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WASHINGTON STATE
SUPREME COURT

Supreme Court No.: 95138-1
Court of Appeals No.: 74934-0-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LINDA RENAE CLARK,

Petitioner.

PETITION FOR REVIEW

LINDA RENAE CLARK
ProSe Petitioner

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FILED AS
ATTACHMENT TO EMAIL

 ORIGINAL

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This Court should grant review in the substantial public interest because the Court of Appeals erred in numerous ways that in essence substantiate Ms. Clark’s claim that trial counsel was ineffective and in violation of her Sixth Amendment right.

Ms. Clark received ineffective assistance of counsel where counsel failed to submit documentation supporting one of the elements of the affirmative defense of necessity or in the alternative failed to argue that trial counsel was ineffective for failing to provide these documents to the state during discovery or to present them during trial or in the alternative failed to show conflict counsel was ineffective for failing to show that Ms. Clark’s pro se motion for a new trial was deficient in that she failed to distinguish between the general denial of the charge of burglary and the defense of necessity pertaining to the remaining charges all of which violated Ms. Clark’s rights under U.S. Const. amend. 6.

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A. IDENTITY OF THE PETITIONER AND THE DECISION BELOW

Linda Renae Clark, (hereinafter Petitioner), asks this Honorable Court to grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in *State v. Linda Renae Clark*, No. 74934-0-1, filed September 25, 2017. A copy of the opinion is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

- i. The Court of Appeals erred in relying on the trial court's ruling concerning the witness list.
- ii. The Court of Appeals erred in its assertion that Petitioner did not know if trial counsel had interviewed any of the potential necessity defense witnesses.
- iii. The Court of Appeals erred in relying on Mr. Terrillion's email communicating the fact he had reasonably completed his due diligence in this case when Ms. Jennifer Rancourt, the conflict attorney, in this matter on the record during the March 18, 2016 hearing for new trial indicated to the court Mr. Terrillion did not complete a proper investigation of this case and in its assertion that Mr. Terrillion based his decision not to pursue the defense of necessity on the credibility of Officers Holmes and Sheahan-Lee.
- iv. The Court of Appeals erred in asserting Petitioner was not entitled to a necessity instruction because no witness testified that the dogs were suffering harm, despite trial counsel's failure to call a single witness.
- v. Petitioner received ineffective assistance of counsel where appellate counsel failed to properly file documentary evidence with the Court of Appeals supporting Petitioner's claims she intervened on behalf of the dogs in this matter because law enforcement, animal control, and town officials refused to do so and further because law enforcement proactively interfered with humane society officials who could have legally come to the aid of the dogs.
- vi. Or, in the alternative, Petitioner received ineffective assistance of counsel where appellate counsel failed to properly argue that trial counsel was ineffective for failing to provide documentary evidence supporting an element of the defense of necessity to the state or during trial; and trial counsel was ineffective for failing to mitigate the burglary charge once

petitioner informed him she did not enter the gate or property as alleged by the state.

- vii. Or, in the alternative, Petitioner received ineffective assistance of counsel where appellate counsel failed to properly argue that conflict counsel was ineffective for failing to argue that trial counsel was ineffective for failing to provide documentary evidence supporting an element of the defense of necessity which shows a good faith effort to utilize legal alternatives before intervening on behalf of Zalo and Ellie; and for failing to distinguish between Petitioner's general denial of the charge of burglary and the defense of necessity pertaining to the remaining charges all of which violated Petitioner's Sixth Amendment rights.

C. STATEMENT OF THE CASE

Petitioner, Linda Renae Clark, was charged with second degree burglary and taking a pet and animal.

Petitioner has been a dog walker and pet sitter in the town of La Conner, Washington since September 2013. Her love for all animals, but especially dogs and their special relationship with her during her upbringing and adult years in a family heavily involved in Mormonism, a male-dominated/female-debasing religious cult headquartered in Salt Lake City, Utah, is incredibly deep. Petitioner's relationship with animals began when she was a small child and continues to this day. She has said on numerous occasions "I love animals because of their pure hearts. They don't lie or gossip about you. They don't cheat you out of anything. They are reliable and trustworthy. People on the other hand..."

In about October 2013, Petitioner began patronizing the coffee shop, Caffe Jubilee, run by the Scotts, Frank and Rebecca, the owners of Zalo and Ellie the two dogs at issue in this matter. Petitioner and Rebecca became acquainted. In about December 2014 the Scotts asked if Petitioner would walk Zalo and Ellie. According to Frank Scott, "we need to get them out of the garage." It wasn't until February 2014 that those services

began. Petitioner knew the Scotts were unable to pay for her services at \$10 per hour so she offered to walk Zalo and Ellie for trade in the form of two cups of coffee and one or two baked goods per week.

The first time Petitioner walked Zalo and Ellie, the stench radiating from them nearly knocked her over. Their eyes were glazed over and they both frantically drank from the puddles on their path. The second day Petitioner walked Zalo and Ellie she gave them a bath and gave Rebecca some clean sheets to put over their beds.

For the first two weeks Frank met Petitioner at their garage where he retrieved Zalo and Ellie so Petitioner could walk them. At first Petitioner walked Zalo and Ellie once a day, but by the end of the first two weeks she asked Frank if she could walk them twice a day, realizing that was probably the only opportunity they were going to get out of the garage. Frank agreed.

After about the second week, Frank failed to meet Petitioner at the garage so Petitioner checked to see if perhaps he left the garage door open. It was unlocked so Petitioner walked in to retrieve Zalo and Ellie. She could not believe what she saw or smelled. There was feces and urine all over the garage. There was one dog bed completely saturated in urine. The dogs had less than 10 square feet of living space. There was no light and no heat source. Petitioner vowed at that point she was going to do what she could to help Zalo and Ellie and hopefully indirectly the Scotts.

Petitioner continued walking Zalo and Ellie twice a day until March 2013 when she sat with Frank on the steps of the Catholic Church in La Conner to ask how she could help Zalo and Ellie and the Scott family. She offered to walk Zalo and Ellie three times a day and when Frank agreed, she asked how late she could come take them out for their

last walk of the day. Frank indicated the most important thing is that they get out of the garage on a regular basis and as long as it wasn't unreasonably late, e.g. 11:00 p.m. he had no objection to a late night walk.

Petitioner cleaned up Zalo and Ellie's living environment. She brought them clean and dry bedding. She arranged to take them to the local groomer, which the Scotts reimbursed her for.

In April 2013 she asked Frank if she could build an enclosure so that Zalo and Ellie could exit the garage without human oversight. Frank agreed it was a good idea, but he couldn't afford the supplies. Petitioner paid for the supplies and built the enclosure.

The relationship with the Scotts seemed to grow to one of appreciation and trust until the night of May 31st. Zalo had been in enormous distress during the night. Petitioner arrived for the morning walk on June 1st to find the living space of Zalo and Ellie covered in feces. Zalo had diarrhea all night and nothing had been done to assist him. Petitioner is confident by the appearance of the garage floor that Zalo was in such distress that the Scotts could not have reasonably not known about it.

The Scotts made no effort to contact Petitioner about the condition of the garage or Zalo's diarrhea, confirming Petitioner's belief they hadn't come to his aide the night before nor were they letting the dogs out in the morning to relieve themselves before her arrival.

As Petitioner does with all of her clients and as she had done in the past with the Scotts, she left a note for them informing them that Zalo had had diarrhea the night before and could they please leave the garage door open for him in the event it hadn't

completely cleared during the daytime hours. This seemed to have embarrassed the Scotts.

On or about June 12, 2014 the Scotts terminated Petitioner's services by calling the sheriff on her while she was out walking Zalo and Ellie. The only time prior to this the Scotts had communicated a need to change her routine was the week prior to June 12, 2014 at which time Petitioner agreed to the change of routine.

Fast forward to September 2014. Petitioner had seen Zalo and Ellie only once from June 12, 2014 when the Scott children had them in the school yard. Based on this occurrence she hoped and prayed her example of how to reasonably care for our k9 companions had made an impact on the Scotts, however in September 2014 when she found Zalo running loose in town she realized nothing had made an impact on them. Zalo was in such terrible condition Petitioner had to look at his right foot for the scars she had come to know as his.

During the four months she cared for Zalo and Ellie she developed a very strong bond with them. She promised them she would do whatever she could so that they did not find themselves living in those horrible conditions again. When she found Zalo running loose she began a campaign to insure they were properly being cared for, especially with the rapidly approaching winter weather.

Realizing any attempts to contact animal control would be met with silence as they had the previous summer Petitioner sent two letters to John Doyle, the administrator for the town of La Conner and Mr. Scott's employer as the town's code enforcement officer. Mr. Doyle forwarded these letters along with the enclosures to Officer Jennifer Sheahan-Lee with the Skagit County Sheriff's Office who served in the La Conner

detachment office. Officer Sheahan-Lee made no attempts to look in on the conditions of Zalo and Ellie and lack of protection from the rapidly approaching winter elements, nor did she contact Petitioner about her concerns.

After receiving no response by the given deadline from Mr. Doyle, Petitioner reached out to Janine Ceja, the Director of Skagit County Humane Society. Ms. Ceja reached out to Emily Diaz, the animal control officer for the Skagit County Sheriff's Office who was told there was little she could do as this fell under the jurisdiction of the La Conner detachment officers. Ms. Ceja then called the La Conner detachment office who informed Ms. Ceja her concerns were ill-advised.

On November 3, 2014 Petitioner sent a letter to Ms. Ceja, Officer Sheahan-Lee, Officer Diaz, John Doyle, Mayor Ramon Hayes (town of La Conner), as well as the Scotts concerning the condition of Zalo and Ellie. None of the governmental officials contacted Petitioner about her concerns that the dogs did not have proper protection or warmth from the winter weather, especially considering their senior ages, Zalo's medical condition, and Ellie's low percentage of hair and body fat. Nor did anyone visit the home of the Scotts to insure her concerns were unfounded.

On November 6, 2014, after a night of rainy, windy, cold weather and after crying all night Petitioner came to the aide of Zalo and Ellie.

Petitioner was unaware charges were filed against her. On or about November 12, 2014 Officer Sheahan-Lee had a discussion with Petitioner during which she said "you really do love animals, how can we support you." At no time did Officer Sheahan-Lee inform Petitioner she had requested the prosecutor's office file charges against her.

