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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION THREE

State of Washington, Plaintiff/Respondent

v.

Pamela D. Deskins, Appellant/Defendant

Court of Appeals No. 29532-0

(Stevens County District Court No. P6282)
(Stevens County Superior Court No. 2010 2 00130 0)

STATEMENT OF ADDITIONAL GROUNDS

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Introduction. Criminal law identifies a crime as being a wrong against society. Even if an individual is victimized, under the law “society” is the victim. The victims as alleged here were not individuals, they were canines. Police power is to used to protect society, individuals, and the public from harm. The general rule in most states is that a dog owner is only held criminally liable in a case in which an animal is known to be vicious or dangerous. While what happened to Ms. Deskins' dogs was deplorable, the facts in this case do not sufficiently establish the required intent or the necessary severity to justify the conviction or harsh criminal penalties imposed here. Cases in Washington involving the death of the animal are situations where the animal is the nuisance. At best, an Oregon court held an animal injuring or killing another animal is a nuisance. Womack v. Von Rardon, 135 P.3d 542 (Div. 3, 2006) CF Lockett v. Hill, 182 Or. App. 377, 51 P.3d 5, 8 (Or. 2002). The dog control ordinances adopted by the State legislature under RCW 16.08 et seq. and Stevens County local code Title 20 et seq.(enforcement suspended) are designed to prevent animals from becoming a nuisance. While the criminal statutes in this case place a duty upon animal owners, the statutes herein do not set out a standard of conduct or confinement for dog owners under the facts set forth here. RCW 16.08 sets out a comprehensive legislative scheme for regulating the registration, confinement, regulation, and execution of dangerous dogs. RCW 16.08.080; RCW 16.08.100. It sets forth misdemeanor penalties for owners who do not comply. The state statute classifies dogs into two categories (dangerous and potentially dangerous). Rabon v. City of Seattle, 957 P.2d 621, 626 (Wash.1998). The regulatory scheme of RCW 16.08 et

seq. takes specific measures against dog attacks, establishing the standard of care and safe confinement for a dog owner. See, RCW 16.08.090. More specifically on January 1, 2010, a new law was added to the animal cruelty chapter, RCW 16.52.310, setting forth a specific standard of care and safe confinement for a dog owner with multiple dogs such as Ms. Deskins. Although the new statute does not prescribe that multiple dogs must be confined in a "primary enclosure" such as a kennel or crate by the owner, it sets forth the humane standard of care and confinement (including exercise and space requirements) for owners who may possess up to fifty (50) mature dogs at any one time. Prior to enactment of this new law there was no specific standard of safe confinement set forth to guide a dog owner under animal cruelty statutes. See, RCW 16.52.310. This case received a huge amount of air time and media publicity, and fodder for the Prosecutor's blogging in local newspapers and Stevens County "Prosecutor's Corner" since 2008. The criminal proceeding and rush to make Ms. Deskins a criminal defendant, (a non-offender) without due process protections, was the result of improper political motive, animus, and vengeance. Logically the punishment imposed is explained in no other way.

1. No Probable Cause for Warrant to Search and Seize. The trial court ruled that probable cause existed to search and seize Ms. Deskins' dogs. RP 301, ll. 16-25; RP 302, ll.1-25; RP 303; 1-21. As an initial matter, the 10-2-08 Affidavit to Search alleging probable cause which originated this criminal action was based upon approximately six (6) outdoor dogs depicted on videotape harming each other and neighbor witness statements. The Affidavit for Search Warrant appears to have been created after the fact

by authorities. Although it is dated 10-2-2008 as it was filed on October 6, 2008, days after the Raid and Search of Ms. Deskins' premises. (See, Aff. for Search Warrant filed 10/6/2008). This may explain why Detective Glover refused to produce it at the time of the Search in response to demand from Ms. Deskins' attorney Robert Caruso. The alleged harmful incidents were never personally observed by Detective Glover other than by videotape. The Affidavit of Probable Cause to Search did not support a 2-day government search of 4 acres, inside two private residences including a non-joined 3rd party, outbuildings, vehicles, and Ms. Deskins' person. Additionally, when no evidence of misdemeanor criminal conduct was located during the invasive search and dogs were not relevant value as evidence (Prosec. S. Stuart, at RP 42, ll. 1-12.), the wholesale seizure and impound of some 36 healthy, well-nourished dogs for nearly three months in a city animal shelter was not supportable nor justified (Also, see, Declarations of Robert Clark, DVM and Kathy Frost filed of record). The scope of the search and seizure warrant was not supported by the nature of the crimes relating to allegations of 6 dogs depicted on videotape harming each other through unknown provocation. No reasonable officer would have engaged in a wholesale seizure of 36 dogs or more under a General Warrant containing no particularity, both indoor and outdoor dogs including days-old puppies in Ms. Deskins' bedroom. A reasonable officer would have sought additional judicial authority before undertaking such a massive expensive 2-day endeavor under a General Warrant non-particularized warrant, when no criminal evidence was found by officers on the first day of the raid (or at all).

2. The Court Erred in Imposing Criminal Restitution in Impound Fees. The District Court does not have statutory authority to impose a some \$22,000 restitution upon Ms. Deskins for a misdemeanor. Further, Ms. Deskins was denied due process by the trial court when her dogs were confiscated in Oct. 2008 when Ms. Deskins filed a Petition to return her seized dogs in mid-October 2008 with District Court in Case No. CVY-8-588. The court dismissed Ms. Deskins' Petition in error, advising Ms. Deskins to first exhaust administrative remedies, and that it did not have jurisdiction over the subject matter. Then, switch-hitting on 2/26/10, the trial court improperly sought to impose liability upon Ms. Deskins for the some three months of restitution at sentencing, after first denying Ms. Deskins' due process on her Petition to return dogs to her in mid-October 2008. Ms. Deskins was not permitted at her Petition hearing the opportunity to speak to, or prove her ability to care for the seized healthy well-nourished dogs which were consequently then held by authorities for nearly three (3) months until 12/24/08. The Court erred and the court's error of a constitutional magnitude cannot be the basis for Ms. Deskins' liability for some \$22,000 in restitution, and it was. See, RCW 16.52.085 which requires that a Petition to return the seized dogs be appropriately brought before the District Court, and it was. Ms. Deskins was denied due process at a meaningful time, place, and in a meaningful manner prior to the deprivation, impound and fees. See, also Mansour v. King County, 131 Wash. App. 255, 267, 128 P.3d 1241 (Div. 1 2006) for the standards for due process in dog seizures. Finally, RCW 16.52.080 (the statute under which Ms. Deskins was charged) which provided authority for the seizure provides:

“...And whenever any such person *shall be taken into custody or be subject to arrest pursuant to a valid warrant* therefor by any officer or authorized person, *such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty.* (emphasis). Ms. Deskins was never taken into custody nor arrested in this district court case, so the seizure was unreasonable and improper under this statute. Further, Ms. Deskins entered into a cooperation agreement with the State for the release of Ms. Deskins' dogs on 12/24/08 (Ex. 1, terms of cooperation agreement, true and correct copy of Ltr. from K. Kamel to Prosec. L. Nickel, 12/30/20). Ms. Deskins was charged certain fees by Gail Mackie at SpokAnimal C.A.R.E. for Stevens County at that time to recover certain of her dogs (involuntary sterilization fees). No other fees were contemplated by Ms. Deskins, Stevens County or Spokanimal C.A.R.E. at the time the contract was executed by the parties on 12/24/08 so any additional lien for fees on the animals has been waived under this statute and other pertinent statutes.

3. Evidence is Insufficient to Support the Concept of Notice and Foreseeability for Criminal Negligence.

In the original State information filed against Ms. Deskins in October 2008, the State alleged the harm was that canines of Ms. Deskins had injured and/or killed other canines of Ms. Deskins on her fenced private property. See, Complaint filed in October 2008 by State. The State alleged that although Ms. Deskins did not whip, beat, or starve these dogs, these acts still constituted animal cruelty inflicted by Ms. Deskins. The State's

theory was cruelty was inflicted by Ms. Deskins through criminal negligence, as Ms. Deskins was on notice in May 2008 (“Winnie” the dog administrative proceedings initiated by the State under Stevens County Code Title 20 dog laws), therefore harm was foreseeable, and Ms. Deskins failed to take action to separate the dogs from each other which was her duty in preventing that harm. (RP 935, ll. 17-25; RP 936, ll. 1-7; RP 937, ll. 9-18). However, the State failed to finalize administrative proceedings and conduct a hearing on accusations wherein “Winnie” was the subject matter. (See, **Ex. 2**, documents regarding admin. proceedings about “Winnie”) Therefore, Ms. Deskins had notice of nothing concerning Winnie except an accusation made by historically incompatible neighbors, the Feilers. (RP 488, ll. 5-18; RP 489, ll. 4-10) Moreover, notice of dogs attacking other strange at large dogs such as “Winnie” is not notice that co-habiting dogs located on Ms. Deskins' property would inflict harm on other members of their own “pack”. The latter canine behavior is an entirely different type of behavioral response in dogs than the former.¹ Due to inefficient trial counsel, Ms. Deskins had no opportunity to have her behavioral expert testify to the core of her defense, that the neighbors actually caused the dog harm complained of herein. Dogs and all other domesticated animals are not considered dangerous or mischievous as a matter of law. Ms. Deskins did not keep dogs as fighting dogs. Ms. Deskins was not present at the time of alleged incidents; she was at work 25 miles away. (RP 795, ll. 4-12; RP 799, ll. 22-25; RP 800, ll. 1-25; RP 801, ll. 1-25; RP 802, 1-13. It follows then that the dogs were not under Ms.

1 See, http://leerburg.com/redirected_aggression.htm?set=1

Deskins' care or competent voice control at the time. To meet the definition of competent voice control, the animal's owner or caretaker must be present to monitor the animal's activities, must be capable of directing all of the animal's movements by vocal commands, and the animal must follow the commands quickly and accurately. Clearly, Ms. Deskins was unable to monitor or direct her dogs from some 25 miles away at the time of alleged 9-17 and 10-1-2008 harm. Neighbors did not advise Ms. Deskins of any dog incident. (RP 545, ll. 20-25; RP 546 104; RP 492, ll. 6-8; ll. 20-23; RP 493, ll.18-25; RP 494, ll. 15-22). Law enforcement failed to provide Ms. Deskins with notice of September 17 and October 1, 2008 videotape incidents. See, Aff. for Search Warrant filed 10/6/08. Law enforcement therefore breached a lawful duty to Ms. Deskins to notify Ms. Deskins of what had specifically had occurred on those dates, which of her dog(s) may have been involved, or whether the biting incidents were provoked or unprovoked. Law enforcement was required to give Ms. Deskins notice or permit Ms. Deskins to view the videos it had acquired from her neighbors of the incident as alleged. See, RCW 16.08.100; and .030.

4. Retaliation for Exercising First Amendment Rights. Stevens County law enforcement intentionally did not notify Ms. Deskins nor show her videotapes for improper reasons -- to retaliate against Ms. Deskins for publicly embarrassing Stevens County sheriff's officers and public officials with a highly profiled article² published approximately 3-1/2 weeks in advance of the 2-day property search, and seizure of Ms.

2 <http://ezinearticles.com/?Dangerous-Dog-Ordinances,-Stevens-County,-Washington---Title-12-->

Deskings' some 36 dogs on her "Doo Da Day" animal sanctuary on October 2-3, 2008.

This unreasonable search and seizure and criminal prosecution was nothing more than retaliation by public officials and law enforcement for Ms. Deskings exercising her First Amendment rights in a very public way in an on-line publication which has ranked high in major Internet search engines to this day. There was a rush by Stevens County to improperly make Ms. Deskings a criminal defendant, and to repeatedly deny her due process safeguards for that reason. Due to ineffective trial counsel's failure to investigate, this matter also never appeared during proceedings.

5. Ms. Deskings Had an Animal Business and Was Provided No Notice. Ms. Deskings owned and operated a Washington State licensed animal sanctuary on rural acreage property in Deer Park, and also operated a small commercial farm. RP 794, ll. 13-22; RP 825, ll. 1-17; RP 827, ll. 1-5. The business purpose of "Doo Da Day" included taking in disabled, unwanted, or unadoptable animals. RCW 16.08.030 requires that:

It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any domestic animal **to kill such dog or dogs within forty-eight hours after being notified of that fact**, and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor...".

If law enforcement had notified Ms. Deskings and showed her the videotape of 9-25-08 identifying which dogs were potential violators, Ms. Deskings could have acted to deal with any problem. Ms. Deskings' dogs had no prior history of in-fighting or killing another domestic animal, therefore it was not reasonably foreseeable to Ms. Deskings that

they might act to harm one another as alleged on 9-17-08 or 10-1-08. RP. 815, ll. 20-22; RP 816, ll. 2-3 Ms. Deskins had no notice from anyone of what specifically occurred on those days on her property, how it occurred, or which dog(s) was involved in the occurrence. RP 800, ll. 23-24; RP 802, ll. 4-7. For argument sake only, the Search and Seizure Warrant was acquired on October 2, 2008 and presumably drafted on October 1, 2008 by Detective James Glover with prosecutors. It was not filed of record until after the fact on October 6, 2008, which begs the question of whether the Affidavit of Detective Glover was even before the magistrate who signed the Search Warrant in Stevens County. If not, this was a highly improper Search Warrant. See, Glover Affidavit for Search Warrant, filed 10-6-08. Even with a notice period given by Detective Glover when he first viewed the video on 9-25-08 from Laurie Strong, that would have been an approximate 6-day notice to Ms. Deskins prior to the Oct. 2, 2008 raid. Ms. Deskins worked full-time in a law firm. It would not have been reasonable to expect that Ms. Deskins, a single person living alone, who had no notice whatsoever (not even 6 days) of what specifically had occurred, how it occurred, or which dog(s) was involved could possibly take any measures to cure any perceived deficiency in dog control in 6 days by building separate confinements, or alternatively destroying all dogs. Without specific personal knowledge of the incident(s), and time to react, Ms. Deskins could not take measures to construct a primary enclosure for each and every dog, or put down a dog. This is not reasonable nor practical in terms of expense. However, despite no actual or constructive notice of these certain behaviors, the omission to act to separate each and

every dog by Ms. Deskins is what led to the criminal charges against Ms. Deskins. Nothing else short of killing each and every dog would have satisfied Stevens County officials, or Ms. Deskins' complaining neighbors. That has been demonstrated by the unlawful forfeiture sanction imposed upon Ms. Deskins (including dozens of livestock) as recommended by the State prosecutor Timothy Rasmussen. (See, 2/26/10 Judgment and Sentence). RCW 16.08.100(1) of the dog control statutes provides for a more reasonable twenty-day cure period for a dog owner who has misbehaving dogs who are found to be dangerous or potentially dangerous, however none of Ms. Deskins' dogs had ever been found to be dangerous or potentially dangerous by any competent authority as Stevens County failed to conduct the hearing before a Hearing Examiner as Ms. Deskins requested. (See, **Ex. 2**, Letter from Prosecutor L. Nickel to Caruso Law Office dated **July 2, 2008**). The dog regulation statutes also contain an owner defense for trespass and provocation of dogs. See, RCW 16.08 et seq. Additionally, Ms. Deskins did not violate any local or state statute or ordinance concerning the management of her dogs, or violate any fencing or confinement standard for maintaining multiple dogs. There simply was no restraint standard other than under the dangerous dog laws. See, RCW 16.08 et seq. Criminal negligence through a breach of a duty to her dogs, as a matter of notice and foreseeability, and failure to act, simply did not occur in this case by Ms. Deskins. Ms. Deskins did not own, possess or keep any animal(s) trained for fighting on her premises, or where an exhibition of animal fighting is being conducted under circumstances evincing intent that such animal(s) engage in animal fighting. Washington State has a

“dog fighting” statute under RCW 16.52.117 wherein any person who owns, possesses or keeps any animal under circumstances evincing an intent that such animal engage in animal fighting is guilty of a felony punishable by imprisonment. Ms. Deskins, a single person, regarded many of her dogs as beloved family members as do many persons, and would never consider “fighting” dogs. The State prosecution in this case skirted the Constitution in order to publicly embarrass Ms. Deskins and hurt the dogs. In Washington State, we have an existing scheme of laws that contains provisions which regulate misbehaving dogs and their owners. See, RCW 16.08 et seq. This is an administrative regulatory scheme of laws. There are misdemeanor criminal punishments under these laws, but only after an owner fails to comply with a 20-day notice by animal control authorities to cure defects in dog control and confinement after a dog is adjudicated to be dangerous or potentially dangerous. Under that regulatory scheme, any such dog(s) is to be restrained and confined in a very specific manner which is then set forth by statute. See, RCW 16.08 et seq. It was not, and is not, unlawful to restrain or confine multiple dogs within an owner's property boundary. It is a private nuisance when the dogs misbehave, and the neighbors reside several hundred yards apart as in this case.

