, "enjoyment". Defense has construed the definition to mean emotional enjoyment in the form of a cuddly puppy or dog. Enjoyment can come in many forms including monetary. Profit is a manner of enjoyment, as is possessing animals for the purpose of running the business. There is no case on point that clarifies enjoyment as used in this statute however a relevant and guiding definition of "Enjoy" is found in Black's Law Dictionary. Black's Law Dictionary 236 (2nd pocket ed. 2001).

> Enjoy, *vb*. To have, possess, and use (something) with satisfaction; to occupy or have benefit of (property). Id.
>
> Enjoyment, *n*. 1. Possession and use, esp of rights or property. 2. The exercise of a right. Id.

Defendant is in the business of breeding and selling dogs for profit. Possessing breeding stock that produce more puppies for sale or for breeding is enjoying the product of the breeding dogs. In Defendant's application for license that she submitted as an exhibit[2] to her memorandum, in section 9c Defendant listed the total gross dollar amount derived from regulated activities as $52,673.00. (Def. Ex. 1). This is further evidence that Defendant enjoys financial benefits of owning and breeding her dogs and selling of the puppies. Because Defendant possessed a USDA license and enjoyed the opportunity to sell dogs to a larger market and to make money doing so, the dogs were pets or companion animals.

The defendant attempts to hide behind the fact that at the time of the charges she was a USDA license holder. As part of the USDA licensure Defendant was required to maintain

[2] Defendant submitted multiple pieces of paper as attachments to her memorandum filed on February 15. 2013. The pieces of paper/exhibits were in no way titled or labeled to allow a reader to know exactly what defendant was referring to. Since the State must reference some of these same documents in its memorandum the State assigned numbers to the defendant's previously attached exhibits relevant to the State's response and attached the same to its memorandum.

acquisition and disposition records to show who she sold dogs to. (T. at 14). Under her USDA license Defendant sold only to one broker called Lambriar Incorporated in Kansas. (T. at 15). Lambriar Incorporated sold to pet stores across the country. (Id). Though not determinative of this issue, even Defendant's own records reflect that the dogs she was selling under her USDA license were going to pet stores. (Id.) The defendant has attached as an exhibit a USDA handout. The defense alleges that in order to be licensed under the USDA Defendant had to be "certified as one who has dogs which are not exclusively pets." The exhibit the defense provided does not support its argument. (Def. Ex. 2). The exhibit is not a certification. The exhibit appears to be a portion of slides from a training presentation entitled Introductory Course for Commercial Dog Breeder. (Id.) Exhibit 2 discusses various exemptions. (Id.) Under the USDA license Defendant was allowed to sell wholesale (to pet stores) and retail (the Internet, directly from kennel, etc.) The focus of this exemption is not on the type of dogs, the purpose of the dogs (pet, laboratory use, hunting, service, etc.) within her kennel; the focus of the USDA material is on the method of sales (exempts retail sales). (Id.). Nothing in defendant's exhibit supports the argument that by holding a USDA license, the dogs in her facility are not pets or companion animals. (Id.) This exhibit offers no legal authority on any subject, and certainly cannot be relied upon to dictate whether or not the dogs in the Bell Kennel facilities meet the definition of pets or companion animals, as defined by Minn. Stat. § 343.20 subd. 6. Defendant does correctly state in her memorandum that the Federal Animal Welfare Act governs the sale of animals. (Def. Memo. Pg. 3). The Animal Welfare Act does not define what a pet or companion animal is, nor is it the last word governing the treatment of the animals. The USDA website specifically states that State and Local government may have laws that protect animals and those breeders and dealers (as checked by Defendant on her application in sections 5 and 7) have to comply with

those laws. (Def. Ex. 1). It has been uniformly held that States are separate sovereigns with respect to the Federal Government because each State's power to prosecute derives from its inherent sovereignty, preserved to it by the Tenth Amendment, and not from the Federal Government. Given the distinct sources of their powers to try a defendant, the States are no less sovereign with respect to each other than they are with respect to the Federal Government. *Heath v. Alabama*, 474 U.S. 82, 87-89 (1985),*Heath,* See also, *United States v. Wheeler*, 435 U.S. 313, 320 (1978). The defendant remains subject to the State's definitions and prosecution. The USDA echoes this on its website. Excerpts directly from the USDA website follow:

Who regulates commercial dog/cat breeders?