The Summons in this matter was not properly served by the prosecutor's office in this matter leading to Ms. Clark's arrest for failing to appear at her arraignment hearing in January 2015. Prior to meeting with her public defender, Mr. Dean Terrillion, Ms. Clark sent his office voluminous documents and emails informing of her desire to utilize the defense of necessity.

Mr. Terrillion failed to properly investigate this matter making him ill-equipped and uninformed in his decision to forego using the affirmative defense of necessity, instead arguing the dogs escaped on their own. Specifically, because Mr. Terrillion failed to conduct an investigation including requesting that his private investigator go to the Scott home, Mr. Terrillion had no idea the gate Petitioner admitted to entering was a public access gate. Not the "gate" to the enclosure she built for Zalo and Ellie. Not having this information about the public access gate, Mr. Terrillion was ill-advised in his decision about a necessity defense because the harm committed was not burglary as charged.

F. ARGUMENT

1. The Court of Appeals erred in relying on the trial court's ruling concerning the witness list.

In its ruling, the Court of Appeals stated:

The trial court denied the motion. The trial court noted:

There's been much focus placed on the witness list that was presented to [defense counsel] by Ms. Clark. Sure, you would have liked to see all of those probably talked to by [defense counsel] or his staff, but it seems like the whole focus on that was they would only provide character evidence, and generally that's not admissible in any event. *And if it was going to go to the necessity defense, I didn't hear that*, and the necessity defense wasn't going to be a viable one in any event, particularly since the decision not to testify, I think that -- by the defendant -- certainly

precluded any -- any introduction of any sort of evidence relative to a necessity defense.¹

Page 16, line 22 (Motion for New Trial Hearing March 18, 2016)

Ms. Kaholokula: And an overview of it, they would not be able to assist her in *establishing necessity*. I believe that most of these witnesses are character witnesses or hearsay witnesses or impugning the victims in this case. So I don't think that they would have established the *necessity defense* for Ms. Clark. [Emphasis added.]

*** (transition from opening statements to sworn testimony)

Page 17, line 24

Ms. Rancourt: Good afternoon, Ms. Clark. The prosecutor has made -- just made reference -- ...to a list of witnesses. Did you provide that list of witnesses to Mr. Terrillion?

Ms. Clark: I did.

The Court of Appeals based its decision on the trial court's relying on the state's argument that the witness list consisted mostly of "character witnesses or hearsay witnesses or impugning the victims in this case". Whether this assertion by the state was intentionally misleading is unknown, but the trial court failed to independently review the witness list prior to making its ruling. An independent evaluation by the trial court and the Court of Appeals would have revealed there were important witnesses who would have supported Petitioner's claim she made several attempts to get animal control, law enforcement, town officials, and the humane society involved, but all of these attempts were thwarted by law enforcement's failure to follow up or contact Petitioner regarding her concerns. This list also confirms Petitioner sent letters to many of these witnesses seeking their assistance on behalf of Zalo and Ellie.

Please refer to the below portions of the witness list provided to Mr. Terrillion in January 2015 and which was submitted by the state during the hearing for a new trial on

¹ I must state here that the decision not to testify was based on Mr. Terrillion's decision to pursue a "dogs escaped" theory. If I had testified under this theory I would likely have been committing perjury.

March 18, 2016. Some have been edited for length, but the entire document was filed with the Appeal Brief by appellate counsel. In addition, if trial counsel had taken even a moment to discuss this list with petitioner it is likely much more valuable information would have come out, e.g. Candice and Trevor McGhee lived next door to the Scotts on the back side. They likely would have testified that they saw the “man door” to the garage open 24 hours a day and that Zalo and Ellie were out at all hours of the night and not sleeping in the house:

Candice McGhee	La Conner Business Owner/Neighbor of Frank and Becky Scott/daughter is playmate of Juliette Scott	She will testify to the fact that <ul style="list-style-type: none"> she rarely, if ever, saw the Scott k-9 companions outside of the garage until I started caring for them; the numerous altercations she and her family have had with the Scotts concerning their daughter, Juliette; why she chose not to intervene on behalf of the Scotts’ dogs as a business owner;
Trevor McGhee	La Conner Business Owner/Neighbor of Frank and Becky Scott/daughter is playmate of Juliette Scott	He will testify to the fact that <ul style="list-style-type: none"> he rarely, if ever, saw the Scott k-9 companions outside of the garage until I started caring for them; the numerous altercations he and his family have had with the Scotts concerning their daughter, Juliette; why he chose not to intervene on behalf of the Scotts’ dogs as a business owner; He will also testify as to the “ruthlessness” of the Scotts, which he informed me of on or about June 19, 2014 after providing him with a copy of my letter to “La Conner Friends”.
Robyn Bradley	Estranged Friend of Rebecca “Becky” Scott/Business owner in La Conner/Former employee of Caffè Jubilee and Frank and Becky Scott	She will testify as to <ul style="list-style-type: none"> her dealings with the Scotts as a friend, employee, and business owner in the town of La Conner; why she chose not to intervene on behalf of the Scotts’ dogs as a business owner and friend of the Scotts.
Marion	Dog Groomer	She will testify as to the condition of Zalo and Ellie both times she groomed them (March/May of 2014)
Ron	Neighbor of the Scotts/Business owner in La Conner	He will testify to <ul style="list-style-type: none"> what he saw at the Scott household with regard to the Scott k-9 companions before I started walking them, during, and after; why he chose not to intervene on behalf of

		the Scotts' dogs as a business owner.
Eleanor Harbord	Former Friend/Former Client	<p>She will likely testify that</p> <ul style="list-style-type: none"> to the fact that Frank Scott said more than once in her former store "Wags and Rags" that "he liked their cats, but wished he could get rid of the dogs"; that I used part of my trade income for rain coats for Zalo and Ellie; why she chose not to intervene on behalf of the Scotts' dogs as a business owner; in November 2014 as to how distraught I was over the fact that neither the animal control officer, sheriff, or anyone in town who know of Zalo and Ellie's circumstances did anything to help them;
John Doyle	La Conner Town Administrator/Employer of Frank Scott	<p>He will likely testify that</p> <ul style="list-style-type: none"> <i>he received correspondence from me on behalf of Zalo and Ellie in September 2014 which he forwarded to Officer Sheahan-Lee with the Skagit County Sheriff's Office;</i>
Ramon Hayes	Mayor of the Town of La Conner/Business owner in Town of La Conner/Father of Victoria Hayes who also walks dogs in La Conner	<p>He will testify as to</p> <ul style="list-style-type: none"> why he chose not to intervene when informed of the dangerous conditions Mr. Scott left his k-9 companions in during the early part of winter of 2014 <i>after receiving correspondence from me on November 3, 2014 [added];</i>
Janine Ceja	Director, Skagit County Humane Society	<p>She will testify as to</p> <ul style="list-style-type: none"> <i>my correspondence to her (October 2014 and November 2014), our telephone conversation concerning her discussions with animal control officer, Emily Diaz, and an officer with the La Conner Department of the Skagit County Sheriff's Office (October 2014);</i>
Officer Sheahan-Lee	Officer of Skagit County Sheriff's Office	<p>She will testify whether:</p> <ul style="list-style-type: none"> her officers followed-up my complaints about the Scotts' treatment of their animals on or about June 13, 2014 and the dates of those follow-ups; that Emily Diaz informed her and her officers about my complaints about the Scotts' treatment of their dogs; that her department followed up on the condition of the dogs after my call to 911 after finding Zalo wandering loose in September 2014; <i>whether John Doyle requested that she follow-up on the conditions of</i>

		<p><i>the dogs after receiving my letters in September 2014, the date(s) and report containing her actions and observations;</i></p> <ul style="list-style-type: none"> • that she followed-up on the dogs after being contacted by Janine Ceja with the Skagit County Humane Society, the date(s) and report containing her actions and observations; • <i>that she followed-up on the dogs after receiving my letter dated November 3, 2014, the date(s) and report;</i> • At no time during my communications with John Doyle, the Humane Society, Officer Diaz, or personally did Officer Sheahan-Lee communicate with me pertaining to the conditions of Zalo and Ellie. Her response to my efforts on behalf of Zalo and Ellie was silence until November 6th AFTER I took the dogs;
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2. The Court of Appeals erred in its assertion that Petitioner did not know if trial counsel had interviewed any of the potential necessity defense witnesses.

As the Court stated:

At a hearing on the motion, Clark testified that she provided the list of witnesses to defense counsel, but admitted she did not know if defense counsel had contacted them...

However, if you look at the transcript from the Motion for New Trial held on March 18, 2016:

Page 18, line 15:

Ms. Rancourt: And did you provide Mr. Terrillion with a list of witnesses that you wanted him to speak with about what you believed to be your defense?

Ms. Clark: I did.

Ms. Rancourt: And did you provide summaries of what you thought they would testify to?

Ms. Clark: Summary is a good word for it, yes.

Ms. Rancourt: And did you provide contact information for those persons?

Ms. Clark: I believe that was included with the list, yes.

Ms. Rancourt: Okay. And did you ask Mr. Terrillion whether he had employed the services of an investigator?

Ms. Clark: I did.

Ms. Rancourt: And did you ask him to have the investigator contact those people?

Ms. Clark: I did.

Ms. Rancourt: To your knowledge, were any of those – well, first off, approximately how many people did you ask him to interview?

Ms. Clark: The list is extensive. As far as the witnesses that I included, I did indicate that there were some that were probably more valuable than others; that is greater than seven, less than ten, probably.

Ms. Rancourt: Okay. And to your knowledge – so you had – just to be clear, you had prioritized who you wanted him to speak with?

Ms. Clark: After I did – after I gave him the list, yes.

Ms. Rancourt: I'm sorry if I already asked this. When did you give him the list?

Ms. Clark: I gave it to him before the – before the first time that we met. So it was on or around January 23rd.

Ms. Rancourt: And to your knowledge were any of those individuals contacted?

Ms. Clark: To my knowledge, no.

Ms. Rancourt: And when I say contacted, I mean by your defense counsel.

Ms. Clark: No.

Ms. Rancourt: Were any of those persons contacted by – to your knowledge, were any of those persons contacted by the defense investigator in this case?

Ms. Clark: Not to my knowledge.

Ms. Rancourt: At any point did you ask Mr. Terrillion not to interview those people?

Ms. Clark: No.

[emphasis added.]

There is a clear difference between not knowing whether something has occurred and being confident something has not occurred. As indicated above the Court of Appeals erred in stating I didn't know whether trial counsel had contacted any of the witnesses on the list. However, as can be seen by the transcript I was confident trial counsel had not contacted any of these witnesses.