5. Ms. Deskins Did Not Breach a Dog Owner's Duty of Care. Ms. Deskins had two duties to her dogs, to keep the dogs and the public safe.

a. Duty to Avoid Private Nuisance. This duty is defined as an "invasion of the individual's interest in the use and enjoyment of land". This duty would fail under the facts of this case, although defendant's dogs did allegedly invade the neighbor's' land,

walking across it according to a witness and barking. RP 531, ll. 23-24; RP 578, ll. 2-7. That one invasion dubiously affected the neighbor's enjoyment of their land. The real interest that lies at the heart of the neighbor complaint is not related to their own real property. The actions giving rise to the neighbor's complaints and this criminal prosecution is emotional distress claimed on the part of the neighbor, although the incidents on videotape did not take place on the neighbor's land but were taped on Ms. Deskins' land several hundred yards away from other neighbor properties. **b. Duty to Avoid Injuring "Constitutive Property"**. The theory of constitutive property is based on the proposition that ownership or possession of certain personal property, like a pet, can become a central aspect of the owner's sense of identity. In support of this proposition, Ms. Deskins cites Steven M. Wise, *Wrongful Death of a Companion Animal*, 4 Animal L. 33 (1998). Wise refers to pets, for which he uses the term "companion animals," as "quasi-children" who "may also be metaphorical extensions of their owners" to the extent that "the wrongful killing of one's companion animal may threaten the way in which an owner constitutes herself: in losing her companion animal, she loses a vital part of herself." *Id.* at 67-68. Washington courts have already identified a person's interest in constitutive property as a legally protected interest. The problem with this duty of care is that the interest in the dogs which are the subject matter of this proceeding, are *Ms. Deskins' legally protected interest*, and *not that of her complaining neighbors or the State*. It follows then that *the argument is that the State has the authority* to declare that wrongful harm to Ms. Deskins' private "constitutive" property is

a breach of a duty or invasion of an interest upon which the neighbor's emotional distress was based or the State's interest (public) was based. The State does not have the authority to declare that harm to such "constitutive" property owned by Ms. Deskins is a breach of a duty owed by Ms. Deskins, or invasion of any interest on which the neighbors' emotional distress or the State's interest to protect the public can be based. Ms. Deskins acknowledges that people have a legally protectible interest in the integrity of constitutive property, and that a companion animal such as a dog is such property. However, to state that the neighbor's interest in not being emotionally distressed over far-away dog incidents, or the state's interest in protecting the public is important enough such that Ms. Deskins' interference with those interests should support a criminal conviction is faulty (when Ms. Deskins is the only one suffering any real injury). The scope of Ms. Deskins' duty owed toward the victim (dog) is not defined by either RCW 16.52.080 or RCW 16.52.207, with respect to these dog biting incidents. Ms. Deskins' alleged negligent act, or negligent omission to act, did not proximately cause dog biting incidents as alleged on 9-17-08 and 10-01-08. Proximate cause is clearly established where the act is directly connected with the resulting injury, with no intervening or supervening force operating. An intervening, supervening cause can relieve a defendant of criminal liability if the act breaks the chain of causation and the defendant's act is no longer a substantial factor in producing the injury. It is a stretch for the State to allege that the act or omission of keeping multiple dogs restrained together on adequately (and lawfully) fenced farm acreage is directly connected with the dog's resulting injuries,

without some additional intervening force which operated to provoke the dogs. It is the inherent nature of every dog to bite or show aggression under certain circumstances or provocation. (Dogs while domesticated evolved from *canis lupis*, a gray wolf, and show typical wolfish pack behaviors. It follows that it is those very circumstances or provocation that is the intervening force operating in this case that relieves Ms. Deskins of any criminal liability. Ms. Deskins believes that the spying neighbors provoked her dogs through their constant surveillance activities - photographing and normally hanging over the fence and trespassing. RP 115; ll. 10-14; RP 117, ll. 19-25; RP 118, ll. 14-24; RP 119, ll. 1-8. Additional continual summoning of television news crews to film Ms. Deskins remote rural home site and her dogs added to the dog's level of anxiety, and the neighbors themselves jeopardized the safety of the dogs. The defensive posture of the dogs toward the strangers in their "territory" was re-directed into internal aggression. This behavioral response is called "re-directed" aggression by canine behaviorists. In each incident, Ms. Deskins had left for work leaving outdoor dogs to guard her rural property, common of owners in a remote area. Ms. Deskins' behavioral expert Glenn Bui was scheduled to testify to "re-directed" aggression in dogs. Mr. Bui did not testify in this case as to Ms. Deskins' defense theory as a result of poor planning by ineffective trial counsel Ronnie Rae who called Mr. Bui off as he believed Ms. Deskins was going to take a plea offer from the State, did not send Mr. Bui a valid subpoena and did not send Mr. Bui his travel expenses which is the only fee Mr. Bui requested from the defense. Mr. Bui explained in a letter to the court read into the record at sentencing his reasons for

not appearing to testify, as a result of Ronnie Rae's actions and representations to him and that a prepayment agreement was not adhered to by Ronnie Rae (who had agreed to be a pro bono expert, if travel expenses were paid). RP 983, ll. 21-25; 984, 1-23.

Neither did expert Grant Fredericks testify, Ms. Deskins' video forensic analyst, to the unlawfully tampered State videotape evidence - that each item he was provided to review had been altered or manipulated in some way as Mr. Fredericks indicates in his sworn Affidavit filed in this case. See, **Ex. 3** hereto. Both Glenn Bui and Grant Fredericks were experts at the heart of Ms. Deskins' defense, and neither expert was present at trial as a result of trial counsel being overworked, under-funded, poor planning, no valid trial subpoena, and/or dispute over expert fees which were agreed to be prepaid to at least Mr. Bui in advance so he could travel a long distance. Trial counsel also called very busy expert witnesses off, stating that Ms. Deskins was going to accept a plea deal, and in fact Ms. Deskins did not accept the plea. Then trial counsel was unable to get them back to trial. Mr. Bui's letter to the trial court is contained i in the trial transcript as it was read into the record concerning Mr. Rae's actions. But for trial counsel's cumulative errors, including but not limited to lack of investigation, lack knowledge of the sentence and forfeiture law and defenses available under the animal cruelty statutes, the result in this trial would more probably than not have been different. As a result of cumulative errors including ineffective representation, Ms. Deskins did not receive a fair trial, lost her estate and farm through a forfeiture order which had no grant of statutory authority, spent 235 days in jail with no stay, lost vehicles, home and personal possessions, and resulted

in so much emotional distress that Ms. Deskins ended up having Open Heart Surgery. See, RCW 16.52.200 et seq. The public defense system for the indigent in Stevens County is wholly inadequate.

6. Incompatible Neighbors, With Restraining Orders; Ms. Deskins'

complaining neighbors in this case (Feilers/Strong's) had been warring for some 3 years since approximately 9/2005 with Ms. Deskins, including restraining orders. RP 488, LL. 5-18; RP 489, ll. 4-10. The extent of the "war" and animosity was not developed well at trial by defense counsel. This animus provided a strong basis for false allegations against Ms. Deskins by neighbors. Shortly before any neighbor dog complaint, Ms. Deskins had asserted her property rights through legal counsel Robert Caruso when neighbors began encroaching on Ms. Deskins' property rights with illegal well-drilling without a water right permit, arbitrarily moving fence lines, and nuisance-dumping of hazardous materials. The dog allegations only surfaced after these numerous problems exhibited themselves. All too often, dogs become a scapegoat for other serious problems between neighbors.

"Re-directed" canine aggression can occur naturally when dogs are threatened by strangers in their territory, their anxiety level is heightened, and the defensive posture reserved for the threat is then re-directed to in-fighting, which is exactly what occurred here. In sum, Ms. Deskins believes that the neighbors themselves, intentionally or unintentionally, caused the very incidents complained of to law enforcement which

resulted in criminal charges against Ms. Deskins. Ms. Deskins never had the opportunity to put on her experts in this case due to ineffective counsel who did not assert any real defense on Ms. Deskins' behalf, or put the State's case and witnesses to any meaningful adversarial test as he had no trial strategy planned.

7. "Potentially Dangerous Dog ” or “Dangerous Dog” Laws Impose Special Restrictions on Dogs and Owners on Public or Private Property

The State statutes at issue in these proceedings were not intended for use under the facts of this case in a criminal prosecution, and were incorrectly charged. Dog fights which are spontaneous and unintended are to be prosecuted in administrative proceedings under RCW Ch. 16.08 et seq., or under Stevens County under Stevens County Code, Title 20 et seq. (currently suspended). If a dog is declared dangerous or potentially dangerous, specific confinement measures must be taken as delineated.

If the owner does not then comply with restraining the dangerous or potentially dangerous dog, the dog can then be confiscated and euthanized. The owner can be criminally prosecuted for a misdemeanor or felony under this regulatory scheme. The notion of due process allows an owner notice, and a meaningful opportunity to be heard and to comply, before government rushes to make the owner a criminal defendant. A dog owner's reasonable duty of care in confining potentially problem animals(s), or an animal likely to roam at large, is to protect the public health and safety, not to protect the animals from an unexpected, nonforeseeable incident with one another .

8. Statutes Are Unconstitutional as Applied. In Ms. Deskins' case, under RCW 16.52.207, there is a willful element of intent. The question is then that while specific

intent cannot be presumed, could a reasonable [factfinder] infer that Ms. Deskins intended to cause her dogs unnecessary pain and suffering and that her conduct plainly indicated the requisite intent as a matter of logical probability? Did Ms. Deskins understand that confining dogs together on her fenced farm property would lead to “unnecessary or unjustifiable pain and suffering” under statute? Evaluated in this context, the phrases in the statutes do not give notice of an objective standard of reasonableness which is clearly within a lay person's understanding; in short, “condemns judicial crime creation.”³ “The essential idea is that no one should be punished for a crime that has not been so defined in advance by the appropriate authority”—in most cases, the legislature.⁴ Fair warning manifests itself in the “void-for-vagueness” doctrine⁵ and the rule of lenity,⁶ the former being the more important.⁷ The void-for-vagueness doctrine requires that a statute be sufficiently clear to enable a person of ordinary intelligence to determine what is proscribed.⁸ A statute can be vague either on its face or

3 RICHARD J. BONNIE ET AL., CRIMINAL LAW 85 (2d ed. 2004).

4 *Id.*

5 See John Calvin Jeffries, Jr., *Legality, Vagueness, and the Construction of Penal Statutes*, 71 VA. L. REV. 189, 196 (1985) (“[T]he vagueness doctrine is the operational arm of legality”)

6 See *id.* at 200 (stating that lenity “has been presented as an implementation of legality”)

7 See *id.* at 198 (stating that lenity “survives more as a makeweight for results that seem right on other grounds than as a consistent policy of statutory interpretation”). See also Trevor W. Morrison, *Fair Warning and the Retroactive Judicial Expansion of Federal Criminal Statutes*, 74 S. CAL. L. REV. 455, 455 (2001) (identifying a third form of the fair warning doctrine, “that a court may not apply a ‘novel construction or a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope’”) (quoting *United States v. Lanier*, 520 U.S. 259, 267 (1997)).

8 The case often cited for this requirement is *Bouie v. City of Columbia*, 378 U.S. 347 (1964). “The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.” *Id.* at 351 (quoting *United States*

as applied to a defendant under particular circumstances.⁹ Another aspect of the void-for-vagueness doctrine should be mentioned. That is, when analyzing a statute for vagueness, courts will also inquire into whether the statute provides an ascertainable standard of guilt so as to not invite arbitrary and discriminatory enforcement.¹⁰ The decisions which have upheld anti-cruelty statutes against vagueness challenges, both facial and as-applied, fit within a standard mold. The defendant's conduct was clearly gratuitous abuse and was of no benefit to society. For example, the starvation of animals typically serves no human end, nor does the infliction of pain or suffering on animals for sheer sadistic pleasure. To the extent that Counts 1 and Count 2 proscribe criminal conduct to unintended dog-biting incidents by Ms. Deskins' dogs, the criminal statutes are vague and insufficiently definite to satisfy due process with regard to the charges against Ms. Deskins, or are overly broad and unconstitutional as applied. Ms. Deskins did not maliciously place a dog in a pit with another dog and encourage dogs to bite, fight, injure, maim, or kill one another. There was no knowing or consensual involvement by Ms. Deskins in dog biting or fighting in this case, and therefore no cruelty involved here. Therefore, the statutes applied under Counts 1 and 2 are not sufficiently clear to give Ms.

v. Harris, 347 U.S. 612, 617 (1954)).

⁹ Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95 (1982).

¹⁰ See Kolender v. Lawson, 461 U.S. 352, 357 (1983) ("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."); see also John F. Decker, *Addressing Vagueness, Ambiguity, and Other Uncertainty in American Criminal Laws*, 80 DENV. U. L. REV. 241, 246 (2002) (discussing due process concerns related to constitutionally vague laws, including notice issues and arbitrary and discriminatory enforcement); Jeffries, *supra* note 69, at 206-12 (opining that the notice test is an unpersuasive rationale and that the prevention of arbitrary and

Deskins fair notice of the offense. In *U.S. v. Stevens* in 2010, the U.S. Supreme Court stated in a First Amendment- animal cruelty case, examining a federal statute as overbroad:

...As we explained two Terms ago, “[t]he first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers.” *United States v. Williams*, 553 U. S. 285, 293 (2008). The court went on to state that “... to ‘kill’ is ‘to deprive of life.’” Brief for United States 14 (quoting Webster’s Third New International Dictionary 1242 (1993)). We agree that “wounded” and “killed” should be read according to their ordinary meaning. Cf. *Engine Mfrs. Assn. v. South Coast Air Quality Management Dist.*, 541 U. S. 246, 252 (2004). Nothing about that meaning requires cruelty.” We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly. Cf. *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 473 (2001)...This prosecution is itself evidence of the danger in putting faith in government representations of prosecutorial restraint...a law may be invalidated as overbroad if “a ‘substantial number’ of its applications are unconstitutional, ‘judged in relation to the statute’s plainly legitimate sweep.’ ” *Washington State Grange v. Washington State Republican Party*, 552 U. S. 442, 449, n. 6. ... *Section 48’s constitutionality thus turns on how broadly it is construed.* Pp. 9–10. (emphasis)

See, U.S. v. Stevens, No. 08–769 (Sup. Ct. 4/2010).

The dogs were alleged to have been wounded or killed by each other in this case. The U.S. Supreme Court states that wounded and killed do not connote cruelty. In this case, the constitutionality of RCW 16.52.080 and .207 turn on how broadly they are

discriminatory enforcement is the “most important concern”).

construed, and how narrowly the statutes are tailored to prevent animal cruelty. As the statutes were applied by the State in this case against Ms. Deskins, it does not matter whether the dogs are inside or outside of a confined area engaged in acts of harm. Under the State's theory, the dogs are unsafely confined either way, and the owner guilty of a criminal act either way. The State did not use these statutes responsibly under the facts of this case, and the statutes are not narrowly tailored enough to prevent this kind of abuse by overzealous prosecutors and law enforcement.

9. Merged Convictions. Before trial and amendment of the information against Ms. Deskins, Counts 1 and 2 would have merged, because unsafe confinement as alleged by the State under these facts was a lesser included offense of second degree animal cruelty (inadequate shelter or space is just another way of stating unsafe confinement of dogs). See, October 2008 Complaint filed by State, Counts 1 and 2. The State amended its information in or around February 26, 2010 improperly introducing the evidence that certain of Ms. Deskins' dogs escaped their restraint on Ms. Deskins' property injuring "Winnie" the dog. This was the required proof of an element that the other charge did not contain, so the State was able to stack up consecutive misdemeanor jail time for Ms. Deskins. The "Winnie" evidence was submitted to provide proof that public health and/or safety was at issue as a justification for the county's acts. The evidence concerning "Winnie" was wrongfully introduced at trial as it was the same subject matter of an administrative proceeding which remedies had not been exhausted. See, **Ex. 2** documents. The prosecutor also wrongfully (and knowingly) introduced his own

statement during the trial that he saw a dog on a videotape clip jump over a fence when speaking with Terry Feiler. Then, Prosecutor Rasmussen backtracked, stating that that video clip was outside the timeframe permitted by the trial court, but it was too late to take his statement back alluding to escaping dogs in front of the jury. Confining multiple animals together on farm property is a given. Some people move to the country so their dogs can run free on their own property, or even outside of private property unrestrained as did “Winnie” the Tennant's dog, as there are no leash or confinement laws at the state or local level in unincorporated Stevens County other than under the dangerous dog laws and a new law effective Jan. 1, 2010, RCW 16.52.310. See, generally Stevens County Code Title 20 dog laws, and Washington State dog and cruelty statutes.