> A. Facilities that breed and sell their animals to pet stores, brokers, or research facilities are covered under the Animal Welfare Act (AWA). The facility operators are required to obtain a license from the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). APHIS inspectors from the Animal Care program conduct unannounced compliance inspections to ensure that the animals receive humane care and treatment. **Many States and local governments also have their own laws that protect animals. Breeders and dealers also have to comply with these laws.** (http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_animal_dealers.pdf) *(empahsis added)*

"APHIS' jurisdiction is limited to the authority granted by the AWA. As indicated previously, States and local governments may create and enforce their own laws and regulations to protect animals, which may exceed the AWA standards". *Id.* "Regulated individuals and businesses are encouraged to provide care that exceeds the specified basic standards, and States have the authority to impose higher standards of care than those required under the AWA". *Id.* The USDA license does not impact the Minnesota statutes that apply to these animals. To accept the defense's argument would allow any breeder to obtain a USDA license and completely disregard

Minnesota statutes and treat the animals in any manner that person choose without any consequence. The absurdities of the defense's argument are apparent.

## II. THERE IS SUFFICIENT PROBABLE CAUSE FOR THE CHARGES

There is probable cause to establish Bell drowned the puppies and the dogs subsequently located in the freezer. The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it. Minn. R. Crim. Pro. 11.04 Subd.1(a). The court may find probable case on the face of the complaint or the entire record including reliable hearsay. Minn. R. Crim Pro. 11.04 Subd 1(c).

The investigation found ten frozen dogs in Defendant's freezer. Observation of the dogs' fur and water coming from their mouth and nose area indicates the dogs were drowned. (T. at 17). The investigator confirmed with a forensic pathologist for animals at the University of Minnesota veterinary clinic that an animal not wet when frozen would present with dry fur. (T. at 38). The necropsy stated that the findings were inconclusive; it did not state that drowning did not occur. (T. at 19). Furthermore, the forensic pathologist explained the impact that the freezing and thawing of the dogs has on the ability to make a conclusive determination as to cause of death. (T. 18). The forensic pathologist and a veterinarian with the Minnesota Animal Hume Society confirmed that dogs would experience being drowned similar to how a human would experience. (T. at 20-21). There would be suffering. Id. There is an eye witness report that defendant placed a rope around a dog's neck and threw the dog into a pool. (T. at 16). A witness confirms that amongst the dogs found in the freezer, were the dogs that the witness saw Defendant put in travel kennels and take to the barn, and the dog defendant threw into the pool. (Compl. Pg. 7, T. at 37-38). Defendant's owns statements further support probable cause. The first statement given by Defendant was that she knew the dogs were in the freezer and that they

were euthanized by her vet. (T. at 23). After law enforcement was able to more closely examine the dogs found in the freezer Defendant was questioned again (T. at 24.) Defendant claimed she had no idea how the dogs got in the freezer. (Id.). Defendant's last version of events was given to a USDA inspector. (T. at 25.) Defendant told the inspector that her husband had drowned the dogs. (Id.) Both the USDA and the American Veterinary Medical Association indicate that drowning is not an acceptable form of killing an animal. (T. at 44-45). Based upon the 1) appearance of the dogs when recovered from the freezer, 2) the statement of a witness observing Defendant drown the puppies and one adult dog, 3) the statement of the forensic pathologist that drowning cannot be excluded as a cause of death and that these dogs would have suffered when drown, and 4) Defendant's inconsistent statements, there is probable cause to proceed to trial.

Defense alleges the witness's observation of a dog being drown is Spreigle evidence and the evidence should not be allowed to explain how the other dogs end up in the freezer. According to the defense the witness would have had to endure watching the defendant drown all the other dogs. The witness indicated that she could not watch this again and it was making her sick to the point where she was going to throw up. (T. at 23). The witness observed Defendant transport the dogs, put a rope that had a cinder block on the other end around a dog's neck and throw the dog into the pool and then the dogs transported and the dog defendant threw into the pool are found in the freezer; this is not character evidence. All of this information is direct or circumstantial evidence of the crimes charged and therefore is admissible.

## CONCLUSION

The Defendant is requesting the Court suppress the witness's identification of the dead frozen dogs. Defense has failed to provide any legal basis for this challenge. The State rests on this memorandum, arguments made on the record at the March 28, 2013 hearing and prior

probable cause memorandum submitted by the State on November 30, 2012. The State requests the Court deny Defendant's motion to suppress the identification and find, for the second time, there is probable cause for the remaining charges.

Dated: 4/15/2013

Respectfully submitted,

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By Jessica A. Bierwerth

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# EXHIBIT 1

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0579-0036. The time required to complete this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

FORM APPROVED OMB NO.: 0579-0036

No license may be issued unless a completed application has been received (7 U.S.C. 2132-2143), and the applicant is in compliance with the standards and regulations Section 2133.