3. The Court of Appeals erred in relying on Mr. Terrillion's email communicating the fact he had reasonably completed his due diligence in this case when Ms. Jennifer Rancourt, the conflict attorney, in this matter on the record during the March 18, 2016 hearing for new trial indicated to the court Mr. Terrillion did not complete a proper investigation of this case.

In its decision, the trial court stated that:

Substitute counsel provided an affidavit stating that she reviewed defense counsel's case file and "[t]here was no indication in the file that any of the witnesses that Ms. Clark provided to counsel were interviewed or contacted in any way by defense counsel."

However, later on the court states:

Clark contends that defense counsel was ineffective for failing to present evidence to support a necessity defense, including her own testimony and the testimony of the witnesses she provided him.

We disagree. First, the record shows that defense counsel did, in fact, investigate the possibility of a necessity defense. Approximately two months prior to trial, defense counsel sent Clark a lengthy e-mail explaining why he did not believe a necessity defense was a good strategy.

Defense counsel stated:

In my expert legal opinion, as a matter of law, the defense of necessity is not available under the facts of your case. Further, even if the defense were available, there is not sufficient evidence to raise it despite your anticipated testimony about the objective events preceding your taking the dogs. Your personal belief that the dogs needed to be rescued will not be sufficient considering the evidence the State has that the situation had been investigated by law enforcement.

However as the Court of Appeals noted above and if you look at the transcript from the Motion for New Trial held on March 18, 2016, my conflict counsel, Jennifer Rancourt, who is a licensed member of the Washington State bar stated:

Page 12, line 4 – 25, page 13, line 1:

Ms. Rancourt: In addition to that, Your Honor, Ms. Clark had made very clear to Mr. Terrillion throughout their communications, and again the record has got plenty of references to this in the previous pleadings, that she wanted to pursue a necessity defense in this case.

Now, ultimately the strategy decision lies with the attorney about what strategy is pursued at trial. However, an attorney does owe a duty to investigate. After the – I think that defense duties were clarified a little bit with the ANJ case which said, you know, once you have some sort of information that there is a defense that exists, you do have an obligation to at least look into that possibility.

I was provided with a copy of the defense counsel's previous – his entire file. I got a copy of the entire file. There was no indication whatsoever that he interviewed any of the multiple, multiple witnesses that Ms. Clark provided with him – provided to him. And I did indicate that in my materials, that I, as an officer of the court, have reviewed that file and did not find any indication that there was effective investigation of her claims.

Again, I think that falls below the level of care that's appropriate. I think that she deserves a new trial.

In *State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987), this Court stated:

...the presumption of counsel's competence can be overcome by a showing, among other things, that counsel failed to conduct appropriate investigations. *State v. Jury*, 19 Wn.App. 256, 263, 576 P.2d 1302 (1978)

The Court went on to state that:

It is clear that defense counsel weighed Clark's credibility against the credibility of the investigating officers and determined that a necessity defense would not be successful. And, none of Clark's proposed witnesses appear to have had any first-hand knowledge of the dogs' living conditions.

The Scotts contacted the Skagit County Sheriff's Office. Deputy Brad Holmes came to the Scotts' house and observed that both dogs appeared to be in good health for their age and their living conditions were appropriate.

The testimony provided by the officers in question, Officers Holmes and Sheahan-Lee confirm there was no investigation performed by law enforcement at any time from September 2014 and November 2014, the time period in question. In fact, Officer Holmes testified he had been to the home of the Scotts only once, in June 2014. Officer Sheahan-Lee testified she saw the dogs walking around town in October 2014, but there was no testimony about going to the house of the Scotts to conduct an investigation into Petitioner's claims they did not have proper protection and warmth from the winter elements.

I direct your attention to the fact that Officer Holmes went to the Scotts' home only once on or about June 12, 2014 -- after I had cleaned up the dogs and their living environment and had been caring for them for four months. The

incident in question occurred on November 6, 2014 and concerned the dogs' old age, seriously ill health, and lack of proper protection from the winter elements.

DIRECT EXAMINATION OF OFFICER HOLMES

Page 128, lines 12 – 21:

Ms. Kaholokula: Okay. Did you hold the position of patrol deputy back in, let's say, 2014?

Officer Holmes: Yes, I did.

Ms. Kaholokula: And did part of your duties include responding to calls in La Conner?

Officer Holmes: Yes, they did.

Ms. Kaholokula: I'm going to direct your attention to June 12th, 2014, at about 8:50 p.m. Did you receive a call from the Scotts?

Officer Holmes: Yeah it was closer to, it was about 8:50 p.m.

CROSS-EXAMINATION OF OFFICER HOLMES

Page 133, line 9

Mr. Terrillion: Officer, when you contacted her, what did she say to you in response to your instructions to not go there?

Officer Holmes: She originally told me that she needed to go there because the dogs needed her.

Mr. Terrillion: Did she say why?

Officer Holmes: She said that the dogs were not being cared for, and that she had to go and comb their manged hair and ice their legs for I believe it was arthritis.

Mr. Terrillion: So after this contact, did you do any followup, did you go back and visit the dogs or the Scotts afterwards?

Officer Holmes: I believe I went back and told them that I had contacted her and trespassed her, *but I don't – I didn't go back after this date [June 12, 2014], no.* [emphasis and date added]

Mr. Terrillion: Did she make you promise that someone would –

Question objected to by Ms. Kaholokula.

And with regard to Officer Sheahan-Lee, her testimony supports the fact that one of the dogs was sick enough to need medication and the Scotts were very concerned about that. In addition, her testimony that the dogs were in good health, she had seen them around the town of La Conner as recent as October 2014, and that their living environment was adequate in light of the cold, winter conditions is contradicted by both her testimony and the testimony of the Scotts.

DIRECT EXAMINATION OF OFFICER SHEAHAN-LEE

Page 142 – line 16:

Ms. Kaholokula: And did they have any other information to provide other than that the dogs were missing?

Officer Sheahan-Lee: Becky was – had with her some medication, very concerned, because Zalo, the German Shepherd, needed medication.

Page 151, line 3:

Ms. Kaholokula: And so that door that they're looking out of, is that the garage?

Officer Sheahan-Lee: That's the man door out of the garage.

Ms. Kaholokula: Do you know whether that door was usually kept open or closed?

Officer Sheahan-Lee: I – it was kept – my understanding was it was kept open on a regular basis to give the dogs access from the garage to the – what – all I'm going to refer to is a dog run...

CROSS-EXAMINATION OF OFFICER SHEAHAN-LEE

Page 159, line 11:

Mr. Terrillion: Would you say that the garage had been winterized by November 6th? Was it open? Was there plastic over the openings? Was there – was it winterized? Was the garage sealed from the outdoor elements?

Officer Sheahan-Lee: It had attached doors. It was a regular, attached garage to a home.

Mr. Terrillion: No separate heat source?

Officer Sheahan-Lee: No, I don't recall a separate heat source in the garage.

Mr. Terrillion: Did you state, as far as you knew, that the door to the garage was open all the time?

Officer Sheahan-Lee: The man door, when – so when I'm referring to the man door, that's your standard door versus the garage doors. So the man door was open to give the dogs access to the dog run.

DIRECT EXAMINATION OF OFFICER SHEAHAN-LEE

Page 157, line 13:

Ms. Kaholokula: Prior to retrieving the dogs from Ms. Clark, had you had any prior contact with the dogs in terms of having seen them?

Officer Sheahan-Lee: Yes.

Ms. Kaholokula: Is that just from being around town?

Officer Sheahan-Lee: Right

Ms. Kaholokula: Did you notice whether they appeared to be neglected or in need of any care?

Officer Sheahan-Lee: No.

Ms. Kaholokula: Did they appear to be healthy enough to you?

Officer Sheahan-Lee: Yes.

Ms. Kaholokula: But they were older?

Officer Sheahan-Lee: They are older dogs.

Ms. Kaholokula: And that was obvious from looking at them?

Officer Sheahan-Lee: Yes.

Ms. Kaholokula: Had you seen the dogs more than once over the time that you were in La Conner?

Officer Sheahan-Lee: Yes, we have a lot of dogs in La Conner, but yes.

CROSS-EXAMINATION OF OFFICER SHEAHAN-LEE

Page 158, line 17:

Mr. Terrillion: Well, how long prior to this was it that you saw the dogs with Ms. Clark and they looked healthy?

Officer Sheahan-Lee: Well, I seen the dogs with Ms. Clark would have been in like May, but I had seen the dogs also since May.

Mr. Terrillion: But prior to November 6th.

Officer Sheahan-Lee: Probably twice, at least, *October being one of them.* [Emphasis added.]

Mr. Terrillion: And they always looked healthy.

Officer Sheahan-Lee: For – yes.

4. The Court of Appeals erred in asserting Petitioner was not entitled to a necessity instruction because no witness testified that the dogs were suffering harm, despite trial counsel's failure to call a single witness.

Referring again to the list of witnesses provided above, this is exactly why Petitioner filed a motion for new trial based on trial counsel's ineffective assistance of counsel. Trial counsel failed to submit a witness list to the court, failed to subpoena a single witness, and was ill-prepared to cross-examine the state's witnesses.

Trial counsel could have subpoenaed Officer Sheahan-Lee to question her about whether she had investigated Petitioner's complaints that the dogs were suffering due to the winter elements, yet failed to do so. When the state asked Officer Sheahan-Lee (as indicated above) whether she had seen the dogs she answered only that she had seen them walking around town, not in their living environment. Further, she answered she saw them at least once in October 2014. This testimony is contradicted by the testimony of the Scotts, yet trial counsel did nothing to even attempt to show through Officer Sheahan-Lee's testimony and failure to act and investigate that Petitioner intervened on behalf of Zalo and Ellie because she felt she had no choice.

DIRECT EXAMINATION OF FRANK SCOTT

Page 181, line 6:

Ms. Kaholokula: Now, about a month prior to the November incident, did you find out that your older dog, Zalo, was having health problems?

Mr. Scott: Yes.

Ms. Kaholokula: What was the care regimen that the dog was under?

Mr. Scott: He was on medication, and he definitely didn't want to be moving around. He was definitely ill.

Ms. Kaholokula: Was walking part of his regimen at all?

Mr. Scott: No. And he did not want to walk. I mean, he would lay down and – yeah, he had, I believe – we weren't going to spend thousands to determine what kind of cancer, but he was ill.