10. Counts 1 and 2 Were Mischarged by the State. The act of family dogs in-fighting restrained on farm property does not fall within the prohibitions of RCW 16.52.080 or RCW 16.52.207 as constituting cruelty to animals. Washington statutes proscribing these incidents as unlawful is located under RCW 16.08 et seq. More currently, the safe and humane confinement has been legislated under RCW 16.52.310 effective Jan. 1, 2010, prior to the charges against Ms. Deskins. In addition, RCW 16.52.080 proscribing unsafe confinement of animals is directed toward protection of the four-legged animal, especially beasts of the field and beasts of burden. The 1983 amendment to this statute was directed at protecting dogs and the public from owners who carry canines in the back of open pickup truck beds upon the public highways. Further, the Washington Association of Prosecuting attorneys in its published CHARGING MANUAL indicates

that RCW 16.52.080 should be charged in crimes involving livestock¹¹. The dog “crimes” in this case - mismanaged and not maltreated dogs - is to be prosecuted according to the Washington State Prosecutor's CHARGING MANUAL under RCW 16.08 dog laws.¹² Also, under this chapter, Washington state law proscribe a dog owner's duty to kill one's own dog, after the owner is provided notice that the dog has injured or killed another domestic animal. In this case, the dog owner Ms. Deskins was criminally charged and convicted for cruelty on allegations that her dogs had injured and/or killed another dog on Ms. Deskins' property. However, law enforcement breached its duty to Ms. Deskins (in particular Sheriff Detective James Glover who acquired the videotapes from neighbors on 9-25-08) by not displaying the first 9/17/08 videotape to Ms. Deskins so Ms. Deskins could carry out her legal duty to “cull out” or confine a problem animal in another way. It is conceivable that no additional incident after 9-17-08 would have occurred. However, there still are no guarantees with animals; they have their own rules, and there are always accidental unforeseeable injuries with animals. Many dog(s) are “Houdini” dogs, escaping at will no matter whether confinement fencing is 4 feet or 8 feet tall. The statute RCW 16.52.207 with elements alleging inadequate shelter or space does not place Ms. Deskins on notice that failing to confine multiple dogs so they will not bite each other while restrained is criminal conduct. What if the dogs were separately kenneled in twos or threes, and the same acts occurred? The shelter or space requirement is inapplicable to the facts in this case and the statute thus is

11 See, <http://www.waprosecutors.org/MANUALS/CHARGING/Final2004charging.pdf>

unconstitutionally applied in this case as to Ms. Deskins. For example, In *State v. Jackson*, the Court stated

...First, the most common meaning of "shelter" is something that affords protection from the elements.¹³ Second, the prosecution's interpretation of "shelter" is difficult to reconcile with the rest of the phrase defining "basic necessities of life." Taken in context, "shelter," as used in "food, water, shelter, clothing, and health care," means protection from the elements. *Furthermore, the prosecution's interpretation would create an open-ended, unmanageable standard. If "shelter" means protection from harm, would accidental harm trigger liability?* In conclusion, given its common meaning, the context in which it is used, and the uncontrollable breadth of defining it as protection from others, we hold that "shelter" means housing or protection from the elements...(emphasis).

State v. Jackson, 87 Wn. App. 808, 944 P.2d 403 (1997).

In this case, the prosecution's interpretation and application of RCW 16.52.207 creates an open-ended unmanageable standard meaning protection from harm or protection from others. Thus, as charged in this way, the accidental harm inflicted on the dogs triggered criminal liability for Ms. Deskins. The dogs were each confined but not under total "restraint" by Ms. Deskins when Ms. Deskins left for work. Ms. Deskins

12 Id.

13 . Webster's Third New International Dictionary 2093 (1986).

has a duty to protect the public from personal injury, property damage, and other hazards created by roving dogs. Ms. Deskins also has a reasonable duty of care to her animals. Ms. Deskins did not reasonably perceive a hazard that family dogs with no history of causing serious harm to each other, within Ms. Deskins' realm of personal knowledge, would turn on each other as alleged. As the court stated in *Jones v. Leon*, 3 Wn. App. 923, 478 P.2d 778 (1970),

... evidence must demonstrate that (1) *there is a statutory or common-law rule that imposes a duty upon defendant to refrain from the complained-of conduct and that is designed to protect the plaintiff against harm of the general type*; (2) *the defendant's conduct violated the duty*; and (3) *there was a sufficiently close, actual, causal connection between defendant's conduct and the actual damage suffered by plaintiff*. *Rikstad v. Holmberg*, 76 Wn.2d 265, 268, 456 P.2d 355 (1969)... In determining the scope of the duty owed by respondents, the hazards *reasonably perceived* are controlling. *Rikstad v. Holmberg, supra*. If the hazards are not foreseeable, *the respondents' failure to protect appellant from the particular harm is not negligent conduct...* The test to be applied in determining the foreseeability of intervening acts of a third person is whether such occurrences *are so highly extraordinary or improbable as to be wholly beyond the range of expectability*. *Berglund v. Spokane County*, Wn.2d 309, 103 P.2d 355 (1940); *McLeod v. Grant County School Dist.* 128, 42 Wn.2d 316, 255 P.2d 360 (1953). In other words, as the court stated in *Rikstad v. Holmberg, supra*, at 269: *'It is not, . . . the unusualness of the act that resulted in injury to plaintiff that is the test of foreseeability, but whether the result of the act is within the ambit of the hazards covered by the duty imposed upon defendant ...* Viewing the evidence in the light most favorable to appellant, we are compelled, as was the trial court, to hold as a matter of law *that the criminal act of Bird was so highly extraordinary or improbable as to be*

wholly beyond the range of expectability, and that the result of that act is not within the ambit of hazards covered by the duty imposed upon respondents ...

Is the State's second degree animal cruelty statute, or the statute proscribing unsafe confinement of animals aimed at preventing harm caused by the owner's own dogs upon each other each restrained on the owner's fenced property? When a dog owner does not foresee a highly extraordinary or improbable act wholly beyond the range of expectability as in this case, is it still within the ambit of hazards covered by the duty imposed upon Ms. Deskins by these statutes? Extraordinary or improbable acts beyond the range of expectability are not within the ambit of hazards covered by a duty imposed on Ms. Deskins, such as family dogs harming each other (or a neighbor trespassing and provoking re-directed aggressive behavior in a dog).

11. Cruel and Unusual Punishment. The Washington State Constitution, Article 1 Section 14 states:

SECTION 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

Ms. Deskins was a first-time offender with zero criminal history. Ms. Deskins qualified for indigency counsel at the time these criminal proceedings began. In later proceedings, Ms. Deskins also qualified for indigency counsel as she was self-employed, had been uninsured, and was on state welfare benefits due to unemployment resulting from health issues. Ms. Deskins suffered cruel and unusual punishment upon conviction and sentence. Ms. Deskins was sentenced upon consecutive misdemeanors for some 850

days (300 suspended) to be spent in the county jail, forfeiture of her estate, farm operation, companion animals, and fines (suspended) and restitution and fees totaling over \$30,000. See, 2/26/10 Judgment and Sentence. The harshness of the jail sentence alone is comparable with high level felony jail sentences under the Washington State Sentencing Guidelines. Ms. Deskins suffered immediate heart failure upon incarceration. The trial court was advised prior to jailing by defense counsel that Ms. Deskins had a heart condition and other medical conditions but showed callous indifference. Ms. Deskins was subsequently held in jail for 235 days until 10-15-10 on the prosecutor's request that Ms. Deskins not be released early, (knowing that Ms. Deskins was being prevented from receiving constitutionally adequate physician level cardiac care). Ms. Deskins was also obstructed by jail corrections officers (also under supervision of the Prosecutor) initially from utilizing county law library resources to fight forfeiture of her animals until the animals were already removed, and it was too late. Inefficient trial counsel attempted to forfeit Ms. Deskins' right to her animals at the penalty phase, without authority of Ms. Deskins, and then openly refused Ms. Deskins' post-trial emergency requests to file an emergency injunction to prevent the animal forfeiture, refused to prepare and record Ms. Deskins' Notice of Appeal with the District Court, and refused Ms. Deskins' phone calls to him made from the jail. Ms. Deskins underwent emergency Open Heart Surgery upon release from jail on 10-15-10 due to the emotional distress, pain, suffering, and likely numerous MRSA bacterial infections contracted from poor jail conditions with a pre-existing heart valve condition. When jail

officials supervised by the Prosecutor became aware that Ms. Deskins was grossly symptomatic after jailing, Ms. Deskins still was not permitted to see a cardiac physician for adequate medical care. In 1976, the U.S. Supreme Court held that "deliberate indifference" to a prison inmate's health problems constituted cruel and unusual punishment and thus violated the Eighth Amendment of the Constitution. Since then, hundreds of subsequent cases have established that inmates have a right to medical care equal to that of the public in general. There is a large gray area, in which "cruel and unusual" is definitely subjective based on individual sensitivities and moral outlook. Part of the Bill of Rights, in the 8th Amendment to the United States Constitution, guarantees that *prisoners shall not be subjected to cruel and unusual punishment*. See, 8th Amendment to U.S. Constitution. This forbids the withholding of medical treatment from prisoners like Ms. Deskins in need of treatment. A prisoner in need of medical care has nowhere to go but the prison authorities. To withhold adequate medical treatment from a prisoner would be using the medical condition of the prisoner as a part of their punishment - and this is held to be cruel and unusual in a long line of 8th Amendment cases. To prove deliberate indifference, the plaintiff has to establish that he faced a "substantial risk of serious harm," and that the defendants disregarded "that risk by failing to take reasonable measures to abate it." See, *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Refusing proper cardiac care to Ms. Deskins with an acute medical condition is the same as refusal to do a biopsy to test for cancer or refusing to treat a case of hepatitis. Ms. Deskins' was jailed some 235 days, never permitted early release or the

short furlough requested by Ms. Deskins. The State was cognizant that Ms. Deskins was suffering from multiple acute medical conditions but the State argued against Ms. Deskins' requests. The Jailers reported to the Prosecutor and jailers failed to provide adequate physician level acute cardiac care to Ms. Deskins for her heart condition, and were deliberately indifferent to this serious medical need of Ms. Deskins. Ms. Deskins never once received any consultation for care from a cardiology specialist and was exposed to an unreasonable risk of bacterial and viral infections from overcrowding of female inmates. A high percentage of female inmates jailed in Stevens County openly admitted to IV drug use, many were very ill in various stages of drug withdrawal, and a high majority had acquired hepatitis and/or carried other infections. Jail prisoners have a constitutional right to be protected from harm, *Farmer v. Brennan*, 511 U.S. 825, 832 (1994), and serious risk of harm, *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993). Whether that harm takes the form of illness, injury, or inhumane conditions, jailers cannot display "deliberate indifference" to a prisoner's serious needs. *Wilson v. Seiter*, 501 U.S. 294, 302-303 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97, 104-106 (1976)). Stevens County was deliberately indifferent to the serious medical needs of Ms. Deskins at trial sentencing and post-sentencing. This is a constitutional deprivation. ... "deliberate indifference" to a prisoner's serious medical needs is a violation of the Eighth and Fourteenth Amendments. *Estelle*, 429 U.S. at 104; *Farrow v. West*, 320 F.3d 1235, 1243-46 (11th Cir. 2003); *Steele*, 87 F.3d at 1269. Jail officials act with deliberate indifference when a prisoner needs serious medical care and the officials knowingly fail or refuse to

provide that care. *Farrow*, 320 F.3d at 1246. The Constitution is violated if a prison official "knows of and disregards an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. Providing only cursory care in such a situation amounts to deliberate indifference. *McElliott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). Conditions violate the Constitution if they pose an unreasonable risk of serious damage to a prisoner's current or future health, and the risk is so grave that it offends contemporary standards of decency to expose anyone unwillingly to that risk. *Helling*, 509 U.S. at 33-36; *Chandler v. Crosby* 379 F.3d 1278, 1289 (11th Cir. 2004). The *Ancata* court stated that "deliberate indifference to serious medical needs is shown when ... officials have prevented a prisoner from receiving recommended treatment or when a prisoner is denied access to medical personnel capable of evaluating the need for treatment." *Ancata*, 769 F.2d at 704 (citing *Ramos Lamm*, 639 F.2d 559, 575 (10th Cir. 1980)). Ms. Deskins' Open Heart Surgery upon her release from jail is evidence of the grave involuntary risk this court exposed Ms. Deskins to, and this jailing constitutes *cruel and unusual punishment* in and of itself. When defense counsel argued against jail time for Ms. Deskins in the penalty phase, indicating that Ms. Deskins had a heart condition and other medical disorders, and that jailing would constitute *cruel and unusual punishment*, the Court callously observed that "*I will note right now that -- cruel and unusual punishment is, in fact, a term of art in our profession. It means very specific things. Going to jail following conviction is not considered cruel and unusual punishment. Does that take care of any of your issues?*" (RP 1013, ll. 17-25). Ms. Deskins' sentence under

the facts of this case combined with knowledge of Ms. Deskins' acute medical conditions was unconscionable. This jail sentence offended standards of decency to expose Ms. Deskins unwillingly to that risk; subjective knowledge of a risk of serious harm, disregard of that risk by conduct that is more than mere negligence is inhumane. It is not the intent of the criminal justice system to permit public officials to completely destroy a citizen's entire life just because it can, with a policy of roughshod rural justice intent on dehumanizing or torturing any person; in particular, under the facts of this case. The 8th Amendment's ban on cruel and unusual punishment is echoed in the Universal Declaration of Human Rights and is law in most civilized societies. It is designed to make sure we don't torture or humiliate those who we imprison, and that punishment for crimes is measured and rational. It is humane and makes perfect sense. If imposition of this harsh sentence does not constitute *cruel and unusual punishment*, Ms. Deskins is constrained to imagine a greater punishment other than perhaps hanging Ms. Deskins with a new rope on a tree at the ranch. *Cruel and unusual punishment* gives rise to a constitutional claim for Ms. Deskins in this case.

12. Wrongful Forfeiture of Property. Under Article 1 Section 3 of the Washington State Constitution, it states:

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law

Ms. Deskins' constitutional right to not suffer a deprivation of her property without due process of law was clearly a “pesky” constitutional right in this case to the

State. The Prosecutor acted unlawfully to recommend seizure and and forfeiture of Ms. Deskins' estate property, not once but twice, in both October 2008 and February 2010. (See, **Ex. 1**, letter re: terms of cooperation agreement; and RCW 16.52.200(3) and (3)(a) as it existed in 2/2008. Also, see **Ex. 4**, Inventory of Dogs Returned to Ms. Deskins by Stevens Co. after seizure on 10/2-3/2008).

13. “Winnie” - State's Failure to Exhaust Administrative Remedies. Defense counsel had a standing objection to the ER 404(b) prior bad acts evidence of the dogs. Viewed in the context of the entire argument presented at trial, the preemptive presentation of the prior bad acts and subsequent emphasis on this evidence during closing argument had a substantial likelihood of affecting the jury. *See Gregory*, 158 Wn.2d at 861. The prosecuting attorney impermissibly used evidence of prior acts of dogs to demonstrate Ms. Deskins' propensities to commit crimes. The prosecuting attorney insinuated that Ms. Deskins engaged in a repeated pattern of cruelty that didn't stop with unsafe confinement of her own animals. It spilled right over into cruelty to any animal, including “Winnie” and a donkey, etc. Using the evidence in such a manner clearly goes against the requirements of ER 404(b) and constitutes misconduct. This prosecutorial misconduct denied Ms. Deskins a fair trial. See, *State v. Fisher*, [No. 79801-0. En Banc.] (3/12/09). The State's ER 404(b) prior bad acts evidence was comprised primarily of issues at the basis of an administrative proceeding initiated by Stevens County under Title 20 of the Stevens County Code, with respect to “Winnie” the dog. Stevens County defaulted in holding Ms. Deskins hearing before a Hearing Examiner, unlawfully failing

to exhaust administrative remedies with respect to “Winnie”, and then ignoring the unlawful default and denial to Ms. Deskins of due process, the State went on its merry way to improperly bring these administrative issues into a criminal trial. *In United States v. Mendoza-Lopez et al.*, 481 U.S. 828 (107 S.Ct. 2148, 95 L.Ed.2d 772), the Supreme Court stated at note 15:

Even with this safeguard, the use of the result of an administrative proceeding to establish an element of a criminal offense is troubling. See, *United States v. Spector*, 343 U.S. 169, 179, 72 S.Ct. 591, 597, 96 L.Ed. 863 (1952) (Jackson, J., dissenting). While the Court has permitted criminal conviction for violation of an administrative regulation where the validity of the regulation could not be challenged in the criminal proceeding, *Yakus v. United States*, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944), the decision in that case was motivated by the exigencies of wartime, dealt with the propriety of regulations rather than the legitimacy of an adjudicative procedure, and, most significantly, turned on the fact that adequate judicial review of the validity of the regulation was available in another forum. Under different circumstances, the propriety of using an administrative ruling in such a way remains open to question... We...holding that, at a minimum, the result of an administrative proceeding may not be used as a conclusive element of a criminal offense where the judicial review that legitimated such a practice in the first instance has effectively been denied.
(emphasis)

Ms. Deskins was completely foreclosed by Stevens County from obtaining effective review of her accuser's accusations under Stevens County Title 20, at the administrative level, when she requested a hearing before a Hearing Examiner on the “Winnie” accusation by her incompatible neighbors, the Feilers. The State agreed to

retain a Hearing Examiner to adjudicate the administrative matter pursuant to Stevens County Code, Title 20 and the Administrative Procedures Act. (See, **Ex. 2**, letter from L. Nickel to Caruso Law Offices July 2, 2008). Ms. Deskins may collaterally attack the convictions on Count 1 and 2 because she was not accorded due process at the administrative stage and those accusations of her accusers were then brought by the State into the criminal proceedings as collective criminal charges.

14. Double Jeopardy. Under Article 1 Section 9 of of the Washington State Constitution, it states:

SECTION 9 RIGHTS OF ACCUSED PERSONS.

No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense. (emphasis).