U.S. DEPARTMENTOF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

# APPLICATION FOR LICENSE

*(TYPE OR PRINT)*

X RENEWAL

DO NOT USE THIS SPACE- OFFICIALUSE ONLY

SEND THE COMPLETED FORM TO:
USDA APHIS ANIMAL CARE
Eastern Region
920 Main Campus Drive
Suite 200
Raleigh, NC 27606-5210
(919) 855-7100

| LICENSE NO/CUST NO | RENEWAL DATE | FEES | |
|---|---|---|---|
| | | AMOUNT | DATE RECEIVED |
| 41-B-0265<br>322965 | 3-Jan-2012 | | |

1. NAME(S) OF OWNER(S)AND MAILING ADDRESS
Dayna Bell
3066 310th St E
Northfield, MN 55057

COUNTY: Rice TELEPHONE (651) 334 - 7784

2. ALL BUSINESS NAME, LOCATIONS, AND ALL SITES HOUSING ANIMALS *(P. O. Box not acceptable)*
3066 310th Street East
Northfield, MN 55057
County: Rice
651-334-7784
TELEPHONE ( )
DAKOTA COUNTY

3. IF PREVIOUSLY LICENSED – NAME AND ADDRESS
41B0265
PREVIOUS LICENSE NO.:

4. NAME AND ADDRESS OF OTHER BUSINESS(S) HANDLING ANIMALS IN WHICH APPLICANT/LICENSEE HAS AN INTEREST
N/A

5. TYPE OF LICENSE
☐ A -Dealer *(Breeder)* ☒ B – Dealer ☐ C - Exhibitor

6. DATE OF LAST BUSINESS YEAR

| | FROM | | | TO | | |
|---|---|---|---|---|---|---|
| | MO | DAY | YEAR | MO | DAY | YEAR |
| | 01 | 01 | 11 | 12 | 31 | 11 |

7. NATURE OF BUSINESS *(Check item that describes nature of your business)*

☐ A – Zoo ☐ B - Aquariums ☐ C – Auction
☒ D – Breeder ☐ E – Pets ☐ F – Roadside Zoo
☐ G – Circus ☐ H – Animal Acts ☐ I – Carnival
☐ J – Drive thru Zoo ☐ K – Pet Store ☒ L - Broker

8. TYPE OF ORGANIZATION
☐ Partnership ☐ Corporation ☒ Individual
☐ Other *(Specify)* LLC

9. LIST OWNERS, PARTNERS, AND OFFICERS

| NAME AND TITLE | ADDRESS |
|---|---|
| DAYNA BELL | OWNER |

10. DEALER ONLY
CLASS A (BREEDER) – LINE 'D' = ½ OF LINE 'C'
CLASS B (DEALER) – LINE 'D' = LINE 'C' LESS THE AMOUNT PAID FOR THE ANIMAL(S) (Sections 2.6)

| | |
|---|---|
| A: TOTAL NO. OF ANIMALS PURCHASED IN THE LAST BUSINESS YEAR | 12 |
| B: TOTAL NO. OF ANIMALS SOLD IN THE LAST BUSINESS YEAR | 263 |
| C: TOTAL GROSS DOLLAR AMOUNT DERIVED FROM REGULATED ACTIVITIES (SALES, BOOKING FEES, COMMISSIONS, ETC.) | 52,673.09 |
| D: DOLLAR AMOUNT OF WHICH FEE IS BASED *(Sections 2.6 and 2.7)* | 485.00 |

11. EXHIBITOR ONLY *(No. of animals holding now or held during the last business year, whichever is greater)*

| | |
|---|---|
| DOGS | RABBITS |
| CATS | NONHUMAN PRIMATES |
| GUINEA PIGS | MARINE MAMMALS |
| HAMSTERS | WILD OR EXOTIC MAMMALS |
| OTHER *(i.e., farm animals) (List Species and No.)* | |

CERTIFICATION

I hereby make application for a license under the Animal Welfare Act 7 U.S.C. 2131 et seq. I certify that the information provided herein is true and correct to the best of my knowledge. I hereby acknowledge receipt of and certify to the best of my knowledge I am in compliance with all regulations and standards in 9 CFR, Subpart A, Parts 1, 2, and 3. I certify that I am over 18 years of age.

| 12. SIGNATURE | 13. NAME AND TITLE *(Type or Print)* | 14. DATE |
|---|---|---|
| Dayna Bell | DAYNA BELL, OWNER | 12/20/11 |

APHIS FORM 7003
(JAN 1995)
*(Previous editions are obsolete)*