Ms. Kaholokula: And from your perspective he was toward the end of his life at that point?

Mr. Scott: Yes.

Ms. Kaholokula: What ultimately happened to Zalo?

Mr. Scott: We put him down the next day, or within 48 hours [November 8, 2017] Date added.

DIRECT EXAMINATION OF REBECCA SCOTT

Page 214, line 22:

Ms. Kaholokula: And would Zalo have had her – his collar on at all for any reason that night?

Mr. Scott: No, he had not had it on for quite some time because we weren't walking him.

5. Petitioner received ineffective assistance of appellate counsel where:

- a. appellate counsel failed to properly file documentary evidence with the Court of Appeals supporting Petitioner's claims she intervened on behalf of the dogs in this matter because law enforcement, animal control, and town officials refused to do so and further because law enforcement proactively interfered with humane society officials who could have legally come to the aid of the dogs.**

To demonstrate ineffective assistance of counsel, a petitioner must make two showings: (1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances as guaranteed by the Sixth Amendment; and (2) defense counsel's deficient representation prejudiced the defendant, i.e. there is a reasonable probability that, except for counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (applying the two-prong test in *Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2015, 80 L.Ed.2d 674 (1984). Competency of counsel is determined based upon the entire record below. *State v.*

White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing *State v. Gilmore*, 76 Wn.2d 293, 456 P.2d 344 (1969)).

One of the elements of a necessity defense is evidence that the petitioner made a good faith effort to first pursue legal alternatives. As the Court of Appeals stated:

And, there was no evidence that Clark had made a good faith effort to first pursue legal alternatives, such as notifying animal control or local animal welfare organizations. [Emphasis Added.]

I direct you to Appendix B which comprises letters to John Doyle, Town Administrator for La Conner, Washington who forwarded my letters of concern to Officer Sheahan-Lee as reflected in a police report dated on or about October 9, 2014. In addition, petitioner's letters to the director of the Skagit County Humane Society, Janine Ceja, on October 13, 2014 and November 3, 2014 (which was also sent to animal control, the sheriff's office, and the Town of La Conner – no one contacted me), an email dated November 5, 2014, and a transcript that I typed during my telephone conversation with Ms. Ceja near the end of October 2014. This transcript shows law enforcement was making no effort to take my concerns seriously. In fact, they were assuring those who could legally come to the aid of Zalo and Ellie that there were no issues or concerns with their health or living environment despite not once having gone to the residence.

Appellate counsel should have provided these letters in support of Petitioner's appeal that her trial counsel should have pursued a defense of necessity, or at the very least appellate counsel should have made a proactive

attempt to direct the Court of Appeals to reference of the letters on the list of potential witnesses.

- b. Or, in the alternative, Petitioner received ineffective assistance of counsel where appellate counsel failed to properly argue that trial counsel was ineffective for failing to provide documentary evidence supporting an element of the defense of necessity to the state or during trial; and trial counsel was ineffective for failing to mitigate the burglary charge once petitioner informed him she did not enter the gate or property as alleged by the state and the Scotts.**

The letters attached as Appendix B were readily available to trial counsel and were provided to him. Two of them had been recorded in the Skagit County Sheriff's Office database by Officer Sheahan-Lee. The transcript of the telephone call with Janine Ceja, the director of Skagit County Humane Society, was also provided to Mr. Terrillion. Further, even if Mr. Terrillion overlooked these letters they are clearly mentioned in the summary provided for these witnesses on the list provided to Mr. Terrillion and ruled by the trial court as mere character.

Appellate counsel had a duty to argue that failing to review these letters or to even acknowledge they existed served as yet another area of ineffective assistance of trial counsel and the letters should have been submitted with the Appeal Brief to establish Petitioner's efforts to do everything she reasonably could before feeling as though she had no other choice other than to intervene on Zalo and Ellie's behalf.

Further, petitioner informed appellate counsel numerous times that she had informed trial counsel numerous times she had not entered the gate and property of the Scotts as charged and argued by the state and as testified to by the Scotts. Petitioner admitted to entering a public access gate leading to a common or public area off of the Scotts' property.

Without the charge of burglary, Petitioner's defense of necessity claim becomes even stronger because the harm that was done is considerably lesser and the test for the trial court giving the instruction to the jury as such sways toward the petitioner. Appellate counsel should have argued this in his appeal brief.

c. Or, in the alternative, Petitioner received ineffective assistance of counsel where appellate counsel failed to properly argue that conflict counsel was ineffective for failing to argue that trial counsel was ineffective for failing to provide documentary evidence supporting an element of the defense of necessity; and for failing to distinguish between Petitioner's general denial of the charge of burglary and the defense of necessity pertaining to the remaining charges

all of which violated Petitioner's Sixth Amendment rights.

A claim of error may be raised for the first time on appeal if it is a "manifest error affecting a constitutional right". RAP 2.5(a)(3); *State v. Scott*, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988). As this Court recognized in *Scott*, constitutional errors are treated specially under RAP 2.5(a) because they often result in serious injustice to the accused and may adversely affect public perceptions of the fairness and integrity of judicial proceedings. *Scott*, 110 Wn.2d at 686-87.

Petitioner gave copies of the letters attached to Ms. Rancourt during their initial discussion concerning this case. Yet, Ms. Rancourt failed to provide them to the court in the filing of her Motion for a New Trial. A good faith effort to involve law enforcement, animal control, and an animal welfare organization would have gone a long way in swaying the trial court to order a new trial for Petitioner, especially considering the Court of Appeals ruled that because

Petitioner failed to show any such good faith effort that she was not entitled to a necessity defense.

And, there was no evidence that Clark had made a good faith effort to first pursue legal alternatives, such as notifying animal control or local animal welfare organizations. [Emphasis Added.]

Further, Petitioner informed Ms. Rancourt, as well as Mr. Terrillion, numerous times she did not enter the gate as alleged by the state as well and the Scotts. In order for the state to comply with the elements for the charge of burglary in the second degree, petitioner had to have entered the gate and the fenced-in area. However, Petitioner insisted fervently to both Ms. Rancourt and Mr. Terrillion she did not enter this gate.

Petitioner admitted to entering a gate in her Response to Petition for Order of Protection, but this was a public access gate leading to a common or public area off of the Scotts' property.

Without the charge of burglary, Petitioner's defense of necessity claim becomes even stronger as the harm is lesser. Ms. Rancourt was ineffective for failing to argue this in her Motion for New Trial and appellate counsel should have indicated this in his Appeal Brief.

E. CONCLUSION

This Court should grant review of the Court of Appeals opinion affirming Ms. Clark's conviction for burglary in the second degree and taking a pet.

DATED this 25th day of October, 2017.

Respectfully submitted,

/Linda Renae Clark/
ProSe Petitioner'

P.O. Box 345
La Conner, Washington 98257
(360) 202-5798

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STATE OF WASHINGTON

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APPENDIX A

FILED AS
ATTACHMENT TO EMAIL



ORIGINAL

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LINDA RENAE CLARK,

Appellant.

No. 74934-0-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: September 25, 2017

2017 SEP 25 AM 10:43

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

APPELWICK, J. — Clark appeals her convictions for second degree burglary and taking a pet animal. She claims that her attorney was ineffective for failing to present a necessity defense or communicate her acceptance of a plea offer to the State. Clark has failed to show that defense counsel's performance was deficient. We affirm.

FACTS

Frank and Rebecca Scott owned two dogs: Ellie, a twelve year old German wire terrier, and Zalo, a ten year old German shepherd. The dogs typically slept in the Scotts' house but spent most of their day either in the Scotts' garage or the fenced yard. The dogs wore collars and the Scotts stored their leads in the garage.

In approximately February 2014, the Scotts hired Linda Clark, who owned a dog-walking business, to walk the dogs. Clark was instructed to enter the garage, put the leads on the dogs' collars, and walk them once a day.

However, within a month or two, Clark began walking the dogs several times a day of her own accord, sometimes late at night or in heavy rain. Clark also

frequently let herself into the garage at all hours to check on the dogs and leave notes regarding what she believed was proper care for them. In addition, Clark replaced the dogs' collars with collars that had her own name and phone number instead of the Scotts'.

In May or June 2014, concerned by Clark's behavior, Frank told Clark that her services were no longer necessary. Clark responded, "[I]f you take me away from these dogs, you're going to regret it." The Scotts contacted the Skagit County Sheriff's Office. Deputy Brad Holmes came to the Scotts' house and observed that both dogs appeared to be in good health for their age and their living conditions were appropriate. Deputy Holmes went to Clark's house and told her "that she cannot go back to the residence for any reason or she could be arrested for trespassing." Clark agreed that she would not go back to the Scotts' property. The Scotts built a heavier fence to keep Clark from coming onto the property.

However, on the morning of November 6, 2014, the Scotts noticed that Ellie and Zalo were missing. The Scotts' fence had been cut and pieces of the fence were found in the Scotts' garbage can. The dogs' leads were also missing. The Scotts were particularly concerned because Zalo was required to take medication and had not had his medication yet that morning.

Sergeant Jennifer Sheahan-Lee located Clark walking around town and asked if she had seen the dogs. Clark stated that she had last seen the dogs the previous evening. She admitted that she had gone to the Scotts' property and petted the dogs through the fence. A few hours later, Sergeant Sheahan-Lee saw Clark walking a different dog, and approached her to tell her that Ellie and Zalo

were missing. Clark denied having the dogs or knowing where they were. After receiving a report that a local citizen had seen Clark with Ellie and Zalo that morning, Sergeant Sheahan-Lee went to Clark's house. When Sergeant Sheahan-Lee told Clark that Zalo had not had his medication that day, Clark then admitted she had the dogs and turned them over Sergeant Sheahan-Lee. Sergeant Sheahan-Lee also noted that both dogs did not appear to be neglected or in need of any care.

The State charged Clark with second degree burglary and taking a pet animal.¹ Prior to trial, Clark notified the State of the possibility that she would raise a necessity defense, on the grounds that she took the dogs because she believed the Scotts were not taking good care of them. The trial court ruled that Clark could request a necessity instruction if the evidence supported it.

Clark did not testify. Regarding a necessity instruction, defense counsel conceded it "would be a frivolous motion, frankly, at this point." Instead, defense counsel argued that there was no evidence to show that Clark had entered the Scotts' home and that the evidence showed it was more likely that the dogs escaped and Clark rescued them. A jury convicted Clark as charged.