In *State v. Catlett*, 81 Wash.App 791, 795-96, 916 P.2d 975 (1996) (a forfeiture proceeding), the dissent stated: “The common denominator of the three separate opinions in *State v. Cole*, 128 Wash.2d 262, 906 P.2d 925 (1995) was to the extent property was forfeited under RCW 69.50.505, and was not proceeds of a connected crime, the forfeiture was punishment for jeopardy purposes”. (emphasis added). The dissent in *Catlett*, *supra*, wrote, “Justice Alexander, joined by Chief Justice Durham and Justice Madsen, concurred [with Justice Talmadge] to the extent property forfeited ‘was not proceeds of drug trafficking, a conviction on criminal charges that follows a forfeiture action constitutes a second punishment for the same offense.’” *Id.* at 293, 906 P.2d 925.” Justice Johnson, joined by Justices Guy and Utter, dissented, writing “a forfeiture under RCW 69.50.505(a)(7), the statute at issue here, must be considered punishment” for double jeopardy purposes. *Cole*, 128 Wash.2d at 297, 906 P.2d 925. Punishment by forfeiture was the point of common

agreement. United States v. Chouteau, 102 U.S. 603, 611, 12 Otto 603, 26 L.Ed. 246 (1880) (forfeiture of bond precludes subsequent criminal action) The dissent in Cole, supra approved this analytical approach: “- . . . double jeopardy analysis in [civil forfeiture] cases involves three inquiries: (a) whether the forfeitures at issue constituted ‘punishment’; and, if so, (b) whether the forfeiture and criminal proceedings against each Petitioner constituted separate ‘proceedings’ (c) arising from the ‘same offense.’” Cole, 128 Wash.2d at 294, 906 P.2d 925 (Johnson, J., dissenting) (citations omitted). (emphasis)

In Ms. Deskins' case, there were two forfeiture proceedings that attached - the first, without judicial oversight or authority under a cooperation agreement with the Prosecutor's Office on 12/24/08 when Ms. Deskins was forced to relinquish rights in her dogs after criminal proceedings were begun by the State. See, **Ex. 1**. The second time, on 2/26/10 in the penalty phase when a second forfeiture was recommended by the State prosecutor and ordered by the trial court. See, 2/26/10 Judgment/Sentence. The administrative, forfeiture and criminal proceedings against Ms. Deskins were separate proceedings arising from the same offense, and constituted double punishment and double jeopardy. In *Bell v. Wolfish*, 441 U.S. 535 (1978), the Court held that the Constitution prohibited the punishment of criminal defendants who were being detained pending trial, because "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt." An individual's right to be free from arbitrary confiscation of her personal property, no less than her real property, is "*a private interest of historic and continuing importance*.", *James Daniel Good Real Property*, 510 U.S. at 53-56 (citing *Mathews*, 424 U.S. at 335). See also *id.* at 81 (Thomas, J., concurring in

part and dissenting in part). Therefore, Ms. Deskins was put in jeopardy three (3) separate times in three separate proceedings by the State and trial court on the same subject matter - in administrative proceedings and criminal proceedings. The State began proceedings under Title 20 of the Stevens County Code in or around May 10, 2008 concerning the very same accusations presented in the criminal case that Ms. Deskins' dogs had escaped their restraint, injuring "Winnie" the dog owned by the Tennant family. Without exhausting remedies under Title 20 administrative proceedings which exposed Ms. Deskins and her dogs to jeopardy in arduous expensive confinement, expensive liability insurance and criminal penalty for failure to cure defects, the State brought these issues into the criminal trial concerning "Winnie". Prosecutor Lloyd Nickel acknowledged in writing that he had received Ms. Deskins' timely hearing request and would retain a Hearing Examiner and set a date for hearing. Title 20 provided for a neutral Hearing Examiner. (See a true and correct copy of a letter from Prosecutor Lloyd Nickel in July 2, 2008 to Caruso Law Offices representing Ms. Deskins, **Ex. 2**). Failure to abide by its duty to exhaust administrative remedies first, then rushing Ms. Deskins into criminal proceedings under the same allegations, was improper. Incredibly, the State brought its administrative proceeding and accusations regarding "Winnie" the dog to a criminal court to make Ms. Deskins face criminal charges. The State's mountain of evidence about "Winnie" included testimony by Terry and Betty Feiler; Jessica, Cynthia and Larry Tennant; Laurie Strong; Dr. Dennis Koesel; graphic surgical photos; and finally video television news clips from KREM and KXLY

to further inflame the sentencing court in order to enhance the sentence. The Prosecutor also informed the court that “her misconduct continues to this day” and “the hurting of the animals continues. There was no evidence of any additional crimes by Ms. Deskins from the date of the charging document in October 2008. This was improper to suggest at sentencing that Ms. Deskins was committing other crimes. RP 10-20. The same dogs on Ms. Deskins property alluded to by the Prosecutor were the very dogs he returned to Ms. Deskins on 12/24/08 under the cooperation agreement, which was 19 dogs. RP 986 ll. 13-18. Defense counsel Joshua Gilstrap and Ronnie Rae both objected to the “Winnie” matter being permitted in this criminal trial, as administrative remedies were knowingly not exhausted by Stevens County prosecutors on this very issue. This is a constitutional due process violation. Ms. Deskins was unconstitutionally placed in jeopardy multiple times for the same issues concerning “Winnie” the dog, denying Ms. Deskins her due process rights.

15. Prosecutor Misconduct - Breach of Contract/Forfeiture. The second taking by the trial court of Ms. Deskins' entire estate in some fifty (50) animals including dozens of livestock on 2/26/10, rubber-stamping the Prosecutor's unlawful recommendations and shutting down a second source of livelihood for Ms. Deskins by seizing her farming rights in property, can also only be construed as punishment. Not to mention that any action that affects title to property (such as taking away a property right for two years) is out of the realm of a Court of Limited Jurisdiction, this forfeiture order of 2/26/10 was fraught with errors. The forfeiture was unlawful under the plain language of RCW

16.52.200(3) as the animals were in Ms. Deskins' exclusive custody, care and control on her Deer Park property on 2/26/10, not in possession of seizing authorities (second re-taking, first was on 10/2/08). While healthy dogs were seized and initially held by the State at Spokanimal C.A.R.E. for some three (3) months from 10/2/08 through 12/24/08 by law enforcement, they were transferred and released back to Ms. Deskins under a cooperation agreement contract between Ms. Deskins and the State Prosecutor on 12/24/08 (See, **Ex. 1** hereto, a true and correct copy of a letter from attorney Kim Kamel to Stevens Co. Prosecutor Lloyd Nickel setting forth the cooperation agreement contract with Ms. Deskins executed on 12/24/08, and also see the inventory sheet **Ex. 4** from Spokanimal C.A.R.E. of dogs returned to Ms. Deskins, Mike Benson and Kathy Frost totaling 19 dogs. All dogs were known to have gone back to Ms. Deskins by Spokanimal). The Prosecutor in this case improperly argued in the penalty phase that Ms. Deskins was still committing other crimes so all of her animals should be forfeited. No such crimes were of record. It is both inconceivable and disingenuous as a practical matter to argue that dogs alleged to have been mistreated by Ms. Deskins would have been released by the State and Spokanimal back to Ms. Deskins. (See, **Ex. 4**, Inventory of animals released back to Deskins, Benson and Frost which came back to Ms. Deskins' property). Finally, these same dogs released under the cooperation agreement on 12/24/08 with the State and Ms. Deskins, each acting to give consideration, were immune from re-taking by the State. This second forfeiture was the act that Ms. Deskins sought to prevent in contracting with the State for the release of her animals back to her

on 12/24/08, some 14 months pre-trial. The State breached its cooperation agreement contract with Ms. Deskins. Cooperation agreements are an accepted and integral part of the criminal-justice system. The 12/24/08 Cooperation Agreement with the State compelled Ms. Deskins to waive fundamental constitutional rights in due process and property rights. The cooperation agreement between the State and Ms. Deskins was an enforceable agreement that should be interpreted according to principles of contract law. To be precise, cooperation agreements can be considered a type of conditional unilateral contract or option contract, meaning a Prosecutor as in the case of Timothy Rasmussen is bound to perform the obligations under the agreement (release dogs) at the point Ms. Deskins undertakes her performance (signed release to dogs) pending final completion of that contract. It is by now well accepted that immunity, non-prosecution, and cooperation agreements between the State and a defendant are enforceable agreements that should be interpreted according to principles of contract law.¹⁴ Decisions from several jurisdictions reason that there are no material violation of immunity agreements by the Government in non-prosecution agreements so long as a defendant is not ultimately convicted and punished. Thus, if a prosecutor indicts a defendant—that is,

14 . See *United States v. Lukse*, 286 F.3d 906, 909 (6th Cir. 2002); *United States v. Baird*, 218 F.3d 221, 229 (3d Cir. 2000); *In re Extradition of Drayer*, 190 F.3d 410, 412 (6th Cir. 1999); *United States v. Castaneda*, 162 F.3d 832, 835 (5th Cir. 1998); *United States v. Nolan-Cooper*, 155 F.3d 221, 236 (3d Cir. 1998); *United States v. Yemitan*, 70 F.3d 746, 747 (2d Cir. 1995); *Carnine v. United States*, 974 F.2d 924, 928 (7th Cir. 1992). Initial concerns about enforcing plea agreements and allowing defendants to waive fundamental constitutional rights inspired a flood of critical debate. See generally Albert W. Alschuler, *The Changing Plea Bargaining Debate*, 69 CAL. L. REV. 652 (1981); Stephen J. Schulhofer, *Is Plea Bargaining Inevitable?*, 97 HARV. L. REV. 1037 (1984). Nonetheless, by this point, plea agreements and cooperation agreements are an accepted and integral part of the criminal-justice system.

fails to perform the primary obligation under the agreement—the prosecutor has breached the contract. It is axiomatic that every contract contains an implied covenant of good faith and fair dealing. Many courts have applied this presumption to agreements between prosecutors and defendants.¹⁵ This rule is critical to ensuring that the prosecutor does not improperly seek to deprive a defendant of a negotiated benefit and to protect against coercive or other wrongful acts.¹⁶ It would have been fraudulent to have induced Ms. Deskins' to act to release her dogs back to her on 12/24/08, with a promise that the government prosecutor already knew he was not going to keep (recommend a forfeiture at sentencing on 2/26/10). One fundamental question is whether the breach requires a legal remedy (damages) or an equitable remedy. Generally, equitable remedies are only prescribed where a legal remedy would not be adequate in some way. From these considerations, it seems clear that an equitable remedy, such as specific

15 . See *United States v. Aleman*, 286 F.3d 86, 91 (2d Cir. 2002) (ruling that prosecutor has obligation to act honestly and in good faith in plea agreements, even where prosecutor reserves substantial discretion to determine the acceptability of defendant's cooperation); *United States v. Nolan-Cooper*, 155 F.3d 221, 236 (3d Cir. 1998) (applying a good-faith standard in the plea-agreement context); *United States v. Jones*, 58 F.3d 688, 692 (D.C. Cir. 1995) (stating that, like other contracts, a plea agreement includes an implied obligation of good faith and fair dealing); *United States v. Robinson*, 978 F.2d 1554, 1569 (10th Cir. 1992) (ruling that courts can review a prosecutor's decision regarding filing of a section 5K1.1 motion for good faith); *United States v. Knights*, 968 F.2d 1483, 1486 (2d Cir. 1992) (same); *United States v. Rexach*, 896 F.2d 710, 713–14 (2d Cir. 1990); see also Julie Gyurci, *Prosecutorial Discretion to Bring a Substantial Assistance Motion Pursuant to a Plea Agreement: Enforcing a Good Faith Standard*, 78 MINN. L. REV. 1253, 1277–78 (1994) (arguing courts should review prosecutorial decisions regarding defendant's "substantial assistance" for objective good faith).

16 . See *Rumsfeld v. Freedom NY, Inc.*, 329 F.3d 1320, 1330 (Fed. Cir. 2003).

performance, is the only appropriate option in the context of non-prosecution or cooperation agreements, or in this case the promise to return the dogs to Ms. Deskins exclusive, custody and care. It is inherent in the State's promise that the dogs returned were not maltreated, and it was okay for them to remain in Ms. Deskins' custody and care in her Deer Park home. Monetary damages for this breach are not adequate, so the only possibility is some court action that prevents prosecution of Ms. Deskins on remand. This court should return Ms. Deskins to her former position while preventing further prosecutions on remand concerning forfeiture and a 2-year restriction on caring for animals, and deprivations of other animals. For example, in *United States v. Nolan-Cooper*, Judge Becker wrote, "If the government otherwise adheres to the terms of the plea agreement [by making a certain sentencing recommendation], and the court independently determines that the applicable range is higher than that stipulated to, it would not appear to be a breach" 155 F.3d 221, 240 (3d Cir. 1998). See also *United States v. Benchimol*, 471 U.S. 453, 455 (1985) (ruling that the government did not violate a plea agreement when it failed to make a sentencing recommendation "enthusiastically" and the judge imposed a different sentence). Thus, breach is measured according to the prosecutor's actions, not the ultimate outcome. When a government attorneys disregard or circumvent these rules, they commit prosecutorial misconduct such as in this case. Under the law, misconduct by prosecutors only results in a reversal of a conviction if the conduct unfairly prejudiced the defendant to the point that he or she was denied a fair trial. The penalty phase of the criminal trial was an integral part of Ms. Deskins' trial

and the animals were an extremely important part of Ms. Deskins' life. Ms. Deskins was denied not only effective legal representation in this phase, but she was denied justice as a result of prosecutorial misconduct. It is clear that Ms. Deskins was unduly and unfairly prejudiced at sentencing by misconduct by the State Prosecutor Timothy Rasmussen and suffered manifest injustice. The trial court imposed upon Ms. Deskins as punishment an unconscionable 850 days in jail (300 suspended) for accidental dog fights on private property among Ms. Deskins own canines; over \$30,000 in fines and restitution including an unlawful fine and restitution not permitted for a misdemeanor; an unlawful forfeiture of all animals including animals which were not "similar" as permitted under statute; and an unlawful 2 year prohibition on "*acquiring*" or "*living with*" animals. The latter 2-year prohibition on *acquiring* or *living with* animals is language not authorized under statute, and otherwise unlawful because (1) the State had already contracted on 12/24/08 with Ms. Deskins to return animals to her exclusive care, custody and control on her property; (2) it follows that if the forfeiture order is overbroad and in excess of statutory authority and unlawful, then under the language of RCW 16.52.200(3)(a) *if forfeiture is ordered*, then the 2-year prohibition on *owning or caring for* animals under the 2003 statute is also unlawful. Moreover, under *State v. Alaway*, 64. Wn. App. 796, 828 P.2d 591, ". We hold that the State cannot confiscate property merely because it is derivative contraband, but instead must forfeit it

using property forfeiture procedures. Washington has a statutory procedure.”...
“The State having failed to comply with that statute”, [Alaway] is entitled to have his property returned.” . The exclusive mechanism for civil forfeiture in Washington for property deemed contraband or derivative contraband is RCW 69.50.505 et seq. (forfeited dogs and livestock were considered neither contraband nor derivative contraband in this case, nor were the dogs *evidence* as admitted by the State) is under RCW 69.50.505 et seq. (Scot Stuart, Pros. RP 42, ll. 1-12). In the event that the Sheriff's Office still was holding Ms. Deskins' seized dogs at sentencing (which they were not), it must initiate civil forfeiture proceedings. The State had already released the dogs under a cooperation agreement contract. Incredibly, the trial court then also ordered that Ms. Deskins could not return to her own home and property for her 2 year probation, as long as another property resident Mike Benson (in an accessory dwelling on Ms. Deskins' farm property) was owned animals on the property. Ms. Deskins is not the equivalent of a registered sex offender who might attack and injure other animals near her home. The Washington State Constitution Article 1, Sections 15 and 16 state:

SECTION 15 CONVICTIONS, EFFECT OF. *No conviction shall work corruption of blood, nor forfeiture of estate.*

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private

ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. *No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner...*(emphasis).

Ms. Deskins' conviction for dog fights on private property worked nearly a total forfeiture of her estate. Private property in canines and commercial and domestic livestock was taken by the State and trial court, and damaged, without any compensation having been first made, or paid into the court for Ms. Deskins. Ms. Deskins lost most assets. Several of Ms. Deskins' pets died due to unsafe confinement resulting from the 2/26/10 forfeiture order. Other canines were disbursed to people and parts unknown. (Even dogs and livestock of a non-joined 3rd party residing adjacent to Ms. Deskins' home was compelled to be removed and forfeited by State Prosecutor Tim Rasmussen under threats by law enforcement acting on Rasmussen's marching orders. The dog was ADA-certified as the non-joined 3rd party resident was a permanently disabled Vietnam War veteran. He also had owned pet donkeys for over 20 years which were forcibly removed from him by this Prosecutor). Ms. Deskins did not violate the statute RCW 16.52. (second degree animal cruelty) since the alleged victim's (dog) injuries resulted from canine biting behavior, a natural consequence of having dogs. The victim's (dog's) injury did not result from direct physical contact by the defendant, or any knowing violation of RCW 16.52. et seq.