Immediately after trial, Clark filed a pro se motion for a new trial, claiming that she received ineffective assistance of counsel. In support of her motion, Clark provided a 28 page document containing the names of potential witnesses that she claimed would support a necessity defense, as well as a summary of their potential testimony. Clark also provided several pages of e-mails exchanged

¹ The State also charged Clark with criminal trespass, which it dismissed prior to trial.

between her and defense counsel regarding the necessity defense and a plea offer from the State. The trial court appointed substitute counsel for the purpose of briefing these claims. Substitute counsel raised three issues in the motion for a new trial: (1) that defense counsel was ineffective for failing to raise a necessity defense; (2) that defense counsel was ineffective for failing to "effectively communicate" with Clark; and (3) that the trial court erred in prohibiting defense counsel to use photographs during closing argument.

At a hearing on the motion, Clark testified that she provided the list of witnesses to defense counsel, but admitted she did not know if defense counsel had contacted them. Substitute counsel provided an affidavit stating that she reviewed defense counsel's case file and "[t]here was no indication in the file that any of the witnesses that Ms. Clark provided to counsel were interviewed or contacted in any way by defense counsel." Defense counsel did not testify.

The trial court denied the motion. The trial court noted:

There's been much focus placed on the witness list that was presented to [defense counsel] by Ms. Clark. Sure, you would have liked to see all of those probably talked to by [defense counsel] or his staff, but it seems like the whole focus on that was they would only provide character evidence, and generally that's not admissible in any event. And if it was going to go to the necessity defense, I didn't hear that, and the necessity defense wasn't going to be a viable one in any event, particularly since the decision not to testify, I think that -- by the defendant -- certainly precluded any -- any introduction of any sort of evidence relative to a necessity defense.

Clark appeals her conviction.

DISCUSSION

Clark contends that defense counsel provided ineffective assistance in two ways: (1) by failing to present a necessity defense and (2) by failing to communicate her acceptance of a plea offer to the State.

The Sixth Amendment to the United States Constitution guarantees the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To show ineffective assistance of counsel, a defendant must demonstrate both that counsel's conduct was deficient and that the deficient performance resulted in prejudice. State v. Nichols, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). To show that counsel's performance was deficient, the defendant must establish that it fell below an objective standard of reasonableness given the circumstances. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If counsel's conduct can be characterized as a legitimate trial strategy or tactic, performance is not deficient. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). To show that the deficient performance was prejudicial, the defendant must show that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. McFarland, 127 Wn.2d at 334-35. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700. We engage in a strong presumption that counsel's representation was effective. McFarland, 127 Wn.2d at 335.

A trial court may grant a motion for a new trial if "substantial justice has not been done," which can include ineffective assistance of counsel. CrR 7.5(8); State

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v. Dawkins, 71 Wn. App. 902, 906-07, 863 P.2d 124 (1993). A trial court's ruling on a motion for a new trial is reviewed for an abuse of discretion. State v. Balisok, 123 Wn.2d 114, 117, 866 P.2d 631 (1994). A trial court abuses its discretion when a decision is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

We first address Clark's claim that defense counsel should have raised a necessity defense. The Sixth Amendment right to counsel includes the right to control one's defense, which encompasses the decision to present an affirmative defense. State v. Coristine, 177 Wn.2d 370, 376, 300 P.3d 400 (2013). An attorney's failure to recognize and raise an affirmative defense can fall below the constitutional minimum for effective representation, but determining whether an attorney was ineffective requires review of whether the record confirms a valid strategic decision. Id. at 379.

"Necessity" is a common law defense with limited application. State v. Diana, 24 Wn. App. 908, 913-16, 604 P.2d 1312 (1979). "The necessity defense is available to a defendant 'when the physical forces of nature or the pressure of circumstances cause the accused to take unlawful action to avoid a harm which social policy deems greater than the harm resulting from a violation of the law.'" State v. Gallegos, 73 Wn. App. 644, 650, 871 P.2d 621 (1994) (quoting Diana, 24 Wn. App. at 913). In order to sustain a necessity defense, the defendant must show by a preponderance of the evidence that "(1) he or she reasonably believed the commission of the crime was necessary to avoid or minimize a harm, (2) the

harm sought to be avoided was greater than the harm resulting from a violation of the law, and (3) no legal alternative existed." Gallegos, 73 Wn. App. at 651.

It is clear, based on the evidence presented at trial, that Clark was not entitled to a necessity instruction. No witness testified that the dogs were suffering any harm. In fact, both Deputy Holmes and Sergeant Sheahan-Lee testified that the dogs appeared to be in good health for their age and their living conditions were suitable. And, there was no evidence that Clark had made a good faith effort to first pursue legal alternatives, such as notifying animal control or local animal welfare organizations.

Clark contends that defense counsel was ineffective for failing to present evidence to support a necessity defense, including her own testimony and the testimony of the witnesses she provided him. We disagree.

First, the record shows that defense counsel did, in fact, investigate the possibility of a necessity defense. Approximately two months prior to trial, defense counsel sent Clark a lengthy e-mail explaining why he did not believe a necessity defense was a good strategy. Defense counsel stated:

In my expert legal opinion, as a matter of law, the defense of necessity is not available under the facts of your case. Further, even if the defense were available, there is not sufficient evidence to raise it despite your anticipated testimony about the objective events preceding your taking the dogs. Your personal belief that the dogs needed to be rescued will not be sufficient considering the evidence the State has that the situation had been investigated by law enforcement.

It is clear that defense counsel weighed Clark's credibility against the credibility of the investigating officers and determined that a necessity defense would not be successful. And, none of Clark's proposed witnesses appear to have had any first-

hand knowledge of the dogs' living conditions. The fact that Clark was ultimately convicted does not render defense counsel's strategy unreasonable; "hindsight has no place in an ineffective assistance analysis." Grier, 171 Wn.2d at 43.

Defense counsel's strategy of general denial was reasonable for other reasons. The record shows that Clark had freely admitted on several occasions that she took the dogs from the Scotts' property. For example, when the Scotts sought a civil order of protection regarding Clark, Clark filed a response stating "The Scotts continually failed to provide Zalo and Ellie with proper identification up and until the day I took them from their home on November 6". (Emphasis added.) But, the deputy prosecutor mistakenly failed to offer this evidence. In light of the lack of evidence supporting a necessity defense, it was a reasonable strategic choice for defense counsel to take advantage of the State's error and argue that the State had not presented evidence that Clark took the dogs.²

We next address Clark's claim that defense counsel failed to communicate her acceptance of the State's plea offer. The State argues that Clark did not raise this issue in her motion for a new trial, and thus RAP 2.5(a) bars her argument as unpreserved. But, "[a] claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal." State v. Killo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). Nevertheless, the record provided by Clark does not support her claim.

² In reply, Clark argues that, even if it were not a winning strategy, defense counsel should have pursued a necessity defense because "a defense of necessity could have provided the basis for positive sentencing consequences." This court will not consider an issue raised for the first time in a reply brief. In re Pers. Restraint of Peterson, 99 Wn. App. 673, 681, 995 P.2d 83 (2000).

No. 74934-0-1/9

On March 11, 2015, defense counsel sent Clark an e-mail containing a plea offer from the State. The offer involved Clark pleading guilty to taking a pet and criminal trespass and dismissing the burglary. The plea offer also included community service, a no-contact order protecting the Scotts, a mental health evaluation, and 24 months of supervised probation. Clark wrote back the same day, stating:

At first glance, I must decline the prosecutor's offer, see no reason for a counter offer because, in my opinion, she is being completely unreasonable, and proceed to trial. I have no problem with it being continued to August.

If you have any inclination to advise me to accept, I would appreciate your input and counsel.

On August 19, 2015, defense counsel sent Clark an e-mail in which he outlined the strengths and weaknesses of her case. Defense counsel strongly advised Clark to accept the State's plea offer:

After conducting a thorough investigation and having complete researching the caselaw relevant to your case, in my expert legal opinion, you should take the State's plea bargain offer and minimize your exposure.

....

Again, I suggest you seriously consider taking the State's plea bargain offer. Proceeding to trial on the facts of this case would be against my direct advice.

Although, I believe your trial would be an interesting one and I do look forward to representing you if you choose to proceed that way.

On September 16, 2015, Clark e-mailed defense counsel requesting that he propose "a reasonable counter-offer" to the State's plea offer. Clark refused to

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agree to the no-contact order, mental health evaluation, or probation.

Approximately an hour later, Clark wrote a second e-mail stating:

Actually, the fact that you now know Frank Scott is an a**hole is good enough for me. If you feel, based on what you now know, that the prosecutor's offer is fair then I will take it as offered. If, however, based on what you now know, you do not believe it fair then I propose what I sent below.

(Emphasis added.)

On October 5, 2015, defense counsel informed Clark that the deputy prosecutor "is holding firm on her offer" and that the offer would expire two days later. On October 6, 2015, Clark sent defense counsel an e-mail stating:

Also, I want to remind you I am NOT afraid to go to trial on this if they remain unreasonable. . . . [M]aybe we need to leave it up to a jury for my punishment.

And the following day, on October 7, 2015, Clark wrote:

. . . I truly do not want to make your job more difficult, but after giving it a great amount of thought I cannot agree to an extension of the current restraining order. I have lived in fear of being arrested on a daily basis and am unwilling to continue living in this constant torment. I would rather go to jail for three months. It would be less stressful and traumatic.

. . . .

I am afraid this must also extend to the mental health evaluation and the probation.

Do what you feel is best. But I can't agree to these terms.

Defense counsel responded:

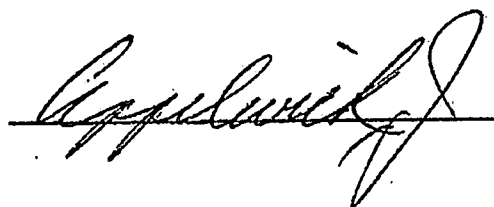
Bearing in mind also that if you're convicted, the judge will probably put a no contact order in place anyway. But, who knows what a jury might say on these facts?

I agree with you on the no contact order and mental health stuff though. I don't feel the facts of your case support those necessarily.