16. Inefficient Court-Appointed Counsel

Ms. Deskins had inefficient counsel in this case - four in fact - who would not

communicate with Ms. Deskins nor provide her with documentation and pleadings filed in her case to keep her apprised. Ms. Deskins was a long-time litigation professional who had prepared numerous attorneys for trial over the years. Ms. Deskins spent some 8 months in jail as a result of ineffective counsel in this case and counsels' cumulative errors. Here the appointed attorneys for Ms. Deskins were out of compliance with the standards endorsed by the Washington State Bar Association referenced in RCW 10.101.030. *See, Wash. State Bar Ass'n, Standards for Indigent Defense Services* (2007)¹⁷. Were it not for counsels' unprofessional defense and errors, lack of preparedness, and lack of communication in this case including penalty phase preparation, and post-trial refusals to file a Notice of Appeal with District Court where trial counsel Ronnie Rae was attorney of record (Stevens County would get angry) or an emergency injunction to prevent forfeiture of Ms. Deskins' animals after waiving Ms. Deskins' rights in the penalty phase without authority of Ms. Deskins (refusal to do any post-trial work after lack of preparation and ineffective representation at sentencing), it is unlikely that Ms. Deskins would have spent time in jail or forfeit her animals and farm. In *State v. A.N.J.*, 168 Wn.2d 91 (2010), the Washington Supreme Court took the opportunity to directly confront some of the most persistent problems in our public defense system. The Court charged that the guarantee of effective representation is often rendered an illusory promise to indigent defendants because of structural problems such as inadequate funding, high caseloads and flawed contracting for defense services. The

17 . <http://www.wsba.org/lawyers/groups/committeonpublicdefense.htm>

juvenile in this case sought to withdraw his guilty plea for child molestation because his attorney failed to consult with him, and even provided misinformation, about the nature of the charges and the consequences of pleading guilty. In addition, the attorney failed to investigate the case. He did not contact exculpatory witnesses, and he performed no appreciable work. Under these circumstances, the attorney could not evaluate the state's evidence against his client, and as a result, could not provide meaningful assistance to his client in deciding whether to plead guilty. The Court held that the attorney's deficient performance was ineffective. The Court, however, did not narrowly focus on the attorney's performance in this isolated case. Instead, the Court acknowledged the flaws of such a contract system. After the trial court replaced two contract defenders for cause in the underlying case on separate motions of Ms. Deskins, Mr. Ronnie Rae contracted with Stevens County to provide indigent defense services to Ms. Deskins. Mr. Rae was covering cases in numerous counties in the eastern part of the state and contracting for public defense work. The A.N.J. Court acknowledged the flaws of a contract system and set out some general professional performance benchmarks beyond merely what would satisfy the bare minimum standards. Specifically, the Court articulated the following standards:

Duty to Investigate; Duty to Form a Confidential Relationship with Client; Duty to Know the Law Client Communication

A.N.J. marks a significant progression in the Court's willingness to address some of the systematic problems in the public defense system and to

broaden its conception of what effective assistance means in criminal defense representation. Other than a few moments before a hearing, trial counsel in this case, Ronnie Rae, spent no more than 60-90 minutes personally with Ms. Deskins during the some 8 months after he was assigned the case after other court-appointed counsel were removed by the Trial Court. Mr. Rae then refused to respond to written communications from Ms. Deskins, a longtime litigation paralegal, when inquiring, "What are my defenses in this case" and inquiries concerning his trial strategy. A "plea" was not explained by counsel to Ms. Deskins who was not familiar with criminal law, nor was the State's plea offer ever investigated by trial counsel. Immediately prior to trial, an unlawful plea offer was conveyed to Ms. Deskins by the State prosecutor Tim Rasmussen conditioning the offer on forfeiture of Ms. Deskins animals except one, removing a second dwelling from Ms. Deskins' farm property, and Ms. Deskins signing over title to property in Stevens County in which Ms. Deskins did not hold legal title (after the Stevens County prosecutor already had a cooperation agreement contract with Ms. Deskins dated 12/24/08, returning Ms. Deskins animals so animals were immune from any re-taking). After Ms. Deskins had an appeal pending before Superior Court, a sentence review hearing was held before trial judge Lynda Eaton. Defense counsel argued for Ms. Deskins' release after spending 47 days in jail. Judge Eaton denied Ms. Deskins a release stating

...“Nowhere in here did I hear anything that said “I’m sorry I threatened to kill my neighbors. Not once, not one word. And that is the reality that is the reason, in large part, for the jail sentence.” (RP 30, ll. 20-22). This statement had no basis in fact. Ms. Deskins did not threaten to kill any neighbor. The video/audio tape presented by the State had been illegally tampered with, and those tapes should never have been admitted by the State. Again, Ms. Deskins’ inefficient trial counsel failed to get Grant Fredericks to trial, Ms. Deskins well-regarded video forensic expert, who testified in a sworn Affidavit that every item he examined from the State had already been tampered with by someone. The State prosecutor was well aware that the tapes as submitted to prosecutors by the neighbors and law enforcement had already suffered illegal tampering. Forensic expert Detective McGregor at Spokane Police Department, working on behalf of the State, informed Detective James Glover of the Stevens County Sheriff’s Office (who conveyed this to the Prosecutor) that the tapes he received from law enforcement were not the original videotapes of the alleged dog incidents. (See, **Ex. 5** hereto). These were the video/audio tapes used to prosecute Ms. Deskins. The court only allowed defense counsel “ten minutes to prepare” for sentencing following trial. (RP 966, ll. 18.21). Defense counsel objected, stating “Ten minutes --- is -- not adequate time for me to prepare the sentencing issues I would want to provide the Court with a sentencing packet with affidavits of her friends and -- loved ones to go

before the Court before a decision is made. It would be an unfair burden on my client to not be able to have preparation -- for sentencing, and I'm asking the Court for a one week continuance of sentencing for my adequate preparation". (RP 968, ll. 8-18). The defense motion to delay sentencing for adequate preparation by defense counsel was denied by the Trial Court because "we have limited schedules that are on the record, all of us, and I think it is -- reasonable that the parties should be prepared to go forward today." (RP . 968, ll. 20-23.) Trial counsel was not prepared for sentencing as he misrepresented to Ms. Deskins that sentencing was two weeks away from the verdict.

17. Perjury and Tampering in this Case. Video footage in this case was circulated by the State's witnesses long before trial, and repeatedly aired in local and national television news media and circulated to the AP and picked up by Seattle television news and in other states in the U.S. Terry Feiler, one of the State's witnesses (a neighbor historically embroiled in legal disputes with Ms. Deskins since 2005), falsely denied contacting the local news media to provide them with video evidence taken in this case. The transcript of proceedings indicates that Terry Feiler (dubbed an unknown male voice) contacted KREM news in Spokane order to give reporters evidence in this case. Feiler contacted KREM even before any videotape was taken of Ms. Deskins canines attacked each other. RP 537, ll. 9-14. The videotape evidence alleged to have been taken by witness Laurie Strong on September 17, 2008 but not provided to Sheriff's Detective James Glover until in or around September 25, 2008 appears to have been unlawfully tampered with prior to handing it off to Detective McGregor of the Spokane P.D. An

incident report filed by Detective James Glover indicates that forensic expert Detective McGregor informed Detective Glover that the videotapes provided to McGregor was not the original videotape for purposes of authentication. (See, attached Incident Report of Detective James Glover, **Ex. 5**). The State Prosecutor was therefore aware that videotape evidence had been tampered with before the State took possession. Further, during trial, the State steadfastly refused defense requests to produce the original videotape evidence contained in the police vaults to renowned court-appointed defense expert Grant Fredericks for authentication purposes. The State would only agree to produce digital copies of the videotapes to defense, each and every one which showed additional signs of non-professional quality digital alterations by the State. (See, Affidavit of Grant Fredericks, **Ex. 3**). Tampered videotape evidence was the primary thrust of the State's case concerning the dog's conduct and the statements in defense of property made by Ms. Deskins on September 17, 2010 when arriving home from her job, discovering neighbors trespassing and conducting video surveillance of her property. During the trial, inefficient counsel Ronnie Rae never subpoenaed either Detective McGregor (State's forensic expert) nor Grant Fredericks (retained defense expert). In fact, Ronnie Rae never brought any witness retained by defense to trial including Glenn Bui, an animal behavior expert who was to testify to "redirected aggression" in dogs -- that the dogs were provoked into fighting with each other by spying neighbors which the dogs perceived as a threat.¹⁸ Ronnie Rae did not get Glenn Bui to trial or any other behavioral

¹⁸ See, http://leerburg.com/redirected_aggression.htm?set=1

expert. Ronnie Rae had also promised Bui, according to Bui, to send him \$1,000 for his travel expenses prior to trial if the trial court did not honor its promise to do so. Mr. Bui's testimony regarding canine forms of aggression behaviors and that the neighbors themselves had intentionally or unintentionally provoked the dog fights, rather than Ms. Deskins act or omission to act which gave rise to liability, may have risen to a level of reasonable doubt in the mind of jurors. It would have placed the neighbors in the possession of controlling the actions of Ms. Deskins' dog through their own conduct. Ronnie Rae also presented no testimony from any expert to controvert testimony of the State's expert veterinarians, or other experts in this case, for example Dr. Dennis Koesel or Dr. Venable who testified to injuries. Those injuries could have been made by other dogs, or coyotes which roam in packs in the fields in this rural area. The injuries occurred during times of the year when coyotes had pups they were feeding, and the injured dog "Winnie" was roaming the range at large, out of the dominion and control of its owner. In sum, defense counsel Ronnie Rae failed to put the state's case to adversarial testing in a manner according to reasonable standards for defense counsel, failing in essence to putting on a defense for Ms. Deskins. Rae met with Ms. Deskins personally in one appointment for only 60-90 minutes some 8 months prior to trial. Rae did not visit the alleged "crime scene" to view the method of confinement used by Ms. Deskins on her animals and did not thoroughly interview or prepare any witness prior to trial, including Ms. Deskins for her own testimony and questioning. Rae even failed to investigate and advise Ms. Deskins concerning a plea deal offered by the prosecutor's

office shortly before trial. Rae's inefficient representation left Ms. Deskins with no representation. Ms. Deskins' repeated written communications to Rae in the 8 months prior to trial asking "What are the defenses available to me in this case? were unanswered by Rae. Exhibits containing photographic evidence of all of the dogs taken at the time of the raid on Ms. Deskins' property which Rae represented would be blown up and used at trial in a certain manner were not used at the trial to indicate that none of the dogs seized were injured, abused or neglected by Ms. Deskins, or to controvert the testimony of Spokanimal C.A.R.E. surprise witness Alicia Finch who was substituted at the last moment. The lack of foundation that Ms. Deskins' dogs were all found in excellent health and condition brought forth for instance comments in the Decision from the Superior Court on 10/15/10 that "malnourished dogs were eating other dogs". See, **Ex. 6**, Declaration of K. Frost. (Also, see RP 670, ll. 19-22; RP 676, l. 25; RP 683, ll. 11-19; RP 725, ll 21-23). Dogs seized by authorities from Ms. Deskins were in excellent body condition, or were considered slightly overweight at the time of their confiscation by Stevens County. No dog needed medical condition as there was not any injury or wound on any dog confiscated by Stevens County. There were approximately thirty-six (36) dogs confiscated from Ms. Deskins in October 2008 material to this criminal trial. Certain dogs inventoried by officers, and crated up by animal control officers, escaped and were not caught again. No foundation was ever established by Ronnie Rae through testimony that Ms. Deskins ran a commercial establishment on her property, including a Washington-state licensed animal sanctuary where Ms. Deskins' business purpose was to

take in unwanted, disabled or undoptable dogs. Occasionally, Ms. Deskins sold retriever puppies and livestock. Approximately 1/2 of the canines on Ms. Deskins' property came from a large litter of approximately 12-14 puppies. The trier of fact was led to believe the State's theme that Ms. Deskins was an "animal hoarder", rather than trying to operate a business. Inefficient counsel Ronnie Rae did not attempt to challenge the State's questioning that Ms. Deskins did not need a business license to operate, as Gail Mackie director of SpokAnimal stated that she did not need a license to operate her animal shelter, again leaving the impression that Ms. Deskins was a "hoarder" not operating any legitimate business. Spokanimal does not need to have a state-licensed business, as it does not report to the Washington State Department of Revenue because it is a "non-profit corporation". Ms. Deskins did not operate a commercial business as a "non-profit" through donations. Ms. Deskins also was not operating as an animal "shelter" for the purpose of impounding animals or exercising law enforcement functions. Much of the State's evidence in this case concerned injuries to a dog named "Winnie", again as alleged by incompatible neighbors Terry and Betty Feiler. The Tennant family members and Dr. Dennis Koesel also testified in this respect. The alleged injuries to "Winnie" occurred outside of Ms. Deskins' fenced property where Ms. Deskins' neighbors own dogs who roam the rural area at large. No neighbor property contains fencing confining dogs to their owner's property. This evidence was not permitted at this criminal trial but Ronnie Rae refused to make a formal written objection on the record to submission of this evidence. Perjury came into this trial at various times, most particularly in the

testimony of Ms. Deskins' incompatible neighbors Amy Strong, Laurie Strong and Terry and Betty Feiler. Amy Strong took the onus off of her own dog, "Rocky" for "Winnie's" injuries by lying about Rocky's vicious tendencies (RP 582, ll. 7-24. (See, Ex. 7, Decl. of Patty Schoendorf which is new evidence since the trial date). Laurie Strong lied repetitively in incident report and on the stand that Ms. Deskins was going to go get a gun and shoot me, when Ms. Strong knew from the express language on the video/audio tape she recorded without consent of Ms. Deskins that no such language was ever used by Ms. Deskins. This perjury by Laurie Strong set Ms. Deskins up to be placed in jail as a danger to the public, a totally baseless accusation. Terry Feiler lied about the reasons and timing of restraining orders and other matters concerning "Winnie", denying that Ms. Deskins had retained the first restraining order and then he followed in a tit-for-tat. Terry Feiler also lied when he stated he had not contacted television reporters to offer them videotapes. It appears from the comments in the transcript on 9-17-08 that Terry Feiler actually contacted news reporters before the first 9-17-08 dog incident to come out to talk to him, which begs the question of whether or not Feiler deliberately staged dogs fighting for the purpose of videotaping just to get Ms. Deskins in trouble. His wife, Betty Feiler, also lied about a black bag "hanging off the tailgate of Ms. Deskins' vehicle" when she made no such reference in any incident report she filed with law enforcement.

CONCLUSION

The State did not prove beyond a reasonable doubt that any act by Ms. Deskins

constitutes animal cruelty, or an omission to act constituting cruelty. Ms. Deskins had a duty of care to her dogs and to the public, but it did not include the duty to act to protect the animals from unforeseeable acts of which Ms. Deskins had no notice or personal knowledge when Ms. Deskins was not present. Ms. Deskins violated no confinement or fencing laws at the local or state level. Defense counsel was ineffective both at trial and sentencing and Ms. Deskins was prejudiced by his deficient representation. His lack of knowledge of the sentencing and forfeiture laws, and failure to investigate including the cooperation agreement executed between the State prosecutors and Ms. Deskins on 12/24/08 wherein some 19 dogs were released back to Ms. Deskins some 14 months prior to trial, in particular, impacted the adverse and severe sentence imposed. He did not get Ms. Deskins' very critical expert witnesses to trial in this case as a result of poor planning and poor funding. The proceedings were punctuated with tampering, perjury, and prosecutorial misconduct by the State which impacted the adverse and severe sentence imposed as well. The sentence was cruel and unusual punishment under the facts of this case, and post-trial acts of Stevens County while Ms. Deskins was incarcerated were unconstitutional and placed Ms. Deskins' life in jeopardy by a failure to provide constitutionally adequate medical care to Ms. Deskins. The acts showed a callous indifference to Ms. Deskins' acute medical conditions. Cumulative errors including inefficient representation, and prosecutorial misconduct in this case requires reversal and or dismissal of Counts 1 and 2.

Respectfully submitted this 10th day of February 2012.

A handwritten signature in cursive script, reading "Pamela D. Deskins", is written over a solid horizontal line.

Pamela D. Deskins, Appellant in pro per

CERTIFICATION

I certify under penalty of perjury that the exhibits attached hereto are true and correct copies of the original documents in this case.

I further certify under penalty of perjury that I caused to be placed in the U.S. mail, correct postage prepaid on February 10, 2012, the preceding Statement of Additional Grounds, as follows:

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Court of Appeals, Div. 3
500 N. Cedar Street
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Courtesy Copy:
Casey Grannis
Nielsen Broman Koch
Seattle, WA

Dated this 10th day of February 2012.



Pamela D. Deskins

EXHIBIT 1

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December 30, 2008.

Bob Caruso
Caruso Law Offices
1426 W. Francis Avenue
Spokane, WA 99205

Lloyd Nickel
Deputy Prosecuting Attorney
Stevens County
P.O. Box 390
Colville, WA 99114

Re: Oral Agreement re Pamela Deskins Hoarding Case

Dear Counsel:

This is to memorialize our conference last week wherein an agreement was reached settling the above matter. Nine of Ms. Deskins' dogs were released to her on December 24, 2008, at approximately 3:00 p.m. The remaining dogs were released to SpokAnimal.

Thank you all for your cooperation in getting this matter settled. SpokAnimal looks forward to payment by Stevens County.

Please do not hesitate to contact me if you have any questions regarding the above.