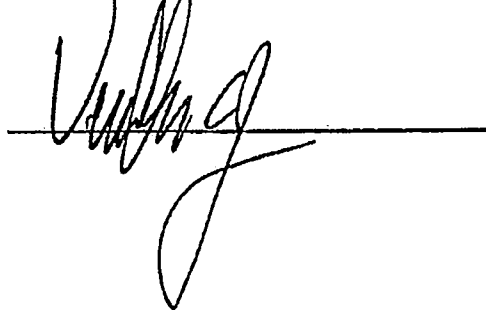
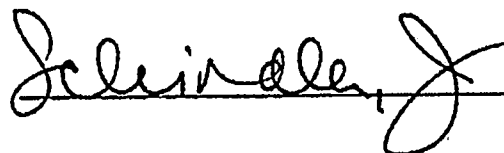
If a person is going to plead guilty to something, it should be a really good deal.

Clark argues that the September 16 e-mail in which she told defense counsel "I will take it as offered" constituted acceptance of the plea offer. However, Clark's statement was not an unconditional acceptance of the plea. Instead, Clark told defense counsel she would agree to the plea offer if defense counsel felt "that the prosecutor's offer is fair." But, Clark later explicitly refused to agree to portions of the plea offer, and said she would "rather go to jail." Because Clark did not accept the State's plea offer, defense counsel was not ineffective.³

We affirm.

A handwritten signature in cursive script, appearing to read "Appellate Counsel", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, written over a horizontal line.A handwritten signature in cursive script, written over a horizontal line.

³ Clark's pro se statement of additional grounds, which raises the same necessity defense claim raised by appellate counsel, is without merit.

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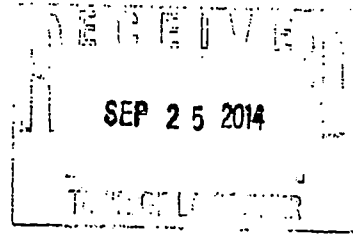
APPENDIX B

FILED AS
ATTACHMENT TO EMAIL



ORIGINAL

Linda R. Clark
LaConner, Washington 98257
(360) 202-5798



September 25, 2014

John Doyle
Town Administrator
La Conner, Washington

Re: Frank Scott

Dear Mr. Doyle:

First of all, let me say I did not ask for any of this ugliness with Frank Scott or his family. The only reason I became involved with the Scotts and their dogs, Zalo and Ellie, was out of the goodness of my heart. I started walking Zalo and Ellie in trade for coffee because it seemed the Scotts needed a "break" due to their hardships over the past five years or so. In fact, if the Scotts had seen anything wrong with allowing their dogs to lie in their own feces and urine (see attached letter to the friends of La Conner) then they would have cleaned it up in the two weeks spanning my first day of walking Zalo and Ellie and my discovering their living conditions.

Second, I believe I have handled the situation concerning the Scotts' behavior with the utmost of integrity.

As you can see from the enclosed documents, the Scotts have not been kind to either me or their k-9 companions. In fact, it finally got to a point where Mr. Scott's behavior made me become fearful for my safety (see police witness statement).

After I informed Deputy Wade with the La Conner branch of the Skagit County Sheriff's Office that I would refrain from requesting that formal charges be filed against Mr. Scott for assault "if Mr. Scott would 'leave me alone' and 'apologize to my employer'", Mr. Scott's behavior quieted down considerably.

Unfortunately, however, after finding the Scotts' german shepherd, Zalo, running loose near the Pioneer Market on Tuesday, September 23, 2014, and returning him to their custody, Mr. Scott's behavior has returned to one of attempted intimidation. Further, he has included his children in these efforts by instructing them to walk with their eyes cast down toward the ground, as though I am some sort of miscreant, if they pass me on the street.

Because Mr. Scott is a representative of this town in his capacity as its code enforcement officer, I feel it fair to give you an opportunity to once again curtail his attempts at intimidation toward me and to insure his k-9 companions are being properly cared for. A list of what Zalo and Ellie need for proper care is enclosed.

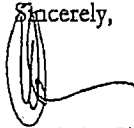
RELEASED SKAGIT COUNTY
SHERIFF'S OFFICE RECORDS PURSUANT
TO R.C.W. _____

Page 2
Linda R. Clark
September 25, 2014

If you are unsuccessful in either regard, I am afraid I will need to proceed to take further action.

Please feel free to call if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to be 'Linda R. Clark', with a long horizontal flourish extending to the right.

Linda R. Clark

P.S. In the event Mr. Scott continues his efforts to disparage me because of my past I am enclosing a "Cliffs Notes" version of my life and the events which brought me back to Skagit County; which was provided to the entire Utah State Legislature as well as Utah's major news media outlets. I have nothing to be ashamed of in my life; in fact I am proud of everything I have accomplished.

SKAGIT COUNTY SHERIFF'S OFFICE WITNESS STATEMENT FORM

Case Number 14-11095

Name LINDA CLARK Address 113 FIFTH ST, LA CONNER WA

I am 44 years old. My date of birth is 7-13-70 My phone number is (360) 202-5718 have finished the 18th grade in school.

I can read, write and understand the English language. Yes No

1. The events involving Frank Scott this morning come on the heels of two months of
2. verbal attacks and attempted intimidation by him. Each time I have encountered
3. Mr. Scott while in the town of La Conner or near my employment at
4. Silver Bell Winery I have done my best to diffuse his verbal attacks either
5. by ignoring them or by standing up for myself. Nothing I have done,
6. however, has had the desired affect of getting Mr. Scott to discontinue
7. such attacks. Since nothing else seemed to work, and after learning
8. Mr. Scott had contacted one of my clients/friends and provided them
9. with untrue information about me; followed by hostile and unwanted
10. behavior from Mr. Scott on my way to work at Silver Bell Winery
11. on Saturday, August 9th, I decided to take whatever part I may have
12. played in his continued verbal attacks and unwanted behavior. To do
13. so, I wrote Frank ^(Mr. Scott) and his wife, Becky, a sincere note of gratitude
14. and forgiveness. Mr. Scott's reaction to this note was 1. Ungratefulness -
15. he demanded I not give any further notes to his family. When I
16. told him it was a note of forgiveness because I wanted all
17. of the ugliness to end and that I can only forgive once.
18. and saw no need to do so again. His further response was 2.
19. to continue his verbal attacks, e.g. calling me crazy and telling
20. me he couldn't wait for me to leave town. His last act was
21. 3. to spray my entire right side of my body with the hose.

The above information is true to the best of my knowledge and was freely given. No threats or promises have been made against or to me in order to get me to make this statement. I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature _____ Location Signed _____

Date and Time _____ Witness _____

DO NOT DISCLOSE to anyone in the Scott

Page 1 of 2

SKAGIT COUNTY SHERIFF'S OFFICE WITNESS STATEMENT FORM

Case Number

1. he was using at the time while my back was turned to him.

2. Mr. Scott's act of spraying me with the hose was not

3. spontaneous as he had to move from his original location

4. by the door to his coffee shop to the location of my bike

5. which was parked outside the door to Silver Bell Winery where

6. Mr. Scott waited for me to exit so he could begin the attacks

7. aforementioned. Because of Mr. Scott's continued verbal attacks,

8. acts of attempted intimidation, and spraying me with the hose

9. while my back was turned to him I am fearful Mr. Scott

10. will cause further harm to me. This fear is great enough that

11. I quit my job at Silver Bell Winery this morning.

12.

13. Also, kindly note, it was cool, overcast, and wet today and I work

14. outside in the elements all day, a fact well known to Mr. Scott.

15.

16. Additional documentation pertaining to June 13th available on

17. request.

18.

19.

20.

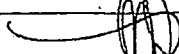
21.

22.

23.

24.

The above information is true to the best of my knowledge and was freely given. No threats or promises have been made against or to me in order to get me to make this statement. I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature 

Date and Time 8.14.14 6:30 p.m.

Witness

Location Signed La Conner, WA

DO NOT DISCLOSE

RELEASED SKAGIT COUNTY of 2

SHERIFF'S OFFICE RECORDS PURSUANT

TO R.C.W.

Dear La Conner Friends:

Zalo (Zah-low) (a 10-year old German Shepard) and Ellie (an 11-year old Italian Spinone) need your help.

When I first started walking Zalo and Ellie four months ago, they were living in conditions which I didn't know anyone could create for a k-9 companion. They were locked in a garage with little natural or unnatural light, were not regularly let out of the garage to pee or poo (despite the male guardian visiting the home on numerous occasions during the day), were not fed or watered on a regular basis, bathed, or walked. The only dog bed in the garage was saturated with urine. Zalo had no bed at all to sleep on - he slept on a plastic mat in his crate that was cracked in multiple places and covered in feces. The garage floor was covered in feces and urine and the dogs had less than 15 square feet of living space. The stench in the garage was so bad after only two months of them living in it that I couldn't get the smell out of my nostrils for several hours after walking out of it. The dogs themselves smelled so bad I had to give them a bath the second day I walked them.

For the past four months I walked these two dogs all over La Conner. I cleaned up their living space, built and paid for an enclosure so they could exit the garage safely and without human oversight, and watered and fed them regularly twice a day. I took them to the groomer in town and took care of any minor medical issues that presented themselves. They became happy, content, and they started trusting people again. They got to run along "dog beach", around the field at the school, got to sit in Gilkey Square and have their picture taken by tourists. They got affection from people who wanted to pet them because they were handsome, friendly dogs.

Just as all of this was happening, their human "guardians" "flipped out" and forbade me from caring for Ellie and Zalo any longer. I can only hope that these "guardians" finally acknowledge they are unwilling/unable to properly care for these two beautiful k-9s and find them new homes. Until then, they need your help.

What can you do: You can offer to walk them. You will need to take it easy on them for a while. Zalo's left ankle was swollen last week and his right ankle has persistent, untreated issues. (Please ice both ankles after you walk him. He hates it but tolerates it long enough to make a difference). You can put the ice in their water when you're done. They love running off-leash at the field next to the new elementary school and they have great recall. Ellie is afraid of fireworks so if she's off-leash when they start to "pop" then you'll need to hook her up or she will probably head toward home. If they happen to see a rabbit tell them to leave it and even though they might chase it for a minute they'll break off from it.

You can make sure they've been fed breakfast and dinner and that they have fresh, cool water. Ellie is a much slower eater than Zalo so unless someone watches to make sure she's eaten all of her food Zalo usually finishes it for her. Zalo has a very sensitive stomach so please don't give him any treats and he has a difficult time getting rid of all of his stool so please be patient with him when you pick up after him. It usually takes five or six times on a good day for him to clean himself out.

You can make sure their enclosure is clean. You can play with them and let them know they haven't been forgotten again. Zalo loves playing "tug of war." They both love having their bellies and ears scratched and they love having kisses on their heads.