Very truly yours,

WITHERSPOON, KELLEY, DAVENPORT
& TOOLE, P.S.

Kimberly A. Kamel

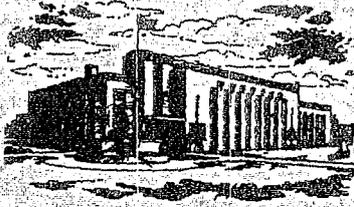
KAK:sc
cc: Gail Mackie

RECEIVED BY
DEC 31 2008
2:43 PM

EXHIBIT 2

FAX - 326-9178

rec'd 6/3/08



STEVENS COUNTY COURTHOUSE

CRAIG ELLIS THAYER
STEVENS COUNTY SHERIFF

P.O. Box 186
COLVILLE, WASHINGTON 99114-0186

BUSINESS HOURS 509-824-5296

24 HOUR PHONE 509-824-2555

TOLL FREE 1-800-572-0947

EMERGENCY 9-1-1



May 11, 2008

Pamela D. Deskins
5522 Wallbridge Road
Deer Park, WA 99006

RE: Potentially Dangerous dogs-numerous

Dear Ms. Deskins,

I have reviewed the information concerning your dogs, numerous and of mixed breeds, and the incident that occurred in Stevens County on or about May 6, 2008 (Case number 0803118). Your dogs have been declared **potentially dangerous dogs** by the Stevens County animal control authority, the Stevens County Sheriff's Office.

The allegation is that your dogs (15 to 20) attacked and severely injured a neighbor's dog. The injuries were quite severe and the injured dog required veterinary care. The attack was not provoked in any way and not on property under your dominion and control. There have been other incidents in the past involving your dogs that are not enumerated in this letter.

Your dogs are responsible for the unprovoked attack on the neighbor's dog. I cannot identify each dog but because they are numerous and running in a pack I am declaring all your dogs **potentially dangerous**.

STEVENS COUNTY CODE—TITLE 20—DOG CONTROL

The ordinance defines a **potentially dangerous dog** as follows:

'Potentially dangerous dog' means any dog that meets the statutory definition found in RCW Chapter 16.08, or, when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or (c) any

OCT 15 2008
9:20 AM

dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury or otherwise to threaten the safety of humans or domestic animals. A dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or the keeper of the dog, or was tormenting, abusing or assaulting the dog, or has, in the past been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime.

20.50 DETERMINATION OF POTENTIALLY DANGEROUS DOG NOTICE, HEARING AND APPEAL—REQUIREMENTS.

- .010 When the Stevens County Sheriff has sufficient information to determine that a dog is a potentially dangerous dog as defined in Section 20.20, a notice shall be served in person or mailed certified and by regular mail to the owner of the dog. The notice must state:
- (a) The statutory basis for the action; the reason(s) the authority considers the animal to be potentially dangerous; that if there are future similar problems with the dog, the dog could be declared to be a dangerous dog as defined in this Title; that the notice constitutes a final determination that the dog has been determined to be a potentially dangerous dog, unless the owner of the dog requests a hearing before the Stevens County Hearing Examiner in writing on a form provided with the notice within fourteen (14) days of the receipt of the notice, and pays the hearing fee of **(RESERVED)**. Failure to exhaust this administrative appeal process shall be a bar to action in a court of law. For purposes of this section, the notice will be deemed received on the third day after the notice is placed in the mail or the date upon which the certified mail is actually received, whichever is sooner.
- .020 In the event the owner of the dog requests a hearing as provided for in subsection 20.50.010, a hearing shall be held within thirty (30) days of the receipt of the request for hearing. The Stevens County Hearing Examiner will notify the owner or keeper of the date, time and place of the hearing, as well as the right to present evidence as to why the dog should not be found potentially dangerous. The hearing shall be informal and open to the public.
- .030 The written decision of the Hearing Examiner shall be mailed to the owner of the dog not later than fourteen (14) days from the end of the hearing. If the Hearing Examiner issues a finding of potentially dangerous dog, the owner may appeal the decision as provided under the general laws of the State of Washington.

REGISTRATION REQUIREMENTS

Because your dogs have been deemed **potentially dangerous** by Stevens County, you must immediately comply with the statutory obligations listed in Stevens County Code—Title 20.70 and 20.80—Dog Control. You are required to immediately undertake the following steps:

Unless a city or county has a more restrictive code requirement, the animal control authority of the city or county in which an owner has a potentially dangerous dog shall issue a certificate of registration, within fourteen (14) days of the final determination, to the owner of such animal if the owner presents to the animal control authority sufficient evidence of:

20.70.010

- (a) A proper enclosure as defined in section 20.20.
- (b) Identification of the dog by a procedure known as micro-chipping with the owner's Stevens County Sheriff's Office case number and presentation of a current color photograph of the animal from the side showing the entire dog in sufficient detail to aid in the dog's identification:
- (c) Payment of the first annual potentially dangerous dog registration fee of \$(RESERVED)

.020 The owner of a potentially dangerous dog shall pay an annual registration fee of \$(RESERVED)

20.80 Confinement, security, control of dangerous and potentially dangerous dogs:

- .010 No potentially dangerous dog nor dangerous dog shall go unrestricted upon the premises of the owner, nor shall it be kept on a porch, patio or in any part of the house or structure which would allow such dog to exit the premises of its own volition.
- .020 All potentially dangerous dogs and dangerous dogs shall be securely confined indoors or in a proper enclosure.
- .030 No person owning or harboring, or having the care of a potentially dangerous dog or dangerous dog shall suffer or permit such dog to go beyond the premises of such person unless the dog is securely muzzled in a manner that will not cause injury to the dog but shall prevent it from biting any person

or animal; and is restrained with a chain having a minimum tensile strength of 300 pounds and not to exceed three feet in length.

Nothing in this section limits a local authority in placing additional restrictions upon owners of potentially dangerous dogs. This section does not require a local authority to allow a potentially dangerous dog within its jurisdiction.

APPEAL PROCESS

Prior to a final determination in Stevens County, you are entitled to an opportunity to meet with the animal control authority or their designee, at which meeting you may give, orally or in writing, any reasons or information as to why the dogs should not be declared potentially dangerous.

A meeting will be scheduled with Captain Michael George or his designee at the Stevens County Sheriff's Office in Colville, WA, should you choose to appeal this decision. Should you request a hearing, please be prepared at our meeting to present any evidence that would mitigate against deeming your dog potentially dangerous.

After such meeting should your dogs be found to be potentially dangerous, you may appeal to the District Court for Stevens County. You must make such appeal within 14 days of receiving the final determination.

While the appeal is pending, Stevens County may order the dogs confined or controlled in compliance with RCW 16.08.090. If the dogs are determined to be potentially dangerous, you must pay all costs of confinement and control.

If you have any questions about the process, please call me at (509) 684-5296.

Sincerely,



Captain Michael George
Stevens County Sheriff's Office

cc: Lloyd Nichol, Deputy Prosecuting Attorney

June 3, 2008

RECEIVED
Stevens Co Sheriff's Office

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

JUN 04 2008

8-9-10-11-12
1-2-3-4-5

CAPTAIN MICHAEL GEORGE
STEVENS COUNTY SHERIFF'S OFFICE
P.O. BOX 186
215 SOUTH OAK STREET
COLVILLE, WA 99114

**RE: CASE NUMBER 0803118
SHERIFF'S DECLARATION OF "POTENTIALLY DANGEROUS DOGS"**

Dear Captain George:

Enclosed please find a Request for Hearing which has been signed and dated by me today, June 3, 2008, the date your May 11, 2008 letter was delivered to me by your deputy at my residence.

In anticipation of the hearing, please forward promptly all documentation, including incident reports, witness statements, videos of the incident, and any and all evidence you intend to use at the upcoming hearing to Senit M. Lutgen and Deanna Highbarger, attorneys, at the law firm of Lutgen & Kirkham, PLLC. Their address is:

Senit M Lutgen, Esq.
Deanna Highbarger, Esq.
Lutgen & Kirkham, PLLC
421 W. Riverside, Ste. 612
Spokane, WA 99201
Phone: (509) 323-0420
Fax: (509) 323-0108

Thank you.

Very truly yours,



Pamela D. Deskins

STEVENS COUNTY SHERIFF'S OFFICE

Request for Hearing

Case number: 0803118

RECEIVED
Stevens Co Sheriff's Office

JUN 04 2008

8-9-10-11-12
1-2-3-4-5

The Animal Control Authority for Stevens County, the Stevens County Sheriff's Office, has declared your dog(s) potentially dangerous.

Because your dog(s) has been declared potentially dangerous you are entitled to meet with the Animal Control Authority at which meeting you may give, orally or in writing, any reasons or information as to why your dog(s) should not be declared potentially dangerous. You must make such request within 14 days of receipt of the initial determination declaring your dog(s) dangerous.

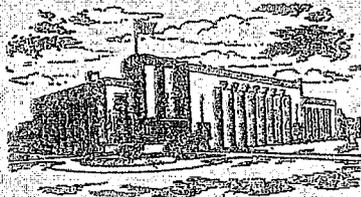
Please indicate by signing and dating below your desire to have a hearing with the Animal Control Authority and return the signed request by mail or in person to:

Captain Michael George
Stevens County Sheriff's Office
P.O. Box 186/215 South Oak
Colville, WA 99114

SIGN *Michael George* DATE *6-3-08*

A hearing will be held within thirty (30) days upon receipt of the request for a hearing.

where is the declaration of potentially dangerous dog? is it in writing? an order? what is its basis

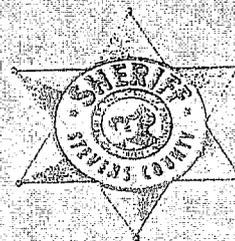


STEVENS COUNTY COURTHOUSE

CRAIG ELLIS THAYER
STEVENS COUNTY SHERIFF

P.O. BOX 188
COLVILLE, WASHINGTON 99114-0188

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24 HOUR PHONE 509-684-2555
TOLL FREE 1-800-572-0947
EMERGENCY 9-1-1



June 19, 2008

Pamela D. Deskins
C/O Caruso Law Offices
1426 W. Francis
Spokane, WA 99205

RE: Hearing for Potentially Dangerous dog-Numerous

Dear Mr. Caruso and Ms. Deskins,

The Animal Control Authority for Stevens County, the Stevens County Sheriff's Office, has declared your dogs potentially dangerous. You have met the statutory requirement by requesting a hearing with the Animal Control Authority for Stevens County.

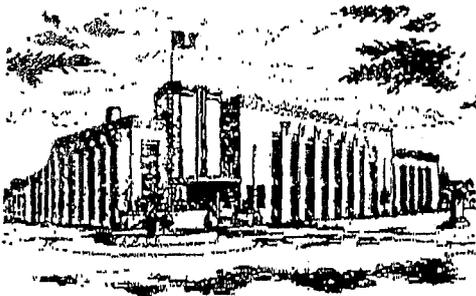
At such hearing you are entitled to give, orally or in writing, any reasons or information as to why your dog should not be declared potentially dangerous. All reports and documents will be sent to you within 5 days of this date and prior to the hearing.

The hearing is scheduled for **July 3, 2008 at 1:30 PM** at the Stevens County Sheriff's Office. If you have any questions about the process, please call me at (509) 684-5296.

Sincerely,

Captain Michael George
Stevens County Sheriff's Office

06/15/2008
10:11 AM



STEVENS COUNTY PROSECUTING ATTORNEY

Bob: who is the Sheriff's Office? 42115th Ave...

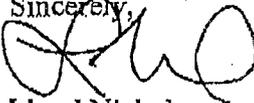
July 2, 2008

Robert E. Caruso & Richard F. Lee
Caruso Law Offices
C/o Linoleum and Carpet City
1426 W. Francis Ave.
Spokane, WA 99205

Re: Pamela Deskins/ Potentially Dangerous Dog Hearing

Gentlemen:

We have received your very untimely motion and request for reassignment of the hearing officer. Although the motion is untimely and the references to the Administrative Procedure Act are probably not applicable, the Sheriff's Office has chosen to transfer this hearing to a Hearing Examiner. Because of the short timing of your motion, we do not know if or when the hearing examiner may be able to accommodate this hearing. However, the hearing scheduled for tomorrow, July 3, 2008 is cancelled and we will be in further contact with you as to the new hearing schedule and hearing officer. Please do not hesitate to contact me if you have any questions.

Sincerely,

Lloyd Nickel

Pc: Sheriff

*County VIOLATED TITLE 20.05.010-013
A.P.A REV 30.05.01.001
REV 42-*

FAMILY LAW DIVISION
298 S. MAIN, SUITE 204
COLVILLE, WA 99114
(509) 684-7501 / FAX (509) 684-7581
TOLL FREE (866) 202-9103

CRIMINAL/CIVIL LAW DIVISION
215 S. OAK, ROOM #114
COLVILLE, WA 99114
(509) 684-7500 / FAX (509) 684-7589
TTY: (800) 833-6388

EXHIBIT 3

EXHIBIT 3

FILED

JUL 01 2009

DISTRICT COURT
STEVENS COUNTY WA

State of Washington vs Pamela DESKINS

Number P6282

**AFFIDAVIT OF GRANT
FREDERICKS**

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I, GRANT FREDERICKS, declare under penalty of perjury under the laws of Washington State that the following is true and correct

I attained an undergraduate degree in television broadcast communications in 1982 and have been continuously involved in the television industry for the last twenty-six years

I am a Forensic Video Analyst with extensive experience in the recovery scientific examination and evaluation of recorded video and audio information involved in criminal and civil investigations in the United States, Canada and in the United Kingdom I have been active in this science since 1984

As a Forensic Video Analyst I have processed thousands of videotapes and computer discs containing digital multimedia evidence for both criminal and civil cases In the past ten (10) years I have provided expert testimony in the field of Forensic Video Analysis more than sixty (60) times in US and Canadian courts, including US Federal Courts I have testified as an expert in Forensic Video Analysis in Washington State Oregon, California, Nevada, Colorado, Iowa, Missouri Massachusetts, Pennsylvania, Michigan, New York, Texas, Florida, British Columbia Alberta, Manitoba and the Yukon Territories

AFFIDAVIT OF GRANT FREDERICKS

Forensic Video Solutions
105 W Rolland Ave
Spokane WA 99218
(509) 467 3559

1
2 I am currently the Principle Instructor for a series of Forensic Video Analysis courses offered
3 by the Law Enforcement and Emergency Services Video Association (LEVA) a non-profit
4 organization that has trained more than 1500 law enforcement video analysts from throughout
5 the world

6
7 I am also a paid instructor of Forensic Video Analysis and Digital Multimedia Evidence
8 Processing for the FBI National Academy in Quantico, VA

9
10 I am the Digital Video Advisor to the International Association of Chiefs of Police for its In
11 Car Video Project and for its Regional Forensic Video Processing Lab Project, which is funded
12 by the US Department of Justice

13
14 I am a panel member for the US National Institute of Justice project which is setting standards
15 for the use and application of digital in-car video recording systems for law enforcement

16
17 I am currently an adjunct instructor for the University of Indianapolis and each I year teach
18 approximately six (6) one week long courses in various disciplines involved in the science of
19 Forensic Video Analysis Each of the courses focuses on digital video engineering principles
20 and the application of proper scientific methodologies for processing digital multimedia
21 evidence, including scientific techniques used to authenticate analog and digital multimedia
22 evidence

23
24 One of the courses I teach at the University of Indianapolis is entitled Photographic/Video
25 Comparisons, which focuses on the identification of vehicles, clothing and weapons captured
26 to digital and analog video recording sources

1 Work Request

2

3 On May 13, 2009, I was contacted by attorney Joshua Gilstrap in relation to an alleged animal
4 cruelty incident in Stevens County, Washington

5

6 Mr Gilstrap requested that I examine each of the 'Items' and attempt to determine if the items
7 depict original recordings Mr Gilstrap also requested that I attempt to answer the question
8 *"Do the recordings depict a true, accurate and complete record of the events they purport to*
9 *show?"*

10

11 Mr Gilstrap was unable to provide any detail regarding the original recording device or
12 devices that were used to produce the video in the first instance

13

14 The question of authentication would be more simply answered if the original recording
15 devices were known For example if it were known that a Hi-8 format camera were used to
16 make the original recordings, then the Items disclosed to the defense would be copies since
17 they are not in the Hi-8 format Since some of the Items are recorded to a VHS format a more
18 detailed examination is required in order to determine authentication

19

20

21 Exhibits

22

23 At 0900 on June 8, 2009, I attended the Stevens County Sheriff's Office in Colville, WA and
24 met with Officer Colin Webb Officer Webb provided me with the following items for
25 examination

26

- 1 VHS Tape marked 'First Attack Killing Dog' (Property Case #0807793)
- 2 VHS Tape marked 'Neighbors Dogs Killing One of her own (Property Case
- 3 #0807793)
- 4 VHS Tape marked 'Neighbors Dogs' (Property Case #0807793)
- 5 DVD marked 'DVD of All Video' (Property Case #0807793)
- 6
- 7 Items 1 through 4 were contained in a secured brown paper bag
- 8
- 9 DVD (Property Case #0807752)
- 10
- 11 Item 5 was contained in a plastic evidence bag
- 12
- 13 DVD (Disc 1) marked 'Laurie Dogs' (Property Case #0807328)
- 14 DVD (Disc 2) marked 'Chasing Donkey' (Property Case #0807328)
- 15 DVD (Disc 3) marked 'Bloody Muzzles' (Property Case #0807328)
- 16 Audio Cassette Tape (Property Case #0807328)
- 17
- 18 Items 6 through 9 were contained in a secure plastic evidence bag
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

1 Observations

2

3 Items 1 2 and 3 are analog videotapes containing amateur handheld video recordings of a rural
4 environment that depict a farm-like setting

5

6 The videotapes also contain recordings of television and entertainment broadcasts

7

8 The video is consistent with home video recordings produced using a standard VHS recorder
9 connected to a television and a broadcast reception system The television broadcasts were
10 recorded using SI P mode (Super Long Play) which is intended to allow for several hours of
11 programming to be recorded to a single two hour videotape

12

13 By contrast, the recordings of dog activity in the rural setting are recorded to the VHS tapes in
14 Standard Play Mode at 29.97 frames per second At the transition point on Item #1 where the
15 broadcast video ends and the video images of the dogs appear on the video, the tape changes its
16 speed The change in speed is visually and audibly evident during the transition period and the
17 changes affect the accuracy of the first images and audio of the dog segments The change in
18 speed of the images and sound during the transition on the VHS tape indicates that the home
19 VCR was set to SLP mode to record broadcast television During the 'dubbing' process of the
20 dog scenes the VCR detected the timing synchronization of the control track of the original
21 dog-event recording and adjusted the speed of the recording on the home VCR to compensate
22 At the transition point on the VHS tapes there is also an obvious loss of control track In other
23 words, the original recording on the VHS tapes is the television programming at SLP mode and
24 when video images of the dogs were copied on top of the old recording and from another
25 source, the speed of the VCR changed to accommodate the record speed of the dog video
26 Item #1 is therefore not the original source of the dog recordings

1
2 Item #2 is also not an original recording. When a video tape is placed in a video camera and
3 the video camera initiates the record mode, the first images receive a synchronization pulse and
4 the first images are recorded with control track and audio. Item #2 starts with unstable images
5 and no sound. The images roll while the record deck attempts to establish a control track.
6 Additionally, the last several lines of video are shifted left. An adjustment of the exit posts on
7 the playback VCR should re-align the video lines, however, since the video was recorded with
8 the lines already shifted to the left, the line positioning could not be corrected. The lines are
9 shifted left because the exit post on the recording VCR used to produce Item #2 was not
10 aligned in the same position as the exit post on the original recording device.