They live in the green house at the end of Dalan Place in the Tillinghast housing development. Their house is adjacent to the fence along the parking lot for Seeds restaurant and Re-Feather Your Nest retail store. You can reach their "guardians", Frank and Becky Scott, at (360) 399-1435 during morning and early afternoon hours. The Skagit County Sheriff and Officer Diaz with Skagit County Animal Control should also be looking in on them. If you see anything of concern please let them know. The best thing for Zalo and Ellie is to find them new homes. If you know anyone who can properly care for these beautiful k-9s please let Frank, Becky, the Sheriff's Office, and Officer Diaz know.

Thank you. Linda (360) 202-5798

RELEASED SKAGIT COUNTY
SHERIFF'S OFFICE RECORDS PURSUANT
TO R.C.W.

Both Zalo and Ellie are:

1. Walked at least one hour per day.
2. Fed twice per day; with someone making sure Ellie eats all of hers prior to leaving.
3. Ellie needs a coat for winter if they are going to remain outdoors.
4. They need a heating and lighting source in the garage.
5. The garage door will need to be altered such that it is weatherproofed with an xtra-large dog door inserted so Zalo and Ellie can still access their enclosure without human oversight. This can be done by purchasing a sheet of $\frac{3}{4}$ inch plywood and cut to fit the door frame after which a hole can be cut out for the dog door. Then the plywood can be screwed into the door frame, the frame can be caulked, and the dog door can be installed. The dogs will then need to be educated as to how to use the dog door.
6. Enclosure cleaned at least three times per week.
7. Any necessary medical attention is sought immediately.
8. Grooming services sought at least every three months.
9. Raincoats purchased so they can dry off more easily after being walked in the rain.
10. Dried off thoroughly after being walked in the rain, especially their feet.
11. Bedding/beds maintained, replaced, and/or cleaned at least every three months.

Linda R. Clark
La Conner, Washington 98257
(360) 202-5798

SEP 30 2014

September 27, 2014

John Doyle
Town Administrator
La Conner, Washington 98257

Re: Frank Scott

Dear Mr. Doyle:

Please find enclosed an amended version of the list of Mr. Scott's k-9 companions', Zalo and Ellie, needs.

Although number twelve should be obvious (which is why I did not include it in the first place), I felt it important to point it out nonetheless so it is not overlooked as it was prior to my care for them.

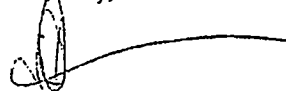
Also, kindly note that I will expect that the issues regarding the changing weather, e.g. dog door installed, coat for Ellie, rain coats for both, lighting and heating source in the garage, etc. be completed no later than Friday, October 3, 2014.

Lastly, I will expect Zalo and Ellie's first grooming appointment to occur prior to Friday, October 10, 2014. The groomer who cared for them the two times I had them groomed is Marion. Her facility is located next to the library in town. Her phone number is (903) 253-1119. She only comes to town for pre-scheduled appointments.

Please send photos confirming these issues have been timely addressed to k9walkerwa113@hotmail.com.

Thank you.

Sincerely,



Linda R. Clark

Enclosure

Both Zalo and Ellie are:

1. Walked at least one hour per day.
2. Fed twice per day; with someone making sure Ellie eats all of hers prior to leaving.
3. Ellie needs a coat for winter if they are going to remain outdoors.
4. They need a heating and lighting source in the garage.
5. The garage door will need to be altered such that it is weatherproofed with an xtra-large dog door inserted so Zalo and Ellie can still access their enclosure without human oversight. This can be done by purchasing a sheet of $\frac{3}{4}$ inch plywood and cut to fit the door frame after which a hole can be cut out for the dog door. Then the plywood can be screwed into the door frame, the frame can be caulked, and the dog door can be installed. The dogs will then need to be educated as to how to use the dog door.
6. Enclosure cleaned at least three times per week.
7. Any necessary medical attention is sought immediately.
8. Grooming services sought at least every three months.
9. Raincoats purchased so they can dry off more easily after being walked in the rain.
10. Dried off thoroughly after being walked in the rain, especially their feet.
11. Bedding/beds maintained, replaced, and/or cleaned at least every three months.
12. Cool/fresh water is provided daily as they both drink large quantities.



SKAGIT COUNTY SHERIFF

Incident Report

Incident #: 14-13750

Incident: INFORMATION REPORT

Area: SCSO AREA- CITY OF LA
CONNER

Location: lacconer area

When Reported: 14:45:38 10/02/14

Occurred Between: 14:45:38 10/02/14

And: 14:45:38 10/02/14

COMPLAINANTS:

1) Name: TOWN OF LACONNER,

DOB: ***/**/**

Race/Sex: /

Address: 204 DOUGLAS ST

LA CONNER, WA 98257

Home Phone: (360)466-3125

Work Phone: (-)

Employer:

NARRATIVE:

Name: SHEAHAN-LEE J

CORRECT NATURE: INFORMATION

SUPPLEMENTAL NARRATIVE:

Name: SHEAHAN-LEE J

Date: 04:08:13 10/10/14

SGT J SHEAHAN-LEE, Fri Oct 10 04:08:35 PDT 2014

LINDA CLARK submitted demands to the Town of La Conner regarding the care of FRANK and BECKY SCOTT'S dogs. CLARK had been walking SCOTT'S dogs last spring and had become demanding regarding their care. CLARK would come into the SCOTT'S La Conner business and confront BECKY SCOTT criticizing the dog's care in front of customers.

The SCOTT'S discontinued the use of CLARK for the dogs. One evening CLARK was found in their garage after the separation, which resulted in a deputy contacting her and trespassing her from their residence. CLARK then started handing out letters to the neighbors and business owner criticizing the SCOTT'S as pet owners. None of her concerns were founded as legitimate negligence.

CLARK has now recently sent two separate letters to the town since FRANK SCOTT is an employee. The letters demand items such as a dog door be installed, raincoats be provided, and a grooming appointment be scheduled. These items each have a deadline date and the town is to advise CLARK that her requirements have been met.

With the first letter there are a number of other document that she provides, I

suspect to support her character, they include but are not limited to a portrait picture, a lifetime timeline similar to a resume, and a legal document regarding a law suit in Utah, which has no connection to anything or anyone in La Conner. Those documents have been placed in the hard file.

There is no action for us to take, and this report is for information purposes, due to the ongoing conflict between the parties.

10/9/2014, 1536 hours by SGT J SHEAHAN-LEE

Printed: 12:45:54 01/23/15

Linda R. Clark
General Delivery
La Conner, Washington 98257
(360) 202-5798

October 13, 2014

Janine Ceja
Skagit County Humane Society
18841 Kelleher Road
Burlington, Washington 98233

Re:Zalo and Ellie

Dear Ms. Ceja:

I am writing on behalf of Zalo (a ten year old male German Shepherd) and Ellie (an eleven year old female Italian Spinone) with the utmost of urgency (especially due to the arrival of cold and wet weather)...They need your help.

This is a fervent plea to ask for your help in finding a way to get them out of the care of their current human guardians, Frank and Becky Scott in La Conner. They deserve much, much better than the care they have received from the Scotts.

Neither the Skagit County Animal Control Officer (Officer Diaz), Skagit County Sheriff, or the La Conner Town Administrator, John Doyle, have been successful or diligent in insuring that Zalo and Ellie are properly cared for by the Scotts. Please see the attached for additional information.

Please take the steps necessary to INSURE they are placed in your care or with another family which will care for them as they should be cared for and LOVED as they should be loved.

If you have any further questions you may contact me at the number above.

Thank you in advance for your assistance – from me, Zalo, and Ellie.

Sincerely,

Linda R. Clark

P.S. If, after getting Zalo and Ellie out of their circumstances with the Scotts, you can keep them safe until about Thanksgiving I can give them a new home.

PHONE COVERSATION WITH JANINE CEJA,
SKAGIT COUNTY HUMANE SOCIETY
End of October 2014

Clark:

Ceja: Hello, Linda.

I spoke with Officer Emily Diaz...understanding that in that area the people that handle that are the actual police department, sheriff's department for La Conner. So she doesn't have any jurisdiction, but she has been looking into that. She's very limited as to what she can go ahead and do. But not very much with progress. Pretty much the officers that are handling that feel confident with what they see and to me it doesn't sound like they're seeing what you're seeing that's how come they're not pursuing the matter. Unless there's anything real recent.

Clark: I can't even go and look because if I see...it breaks my heart. I'll let you know...it's like I told you earlier what I saw. They were locked in the garage, they were not being let out, they were not being fed properly, they were not being watered properly. I built the enclosure that's off of the garage now. I built and I paid for it so they have the enclosure. But like I said Zalo was running loose about 3-4 weeks ago. Looked very, very despondent and they've done nothing from what I can see from the road, because I can see from the road, to enclose the garage door so that Ellie is protected from the weather. There wasn't any need to do anything with that at the time because the weather wasn't inclement. But now it is. They had no lighting source. They had no heating source and like I told you before Ellie is very thin and unless they've been feeding her properly and making sure that she eats, she's going to freeze to death. I had to put coats on her when I first started taking care of her because she was getting cold and that was in April.

It's like I told you, those people are not going to take care of those dogs properly. They have two kids who are also needing their care. They also have two cats.

I know it's limited to what people can do, but somebody's got to step up. Somebody's got to step up.

Ceja: Inaudible. There's not enough strict criteria...a lot of things fall through the cracks because of this.

Clark: Everybody knows there's an issue. It's not like they're still locked in the garage lying in their own feces. People know there is an issue and it is flabbergasting to me that little, if anything is being done. I walked those dogs for four months three times a day and every morning after I'd started walking them, I knew...before I built the enclosure, I knew that they hadn't been let out before I got there at 8:00 in the morning and these people have to be over to their coffee shop early to open up and get things started. Even after I built the enclosure they could not even bother themselves to go out and open the garage door to let them out before they started leaving the garage door open all the time.

Ceja: Are they still not getting out?

Clark: No, they leave the garage open all the time still, but the problem now is is Ellie. Ellis is not going to survive the cold weather. It's like I said. They don't have a heating source in the garage. Their bedding is probably in really bad condition again. When I found them last February, her bed, there was only one bed in the garage and it was completely saturated with urine. They did buy new beds...