11
12 Item #3 contains similar instabilities at the beginning of the recording as described in Item #2.
13 The first images roll and are not in sync, indicating that the images are not original or the video
14 has been edited. Additionally, part way through the recording, the video is stopped and
15 restarted quickly. The scene and time has changed. Between the two recordings is
16 approximately two and a half seconds of video with no control track. Close to the end of the
17 transition between the two scenes are a few images of a television broadcast signal. The two
18 'dog segments' are edited together. Due to the technical inability of the editor, the edit is
19 visible.

20
21 Items 1, 2 & 3 are not original recordings.

22
23 Item #4 is erroneously purported to be an exact copy of the contents of Items 1, 2 & 3. Item #4
24 does not contain any of the television broadcast information. This fact is not particularly
25 critical since the broadcast programming is not relevant and was likely edited out when Item
26 #4 was produced, however, the speed change observations of the dog images described above.

1 are not reproduced in Item #4 Due to the instability of the signal at the transition points on the
2 tapes the complete transitions in Items #1, #2 and in #3 are not reproduced in Item #4 The
3 instability of the transition points is due to the dubbing process and further demonstrates that
4 the contents of Item's 1, 2 & 3 are not original recordings and that Item #4 is not an accurate
5 reproduction of those earlier items
6

7 Additionally VHS technology is old and the camcorder industry has been transitioning away
8 from VHS recordings for the last several years 'Handicam' or handheld camera technologies
9 have not used VHS videotapes for 'field recordings' for several years VHS recordings in a
10 handheld environment were transitioned to VHS-C (compact format) then to 8mm analog,
11 then to Hi-8 analog, then to Digital 8, then to various digital formats The camcorder
12 technology used to record VHS tapes has been considered obsolete for a number of years
13 VHS is considered a dead format
14

15 Given that the videotapes in Items 1, 2 & 3 are purported to have come from two or more
16 separate sources, it would be highly unlikely that so many independent private video
17 camcorder users would be independently using the same obsolete recording technology It is
18 much more likely that one dubbing device was used to edit and record various original sources
19

20 Further Item #4 contains images of a woman, purported to be the defendant, as she is working
21 near her vehicle This recording was not originally an analog recording It contains no analog
22 artifacts that would identify the source of the video as coming from an analog camera On the
23 contrary it contains evidence that the original source was digital
24

25 An analysis of Item #4, (VOB File 02), shows that it is an MPEG 2 recording that was
26 produced on March 26 2009 as a 720 X 480 file size (720 pixels from left to right per line with

1 480 lines) The analysis also shows that the video was originally recorded at 29.97 frames per
2 second. Original analog video is recorded at a rate of 60 images per second.
3
4 Item #6 shows the same scenes, yet an analysis of the video images shows that the video is
5 from a different source than identified in Item #4. According to the analysis of Item #6, the
6 same images depicted in Item #4 (VOB File 02) were actually recorded as 640 X 480 images
7 not 720 X 480 images. The images are actually Motion JPEG images, produced using a V3
8 codec at 10 frames per second. A further analysis of the metadata shows that the camera used
9 was a Canon MV102. The Canon MV102 appears to be a digital still camera with the ability
10 to record video segments.
11
12 It is much more likely that the original source for Item #4 (VOB File 02) and Item #6 are from
13 a Canon digital camera and not from a videotape, as it is purported to originate.
14
15 Item #6 also supports the observations and analysis that the video content of Item #4 is not an
16 original recording when one examines the file names of the same recordings, as depicted on
17 Item #6. The three files contained in Item #6 under the heading "Laurie Dogs" are *Laurie*
18 *Dogs 005.avi*, *Laurie Dogs 006.avi* and *Laurie Dogs 007.avi*. Cameras do not designate
19 specific names to video files. The only method available for the files to be given specific and
20 unique names such as those given, is for an operator or technician to manufacture the names.
21
22 It is also odd that a series of files so specifically named would start with 005. Given the
23 naming convention used, it is likely that files 001, 002, 003 and 004 were also produced but
24 not disclosed. Those files were not provided for analysis.
25
26

1 Further, a file with an extension 'AVI' (audio video interleaved) is not as common as many
2 other file naming conventions. It is likely the AVI files were transcoded from another format.
3 In other words, the files contained in Item #6 very likely find their origins from another file
4 format and are therefore changed and altered as a result of being converted to the current
5 format.

6

7 The video images from Item #4 and Item #6 were also edited. Without the original data, it is
8 not possible to know whether the edits occurred 'in camera' or were conducted post-
9 recording'. However, the editing is clearly evident in *Laurie Dogs 006 avi*, when the video
10 stops playing 'mid sentence'. In this brief segment the audio produces the sound of a woman
11 stating "I will start shooting if". The video stops at this point and the viewer cannot know
12 what followed after the 'if' in the statement. Given the lack of context, one does not know if
13 the woman is referring to shooting as a reference to shooting a camera or shooting a gun. If
14 the woman were referring to shooting her own videotape, one could argue that the edited
15 reference is prejudicial, since it could lead a viewer to inaccurately infer that her intention was
16 violent.

17

18 Finally the images of "Laurie Dogs" are reproduced at 24 frames per second on Item #6 but in
19 Item #4, they are produced at 29.97 frames per second. No reference is given for their original
20 source but the two copies provided to defense are clearly different from each other.

21

22 Item #5 (0807752) contains visual and audio data that was produced on October 1, 2008
23 according to the date and time stamp in the metadata of the files. The data shows eight
24 separate recordings contained on VOB 1 through VOB 8. The files are MPEG-2 files recorded
25 at 720 X 480 pixels. The contents of this Item contain no analog artifacts, indicating that the
26 original source was from a digital recording device. However the original source did not

1 produce the MPEG-2 VOB files contained on Item #5 Item #5 was likely produced using a
2 consumer grade DVD recording deck Digital camera systems do not produce the types of files
3 found on Item #5
4
5 VOB 1 through VOB 4 show scenes with 'flat' lighting The flat lighting indicates that the sun
6 is not direct and shadows are not evident in the scene VOB 5 through VOB 8 show scenes
7 with direct light from the sun, where harsh shadows are clearly evident on the ground The
8 lighting difference shows that the video was recorded at different times and not at the same
9 time as was the indication when disclosed to defense
10
11 Additionally, verbal statements are heard on the video's audio tracks A woman is heard
12 stating that a dog has just been killed A few moments later (after an in-camera edit) a person
13 is heard confirming the woman's observations by stating 'it smells dead' Throughout the
14 video sequences statements are heard that tend to bias the casual observer Clearly an animal
15 that is killed will not 'smell dead' so soon after its death
16
17 Item #7 (#0807328) contains a heading 'Chasing Donkey' and contains some video and audio
18 that is consistent with Item #1 and Item #3 However, Item #7 also contains an analog video
19 segment that shows a number of dogs running free near what appears to be a private home
20 The camera position is inside the home
21
22 No source was provided or identified for this video although the original source is clearly
23 analog The video of this segment contained on Item #7 is a copy and is edited The original is
24 unknown Item #7 is the only item provided that depicts this specific activity of the dogs
25
26 Item #8 contains images that are a repeat of images from Item #1

1
2 Item #9 is an audio cassette of a telephone message and is irrelevant to the work request

3
4 The state has not provided the usual technical disclosure regarding the technology used to
5 produce the exhibits. No disclosure regarding what camera or recording systems were used is
6 available to conduct a further review or additional tests

7
8 Opinion

9
10 Editing is clearly evident in all of the items provided for analysis. The items provided are not a
11 complete record of the original events or the original recordings. None of the items appear to
12 be original recordings. I am not able to provide any insight into what additional content may
13 be available from the original recordings and whether or not the edited portions contained
14 exculpatory information

15
16 Glossary & Terms

17
18 **In-camera Edit** a process during which the camera recording is stopped and later restarted by
19 the camera operator. The stoppage is usually short in duration and results in loss of
20 information between the stop and start points

21
22 **AVI** Audio video Interleaved

23
24 **Pixel** Picture Element

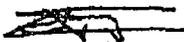
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26 **Dub** a process of copying video and audio information from one source to another

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Analog a frequency based medium using an electromagnetic signal to carry information

Artifact an error created by an analog or digital process An artifact can help to identify the source of the signal

DATED this 25th day of June, 2009 in Spokane, Washington



GRANT FREDERICKS

FILED

MAY 15 2009

DISTRICT COURT
STEVENS COUNTY WA

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON,)	No P6282
Plaintiff,)	
vs.)	Order Approving Costs
PAMELA DESKINS,)	
Defendant.)	

TO The Stevens County District Court,

BASIS

On May 7, 2009 the defendant by and through her attorney was given authorization on the record to hire an expert in the authentication and analysis of video surveillance. Since that time, the defendant's attorney has contacted Forensic Video Solutions and received a fee agreement from that company. The fee agreement is attached. The defense is now seeking a release of these funds so that Mr. Fredericks can begin his work so we can conclude with this aspect of the case in a timely manner and thereby keep our trial dates on track.

ORDER

It is ordered that these funds shall be released so that the conditions of the fee agreement can be satisfied. *Total Costs not to exceed \$2,500 -*

Order Approving Costs

COPIES SENT TO

- /PROSECUTOR
- /DEFENDANT
- /JAIL
- /CLERKS INIT

- /ATTORNEY
- /PROBATION
- /911
- /OTHER

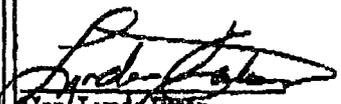
Joshua B. Gilstrap
Attorney at Law
P.O. Box 123
Deer Park, WA 99006
Telephone (509) 369-3638

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Dated this 15th day of May, 2009

Approved by

Presented by


 Hon. Lynda Eason


 Joshua B Gilstrap #31102
 Attorney at Law
 P O Box 123
 Deer Park, WA 99006

Order Approving Costs

Joshua B Gilstrap
 Attorney at Law
 P O Box 123
 Deer Park, WA 99006
 Telephone (509) 362-3020

EXHIBIT 4

Public Information Request obtained
 From Spokane Animal Care's GAIL Mackie

List of Dogs Returned to owner 12-24-08

Animal #	Name	Date In	Date Out	Misc.	Adopter name	Zipcode	Spayed/ Neutered
6145131	[REDACTED]	10/2/2008	10/15/2008	Owner released/adopted	Courtney Jones	[REDACTED]	neutered
6145132	[REDACTED]	10/2/2008	10/15/2008	Owner released/adopted	Jill McBride	[REDACTED]	neutered
6145124	[REDACTED]	10/2/2008	12/27/2008	Owner released/adopted	Todd Beard	[REDACTED]	neutered
6145127	[REDACTED]	10/2/2008	12/24/2008	Owner released/adopted	Mike Benson	[REDACTED]	neutered
6145135	[REDACTED]	10/2/2008	12/24/2008	Returned to Owner	Pam Deskins		
6145137	[REDACTED]	10/2/2008	10/31/2008	Owner released/adopted	Miroslav Khashchuk	[REDACTED]	spayed
6145134	[REDACTED]	10/2/2008	12/27/2008	Owner released/transferred	INGRR		
6151482	[REDACTED]	10/3/2008	10/11/2008	Owner released/adopted	Tage Valone	[REDACTED]	neutered
6151452	G.W.	10/3/2008	10/10/2008	Owner released/euthanized			
6151196	[REDACTED]	10/3/2008	10/11/2008	Owner released/transferred	Partners 4 Pets		
6151465	Baxter	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
6153092	Beep	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
6151101	Bob	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
6151330	Bruiser	10/3/2008	12/24/2008	Owner released/adopted	Mike Benson	99218	previously altered
6151223	Bunny	10/3/2008	12/24/2008	Owner released/adopted	Mike Benson	99218	spayed
6151355	Charlie	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
6151128	[REDACTED]	10/3/2008	12/24/2008	Owner released/adopted	Mike Benson	[REDACTED]	spayed
6151166	[REDACTED]	10/3/2008	12/28/2008	Owner released/adopted	Kathy Frost	[REDACTED]	spay agreement
6151048	Daisy Mae	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
6151245	Gimpy	10/3/2008	12/24/2008	Owner released/euthanized			
6151295	Goober	10/3/2008	12/24/2008	Owner released/adopted	Mike Benson	99218	previously altered
6151435	Lady	10/3/2008	1/11/2009	Owner released/adopted	Mike Benson	99218	spayed
6151490	[REDACTED]	10/3/2008	10/23/2008	Owner released/adopted	Melissa Kilgore	[REDACTED]	spayed
6153098	[REDACTED]	10/3/2008	10/26/2008	Owner released/transferred	INGRR		
6151500	[REDACTED]	10/3/2008	11/26/2008	Returned to Owner	Mike Benson		
6153094	[REDACTED]	10/3/2008	10/23/2008	Owner released/adopted	Myrna Squire	[REDACTED]	spayed
6153097	[REDACTED] (Taz)	10/3/2008	10/25/2008	Owner released/bite case/euthanized			
6151260	[REDACTED]	10/3/2008	12/23/2008	Owner released/adopted	Christopher Stevens	[REDACTED]	neutered
6151264	[REDACTED]	10/3/2008	12/24/2008	Owner released/adopted	Joanna Kaufman	[REDACTED]	neutered
6151388	[REDACTED]	10/3/2008	12/24/2008	Owner released/adopted	David Lewis	[REDACTED]	neutered
6151400	[REDACTED]	10/3/2008	12/28/2008	Owner released/adopted	Gail Mackie	[REDACTED]	neutered
6151408	[REDACTED]	10/3/2008	12/21/2008	Owner released/adopted	Derilyn Hilburn	[REDACTED]	spayed

EXHIBIT 4

	NAME	DATE ENTERED	RELEASED	Disposition	ADOPTED, etc	ZIP	Notes
151339	[REDACTED]	10/3/2008	1/2/2009	Owner released/transferred	SHS		
151146	[REDACTED]	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
151093	[REDACTED]	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
151369	[REDACTED]	10/3/2008	11/26/2008	Returned to Owner	Mike Benson		
151419	Sparky	10/3/2008	12/24/2008	Returned to Owner	Pam Deskins		
153090	[REDACTED]	10/3/2008	12/28/2008	Owner released/adopted	Kathy Frost	[REDACTED]	neuter agreement
153095	Tommy	10/3/2008	12/24/2008	Owner released/euthanized			
861785	[REDACTED]	11/30/2008	1/30/2009	born in shelter/adopted	David Bridges	[REDACTED]	neutered
861790	[REDACTED]	11/30/2008	1/31/2009	born in shelter/adopted	Denise Hopkins	[REDACTED]	neutered
861793	[REDACTED]	11/30/2008	1/31/2009	born in shelter/adopted	Eric Cijais	[REDACTED]	neutered
861798	[REDACTED]	11/30/2008	died 12/05/08	died			
861771	[REDACTED]	11/30/2008	died 12/07/08	died			
no #	[REDACTED]	11/30/2008	11/30/2008	stillborn			
861801	[REDACTED]	12/1/2008	died 12/02/08	died			
861798	[REDACTED]	12/1/2008	died 12/05/08	died			
870815	[REDACTED]	12/1/2008	died 12/04/08	died			
870780	[REDACTED]	12/1/2008	1/31/2009	born in shelter/adopted	Angela Cooler	99001	spayed
870790	[REDACTED]	12/1/2008	12/11/2008	died			
870805	[REDACTED]	12/1/2008	12/15/2008	died			
895185	[REDACTED]	12/9/2008	12/22/2008	died			
895215	[REDACTED]	12/9/2008	12/23/2008	died			
895222	[REDACTED]	12/9/2008	12/24/2008	died			
895227	[REDACTED]	12/9/2008	12/22/2008	died			
895236	[REDACTED]	12/9/2008	12/24/2008	died			
895242	[REDACTED]	12/9/2008	12/24/2008	died			
895253	[REDACTED]	12/9/2008	12/21/2008	died			

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EXHIBIT 5

EXHIBIT 5

09/14/10
14:21

Stevens Co. Sheriff's Office
LAW INCIDENT TABLE

Page: 262
10

STEVENS COUNTY SHERIFF'S OFFICE
ADDITIONAL INFORMATION REPORT

CASE #0807793

Details of Supplemental Narrative:

On 06-15-2009 I was advised that the three VHS tapes were not originals. On 06-16-2009 I made phone contact with Laurie Strong. Strong told me they got the VHS tapes from a garage sale. They use them to record TV shows. They have been recorded over several times. Strong insisted she gave us the original VHS tapes she used to record with. I advised the P/A and will be taking the VHS tapes back to SIU in Spokane for review.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct" 9A.72.085.