Ceja: Linda, if there's any way that we could go ahead and somehow get some kind of current information. I'm going to try on my end to go and see what I can go ahead and do, but as far as getting them to do anything. They feel confident with what they see... they don't feel...they don't. I literally spoke with everybody and they just do not, they think I'm crazy.

Clark: They think I am too.

Ceja: [inaudible] I can't understand that. I'm going to try to find out...it's not that easy. But any help, any current information that you could go ahead and provide would be very helpful.

Clark: As far as what I see from the road?

Ceja: Well, yeah and as far as close as you can go and see. If you can see a pattern of it.

Clark: I can't really, I can't really get up to the house to to even look. Partly because it wouldn't be fair for Ellie and Zalo to see me and for me to walk away and not take care of them, but partly for me. It's just breaking my heart that I can't know that they're being taken care of.

And the Scotts, they just are so unreasonable. And it's like I said, I did all of that for free. I walked them three times a day, I fed them twice a day, I watered them twice a day, I cleaned the garage, I bought them sheets, I took care of them implicitly for four months and their reaction to that was to flip out on me and all I was was respectful and loving and kind to all of them.

So...and I know that they probably think you're crazy. I know they think I'm crazy, but I also will not walk away from those dogs. It's like I told you last week if anybody saw what I saw...

Ceja: ...be more of a lengthy one, but if we could go ahead and gather as much information...there really isn't an ordinance to go ahead, short from an animal has shelter, food, and water to have the other stuff we have to prove that this is affecting their health that it is affecting, causing, creating suffering. Anything that we can go ahead and get from you that would help [inaudible] we would be able to go ahead and utilize...and say "Hey this is going on. How come?"

Because what happened from February to May and now we're in October unless we know for sure that this is a consistent pattern still continuing, it's just the length of time has expanded to where there really isn't anything that we can get some kind of law enforcement to look into. But I will go ahead and all the records information and the look into somehow if we can go ahead and get the authorities that are supposed to be able to do anything to look into this. If nothing else be a thorn in their side and just continue. They've got to eventually look into it. [some of this might not be 100% accurate due to inaudibility]

Clark: You would think. But it's a small town and like I said Frank Scott works for the town.

Ceja: I do believe in being persistent.

Clark: That's me too. That's me too. That's me too. That's why I am not stopping. I'll put together what I can. May I email it to you?

Ceja: Yeah you can email it to me, that's no problem.

Clark: What's your email address?

Ceja: Humane@clearwire.net.

Clark: Okay, I will put together what I can for you and I will get it to you over the weekend.

Ceja: Sure.

Clark: Okay.

Ceja: Okay, thank you.

Clark: Have a good day.

Linda R. Clark
La Conner, Washington 98257
(360) 202-5798

November 3, 2014

URGENT

VIA EMAIL

Janine Ceja
Skagit County Humane Society
Burlington, Washington

Re: Zalo and Ellie

Dear Ms. Ceja:

This follows my letter to you dated October 13, 2014 and our telephone conversation on Friday, October 24, 2014. In lieu of a "journal" as you requested concerning Zalo and Ellie, I am attaching photos of them. These photos represent their conditions as of November 3, 2014.

If the Skagit County Sheriff took photos of Zalo and Ellie on or about June 13, 2014 or at any other visit as you mentioned during our telephone conversation, the photos of November 3 would reflect that Ellie has lost around 5 pounds and Zalo has gained around 10 pounds since June. Their eyes have lost the brightness they had under my care and their coats have not been properly cared for in the way of bathing and grooming. Care of their coats is crucial now that the cold weather has arrived.

Further, Zalo and Ellie's living circumstances have become dangerous in regards to them both with the arrival of cold and inclement weather. This is especially true concerning Ellie and her weight and Zalo concerning what appears to be severe arthritis or an untreated medical issue.

As you will notice from two or more of the photos, the Scotts have failed to properly winterize the garage in which Zalo and Ellie are housed. Their failure to properly winterize this garage is resulting in cruel conditions for Zalo and Ellie, i.e., they cannot stay warm and dry. Specifically, on October 31, according to multiple weather reporting sites, the temperature in La Conner did not exceed 52 degrees fahrenheit. In addition to this cool temperature, it rained heavily until approximately 4:30 p.m. Today, November 3rd, as I send this the weather outside has turned stormy (very rainy and windy)

When I cared for Ellie and Zalo last February, March, and April I had to make sure that Ellie had a coat on during the night time hours and for most of the day time hours due to the limited fat stores on her body and the ever present cold in the garage. **Kindly note that this was when she was being properly fed and the garage door was shut every night¹.** It is clear from these photos that the Scotts are not making sure Ellie eats properly, which means the current conditions are increasingly difficult for her to tolerate and therefore are even more cruel to her.

Even if the Scotts have placed some kind of a space heating device in the garage for warmth, any such space heating device will be ineffective in aiding Zalo and Ellie in staying warm. Indeed, the amount of

cold air entering the garage during the day and at night is going to be too great for the space heater to dissipate.

Thus, this is one last effort to give you, Officer Emily Diaz, the La Conner detachment of the Skagit County Sheriff, and John Doyle (La Conner Town Administrator) the opportunity to uphold your duties in insuring the well-being of Zalo and Ellie. They need proper warmth during the coldest part of the year and thus far the Scotts have failed to provide this to them.

If, in your joint efforts, you can either (1) get the Scotts to allow me to continue my care of Zalo and Ellie with unrestricted access to their garage and side yard during the hours of 6 a.m. and 8 p.m. (compensation in the form of money or trade will neither be expected or accepted); or (2) get them to surrender *both* Zalo and Ellie to you then I will drop this matter. If, however, you are unable to persuade the Scotts to do either of these things then I will begin shouting from the roof tops to whomever will listen. This will include contacting news media, use of social media, and contacting the appropriate offices for child welfare services², etc.

The deadline is 5 p.m. on Friday, November 7, 2014. I only hope they don't die before then.

Sincerely,

Linda R. Clark

cc:

Officer Emily Diaz – via U.S. Mail w/out Enclosures
Sgt. Jenny Sheahan-Lee – via Hand Delivery w/out Enclosures
John Doyle – via Hand Delivery w/out Enclosures
Frank and Becky Scott – via Hand Delivery w/out Enclosures
Mayor Ramon Hayes – via Hand Delivery w/out Enclosures

Enclosures

P.S. unfortunately the photos did not turn out as well as liked, but you can see enough to know Zalo and Ellie need help...immediately.

1I do not encourage the closing of the garage door in these current circumstances because that will just revert Zalo and Ellie back to the conditions they lived in prior to my building and paying for the enclosure off of the garage, e.g. they will be locked in and no one in the Scott residence will open the garage door for them in the morning to let them out to relieve themselves. They need an extra large dog door installed so that the garage door opening is shut permanently yet Zalo and Ellie can exit and enter without human oversight.

2The neglect which occurred prior to my caring for Zalo and Ellie and which continues today is done in the presence of two minor children who reside in the same home, e.g. a 9 year old female and 10 or 11 year old male.

RE: URGENT: ATTN: Janine

Linda Clark

11/05/14

To: humane@clearwire.net



Janine:

I don't care what the repercussions are, I went into Ellie and Zalo's enclosure today. Zalo needs medical attention immediately. Below I made a typographical error in his weight gain. He has lost ten pounds, but his hair and some present edema hides it. His ribs, spine, and pelvis bones can all be felt. He has edema in his front feet and legs.

Send someone to help them, PLEASE!!!!

Linda

Linda R. Clark
Pro Se
P.O. Box 345
La Conner, Washington 98257
(360) 202-5798

WASHINGTON SUPREME COURT

_____)	
Linda R. Clark,)	Supreme Court No. _____
)	Court of Appeals No.: 74934-0-1
Petitioner,)	
)	
v.)	
)	
State of Washington)	CERTIFICATE OF SERVICE
)	
Respondent.)	
_____)	

I, Linda Renae Clark, hereby certify under penalties of perjury that on this 26th day of October, 2017, I did cause true and correct copies of the above and foregoing instruments, PETITION FOR REVIEW with Appendices to be served by hand-delivering on the following person:

Erik Pedersen
Skagit County Prosecuting Attorney's Office
605 South Third Street
Mount Vernon, Washington 98273

RECEIVED

OCT 25 2017

**WASHINGTON STATE
SUPREME COURT**

Linda R. Clark
Pro Se
P.O. Box 345
La Conner, Washington 98257
(360) 202-5798

WASHINGTON SUPREME COURT

_____)
Linda R. Clark,)
)
Petitioner,)
)
v.)
)
State of Washington)
)
Respondent.)
_____)

Supreme Court No. _____
Court of Appeals No.: 74934-0-1

CERTIFICATE OF SERVICE

I, Linda Renae Clark, hereby certify under penalties of perjury that on this 26th day of October, 2017, I did cause true and correct copies of the above and foregoing instruments, PETITION FOR REVIEW with Appendices to be served by hand-delivering on the following person:

Erik Pedersen
Skagit County Prosecuting Attorney's Office
605 South Third Street
Mount Vernon, Washington 98273

FILED AS
ATTACHMENT TO EMAIL

 **ORIGINAL**

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, October 25, 2017 4:55 PM
To: 'Linda Clark'
Subject: RE: Petition for Review, COA No. 74934-0-1

Received 10-25-17.

Supreme Court Clerk's Office

ATTENTION COURT FILERS: The Supreme Court and the Court of Appeals now have a web portal to use for filing documents. Beginning July 3, 2017, all electronic filing of documents in the Supreme Court should be through the web portal. We will accept your attached document for filing, but you should immediately follow the directions below to register for and begin using the appellate courts web portal for all future filings.

Here is a link to the website where you can register to use the web portal: <https://ac.courts.wa.gov/>
A help page for the site is at: <https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=portalHelp>
Registration FAQs: <https://ac.courts.wa.gov/content/help/registrationFAQs.pdf>
Registration for and use of the web portal is free and allows you to file in any of the divisions of the Court of Appeals as well as the Supreme Court. The portal will automatically serve other parties who have an e-mail address listed for the case. In addition, you will receive an automated message confirming that your filing was received.

From: Linda Clark [mailto:trekgirlwa525@hotmail.com]
Sent: Wednesday, October 25, 2017 4:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Linda Clark <trekgirlwa525@hotmail.com>
Subject: Petition for Review, COA No. 74934-0-1

Please find attached:

Petition for Review
Appendix A
Appendix B
Certificate of Service

Please confirm receipt. Thank you in advance for your assistance.

Linda Renae Clark