06-16-2009 Colville, Washington Detective James Glover #115

Date and Place	Signature
5 Glover, James 15:07:34 06/23/2009	

STEVENS COUNTY SHERIFF'S OFFICE
ADDITIONAL INFORMATION REPORT

CASE #0807793

Details of Supplemental Narrative:

On 06-18-2009 at about 1258 hours I checked the VHS tapes out of the vault and drove them to Detective McGregor in Spokane for analysis.

Forward to P/A

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct" 9A.72.085.

06-23-2009 Colville, Washington Detective James Glover #115

Date and Place	Signature
6 Glover, James 14:55:18 02/10/2010	

EXHIBIT 6

EXHIBIT-6

ORIGINAL

FILED

OCT 15 2008

DISTRICT COURT
STEVENS COUNTY

OCT 15 2008

OCT 15 2008

STATE OF WASHINGTON
STEVENS COUNTY DISTRICT COURT

PAMELA D. DESKINS,)
Petitioner,)
and)
THE ANIMAL CONTROL AUTHORITY OF)
STEVENS COUNTY, STEVENS COUNTY)
SHERIFF'S OFFICE, and to SPOKANIMAL)
CARE)
Respondents.)

Case No.: 08-10-11-12
CV 8-588

DECLARATION OF KATHY FROST
CONCERNING CONDITION OF
DOGS SEIZED FROM PROPERTY
OF PAMELA DESKINS LOCATED AT
5522 WALLBRIDGE RD., DEER
PARK WA 99006

I, KATHY FROST, declare under penalty of perjury of the laws of the State of Washington as follows:

I am over the age of 18 and I am competent to testify in this matter if called upon to be a witness. I make these statements of my own personal knowledge.

1. I have been raising dogs for pleasure, companionship, and as show dogs for 10 years. I have also been involved in dog rescue for over 30 years.
2. I am an unbiased, disinterested party to this matter.

DECLARATION OF KATHY FROST
REGARDING CONDITION OF DOGS

PAGE 1

CARUSO LAW OFFICES
1426 West Francis Avenue
Spokane, WA 99205
(509) 323-5210 Telephone
(509) 326-9438 Facsimile

1 3. I was asked by property owner, Pam Deskins, to photograph and document
2 the condition of all dogs on the property located at 5522 Wallbridge Road,
3 Deer Park, Washington, on October 3, 2008.

4 4. I was also asked to carefully note the procedures being used to seize the
5 dogs by the authorities.

6 5. I was present at the Deskins' property on October 3, 2008, and I observed
7 that the overall condition of the animals that I saw was excellent at the time
8 they were removed from the Deskins' care by Stevens County Sheriff's
9 officers and SpokAnimal C.A.R.E.

10 6. I have been showing and breeding dogs for approximately 10 years, and I
11 own and breed AKC Australian Shepherds and also own a Collie at this time.
12 I owned a Great Pyreneese until recently and have shown for other breeders
13 many different breeds of AKC dogs in conformation, obedience, and agility.

14 7. On October 2, 2008, I visited Spokanimal where the first seven (7) dogs that
15 were removed on October 2, 2008 are contained ^{by} ~~the~~ ^{others} the following day, and noted
16 and photographed that all of those dogs are in excellent flesh with no injuries
17 or health problems obvious.

18 8. My personal notes and photographs, to be provided at the hearing,
19 concerning dogs I did observe carefully and photograph at 5522 Wallbridge
20 Road, Deer Park, on October 3, 2008 are, in my expert opinion and
21 knowledge, as follows.¹

22 9. "Goober," a neutered male, Shepard mix, one of Ms. Deskins' housedogs, is
23 seven (7) years old, "in excellent condition." He is of a heavier build, no
24 injuries observed prior to its seizure;" very friendly demeanor."

10 10. "Gimpy". Young female with limp on front foot; shepherd mix; "good physical
11 condition; no injuries observed" prior to its seizure. This dog is now enclosed

12 ¹ The conditions I report that are underlined and in quotations are conditions that were stated by the
13 animal captors prior to removing them from the property.

1 in the dangerous dog section at SpokAnimal C.A.R.E. (also known as "doggie
2 death row"), due to mishandling by Spokanimal and the Sheriff's Officers in
3 provoking this timid dog.

4 11. "Bruiser". Large neutered Male; Golden Retriever; one of Ms. Deskins' house
5 dogs, 8 years; "excellent condition; heavy build; no injuries observed" prior to
6 its seizure; friendly demeanor.

7 12. "Crook". 1 yr. Female; Weimaraner/Shepherd mix; "excellent condition; shy;
8 no injuries observed" prior to its seizure.

9 13. "Puppy-Puppy". Female; white retriever mix; 4 years; one of Ms. Deskins'
10 house dogs; "excellent condition, stocky; no injuries observed" prior to its
11 seizure.; "friendly."

12 14. "Chuckie". Black Lab female; "beautiful and shiny;" one of Ms. Deskins'
13 housedogs; "excellent condition with a good weight; no injuries observed"
14 prior to its seizure; "friendly."

15 15. "Cindy Lou". 2 year old husky mix female; "excellent condition; stocky; no
16 injuries observed" prior to its seizure; friendly.

17 16. "Bunny". 3 year old female; "beautiful white lab"/Weimaraner mix; "green
18 eyes" one of Ms. Deskins' house dogs, "excellent condition, no injuries
19 observed" prior to its seizure; friendly.

20 17. "Rebel". Young adult male white lab mix; "excellent condition, good weight;"
21 no injuries before capture. During ^{confinement} capture, I observed blood on him, and he 
22 had a swollen mouth with blood staining on coat. His injuries were consistent
23 with injuries sustained during attempted capture by authorities. Prior to
24 capture, he was friendly, on observation at SpokAnimal C.A.R.E., he is now
completely traumatized in his kennel there. Hides in corner, unresponsive,
withdrawn, refuses any human contact.

- 1 18. "Sam" - 12-15 yr. old male Rotweiler with hip Dysplasia; Ms. Deskins' house
2 dog she has had since a puppy; "a little overweight; shiny coat; very sweet
3 temperament; no injuries observed" prior to its seizure.
- 4 19. "Daisy Mae". 4-5 yr old Chocolate Weimaraner female; very sweet and
5 friendly house dog, "excellent condition, shiny coat, good weight; no injuries."
- 6 20. "Rosie". 5-7 year old Golden Retriever female; lactating with "two healthy
7 puppies;" heavier build; "no injuries observed" prior to its seizure, housedog.
- 8 21. "Bob". Young black lab male; "very sweet; excellent condition, shiny coat,
9 good weight; no injuries observed" prior to its seizure.
- 10 22. "Coyote". Young adult female white lab mix; approximate "healthy weight of
11 40 lbs; excellent condition, no injuries observed" prior to its seizure.
- 12 23. "Sparky" 3 year old Weimaraner mix female with 3 puppies; one of Ms.
13 Deskins' house dogs; "lactating and thinner due to the breed," but "has 3 very
14 fat puppies" approximately "2 weeks old; no injuries observed" prior to its
15 seizure.
- 16 24. "Lady". Golden Retriever 3 year old female; "excellent condition, a bit heavy;
17 no injuries observed" prior to its seizure. "Very shy demeanor."
- 18 25. "Mo". Husky 1-year-old male dog, property of another resident of the
19 property. This dog was "in excellent condition" and "good weight with no
20 injuries" prior to its seizure by SpokAnimal. At the time of seizure, I observed
21 that "Mo" was dragged across wood floor with wire loop around his neck,
22 urinating all the way across the floor in Ms. Deskins' house.
- 23 26. "Baxter". Friendly 5-6 year old "very sweet male dog, slightly underweight; no
24 injuries observed" prior to its seizure.
27. "G.W." 1 year old female Golden Retriever due to whelp; water broke during
chase; "beautiful; shy. No injuries observed" prior to its seizure. However,
"appears in a great deal of discomfort" at Spokanimal. (Labor stopped due to

1 trauma of capture, SpokAnimal refused to provide medical attention to this
2 dog on capture and retention at their facility.)

3 28. "Busy" #1. White lab puppy male, brown eyes, about 4 months old; "excellent
4 condition observed" prior to its seizure, "cute and friendly."

5 29. "Busy" #2. White lab puppy male; green eyes; "adorable and friendly,
6 excellent condition" observed prior to its seizure;" no injuries."

7 30. "Busy" #3. Shepherd/lab mix puppy male; green eyes; "darling; good
8 condition observed" prior to its seizure; "friendly."

9 31. "Lady's Puppies". 3 puppies around 5-6 months; "excellent condition; no
10 injuries observed" prior to its seizure. DURING SEIZURE, SPOKANIMAL
11 HANDLERS BROKE OUT THE TEETH OF AT LEAST ONE OF THESE
12 PUPPIES DURING CAPTURE, CAUSING A GREAT DEAL OF BLEEDING. I
13 do not know if SpokAnimal has provided medical treatment for this puppy's in-
14 juries sustained during capture.

15 32. "Beep" (B.P.) "Beautiful" 1-2 year old husky male, "very friendly nice dog,
16 good weight; no injuries" observed prior to its seizure. There was some
17 traumatizing mishandling and provocation during capture caused most likely
18 by using a wire loop around its neck. This dog is now enclosed in the
19 dangerous dog section at SpokAnimal C.A.R.E. (also known as "doggie death
20 row"), due to mishandling and provocation, likely by using the wire loop.

21 33. "Toby" Beautiful yellow lab male; 2 yrs; good weight; extremely traumatized
22 in capturing him and still appears traumatized at Spokanimal; "no injuries
23 observed" prior to its seizure.

24 34. "Huckleberry": Beautiful 2 yr. old Siberian male; no injuries observed prior to
25 attempted seizure; escaped from authorities and property.

26 35. "Tommy". Siberian female 2-3 years old; "excellent shape; very timid; no
27 injuries observed" prior to its seizure.

- 1 36. "Mattie's Baby" - Very pretty 4-5 mo. white lab pup with green eyes, "healthy,
2 no injuries observed" prior to its seizure.
- 3 37. "Shep" - Young German shepherd female. Excellent condition prior to
4 attempted capture by authorities. This dog was shot with dart gun by
5 Spokanimal, provoked over electric fence by 3 officers with sticks and wire
6 loop, shocked on electrified fencing again, ran into the woods off the property.
7 She was abandoned by officers at dark in the rain. They left her without
8 further search. They did not attempt to ascertain her injuries or make any
9 attempt to further locate her.
- 10 38. I took photos of all of the dogs calmly sleeping under the trees, on the country
11 porch and in the yard before officers arrived.
- 12 39. I observed that the sanitation provisions on the property were excellent.
- 13 40. I observed that the dogs were exceedingly well fed.
- 14 41. I observed that the dogs had chairs, sofas, and other furniture to sleep on
15 with blankets on two covered country porches, provided as shelter from the
16 elements.
- 17 42. I observed that the dogs had plenty of fresh water in a plastic pool in the yard.
- 18 43. I observed that the dogs were all getting along just fine immediately before
19 the seizure attempt began.
- 20 44. As soon as the authorities arrived and starting seizing dogs, a sense of panic
21 became obvious as the dogs ran around the property in efforts to avoid
22 seizure.
- 23 45. Having dogs of my own, I noticed the loving and emotional relationship Ms.
24 Deskins had with all her dogs and the trust they appeared to have in her.
46. Mrs. Deskins cooperated in getting many of the dogs into the kennels, she
stated repeatedly to me that she was very concerned that they would be
injured or killed during the seizure. She seemed to also be in a high state of
emotional trauma.

DECLARATION OF KATHY FROST
REGARDING CONDITION OF DOGS

PAGE 6

CARUSO LAW OFFICES
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Spokane, WA 99205
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1 47. These were very healthy, happy, friendly dogs, with no injuries and no signs
2 of abuse prior to their capture. It is my understanding that they "barked" at
3 strangers walking by, or approaching the property, which is typical behavior of
4 dogs.

5 48. The dogs had 4 acres of very fortified fenced pasture and woods to play in.
6 They were not confined to pens or kennels. The fencing was at least 6-7 ft
7 high and electrified on the top and bottom.

8 49. I have now personally witnessed them in confinement at SpokAnimal. I have
9 observed them to be in an extremely unclean environment, in a very small
10 kennel, wallowing in their own urine and feces, and getting no exercise or
11 fresh air at all.

12 50. I have observed the dogs seized by SpokAnimal and Stevens County now
13 held at SpokAnimal C.A.R.E. Several appear to be extremely traumatized,
14 some too frightened to even come to their kennel gates, and some were
15 injured by their captors.

16 51. I have personally witnessed an extraordinary connection between Ms.
17 Deskins and these dogs.

18 52. It is my personal knowledge that these dogs had always been well cared for
19 by Ms. Deskins, and had all the love and companionship that they could ever
20 want.

21 SIGNED AT Deer Park, Washington on the 14 day of October 2008.

22
23 
24 Kathy Frost

25 DECLARATION OF KATHY FROST
26 REGARDING CONDITION OF DOGS

27 PAGE 7

CARUSO LAW OFFICES
1426 West Francis Avenue
Spokane, WA 99205
(509) 323-5210 Telephone
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Exhibit 7

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

STEVENS COUNTY)
)
Vs.) DECLARATION OF PATTY
) SCHOENDORF
PAMELA DESKINS)

I, Patty Schoendorf, declare and swear under penalty and perjury of the laws of the State of Washington as follows:

1. I am over the age of 18 and competent to be a witness if called to do so.
2. I make the following statements of my own personal knowledge as follows.
3. I attended a series of six "dog training" classes at Petco in June or July 2007.
4. These classes were taught by a woman named Amy Strong.
5. During the last class, she brought a dog named "Rocky".
6. She introduced this dog as her personal pet.
7. She also stated that she brought her dog to the last class so that the attendees could see the outcome of a "well-trained" dog.
8. Her dog, immediately upon entering the area where the class was taking place, began snarling and barking and acting aggressively toward the other dogs in the class.
9. Ms. Strong attempted to get her dog under control, but was not successful.

1 10. Her dog continued to act aggressively toward the other dogs in the class.

2 11. I became personally fearful that her dog was going to attack my dog or one of the other
3 smaller dogs in the class.

4 12. Ms. Strong, within minutes, called for help from one of the store employees.

5 13. An employee came and Ms. Strong requested that he take her dog and place it in a back
6 room so it could not come in contact with any of the other dogs in the store.

7 14. I was so upset by this situation; I lost complete faith in the ability of Ms. Strong to be
8 teaching any dogs because she was not able to control the behavior of her own dog.

9 15. Her dog was aggressive and dangerous and should not have been brought to the class
10 where there was the potential of harming another dog in the store.

11 16. At the time of the training classes I had never met Pam Deskins or had any personal
12 knowledge of her.

13 17. At the time of the training classes I had absolutely know knowledge of where Amy
14 Strong lived or her relationship with the Defendant Pamela Deskins.

15 18. I distinctly remember seeing a news broadcast in the spring of 2008 regarding a dog
16 named "Winnie" who had been attacked.

17 19. I remember it distinctly because Amy Strong gave an interview to the news, and I
18 recognized her on television during the interview.

19 20. I remember thinking that it must have been her dog who attached Winnie, since I
20 remember how vicious her dog became with the dogs in the training class the year
21 before.

22 I declare under penalty of perjury under the laws of the state of Washington that the
23 foregoing is true and correct.

24 Signed at Spokane, Washington on June 28, 2010.


Patty Schoendorf