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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III

Appellate Case No. 2014-000636

ORIGINAL

RECEIVED

DEC 18 2015

SC Court of Appeals

Mare Baracco,.....Appellant

v.

Beaufort County, South Carolina.....Respondent

RECORD ON APPEAL

Mare Baracco.
Pro Se Appellant

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

(843) 592-1062

Mary Bass Lohr
Attorney for Respondent

Mary Bass Lohr, Esquire
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901
(843) 522-2400

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

2014 MAR 20 AM 11:17
CASE NO. 2013 CP-07-00918

JERMAIN ROSENEAU
BEAUFORT COUNTY CLERK
CLERK OF COURT

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAME BEFORE ME ON MARE BARACCO'S MOTION FOR AN ORDER PURSUANT TO RULE 60 SCRPC, FILED NOVEMBER 12, 2013. ATTORNEY ALLISON COPPAGE APPEARED FOR THE STATE AND MARE BARACCO APPEARED PRO-SE. THIS IS AN EMOTIONALLY-CHARGED ISSUE INVOLVING AN ADMINISTRATIVE DETERMINATION THAT THE DEFENDANT'S PET RHODESIAN RIDGEBACK "BODI" IS A "DANGEROUS ANIMAL". THIS DETERMINATION FOLLOWED AN INCIDENT RESULTING IN THE DEATH OF A NEIGHBOR'S DOG.

RULE 60 ALLOWS FOR RELIEF FROM A JUDGMENT OR ORDER FOR SPECIFIC REASONS ALLOWED IN THE RULE. I HAVE REVIEWED THE RECORD IN THIS CASE AND CONSIDERED THE ARGUMENTS OF THE PARTIES. I FIND NO GROUNDS UNDER THE RULE TO GRANT THE MOTION. MOTION IS DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

Date

3/20/17

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ALLICSON C. COPPAGE

PRO-SE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2014

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Mare Baracco
Lower Court Case No. 2013CP0700918
Appellate Case No. 2013-002410

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Mare Baracco
Joshua A. Gruber, Esquire
T. Parkin C. Hunter, Esquire
Mary Bass Lohr, Esquire

The South Carolina Court of Appeals

Mare Baracco, Appellant,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-002410

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2013CP0700918

ORDER

It appears that Mare Baracco wishes to withdraw and dismiss this appeal in order that a motion for reconsideration can be heard in the trial court. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Mare Baracco

Joshua A. Gruber, Esquire

T. Parkin C. Hunter, Esquire

Mary Bass Lohr, Esquire

FILED

2/20/14 CS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARE BARACCO

vs.

STATE OF SOUTH CAROLINA.

) IN THE COURT OF COMMON PLEAS
) 2013 OCT 16 AM 11:16
) FOURTEENTH JUDICIAL CIRCUIT
) JUDGE ROSENEAU
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT CASE NO. 2013-CP-07-00918

) ORDER
)
)
)
)
)
)

This matter came before this Court for a hearing on October 4, 2013 upon the Appeal from the Beaufort County Magistrate Court filed by the Petitioners on April 10, 2013. The Appellant was represented by Kimberly Smith of Moss, Kuhn and Fleming, and the State was represented by Allison C. Coppage, Assistant Beaufort County Attorney.

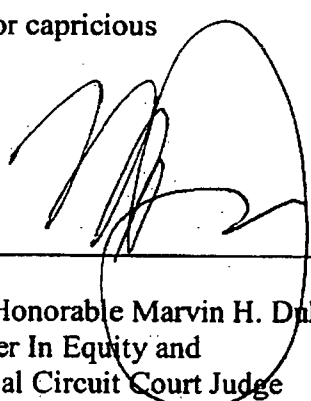
The Appellant appealed the Order of the Magistrate Court dated March 13, 2013 finding the dog, "Bodi" owned by Mare Baracco to be a "Dangerous Animal" pursuant to the Beaufort County Code of Ordinance Sec 14 -35. The issues raised by the pleadings concern whether the Magistrate Court erred as a matter of law in determining that the Respondent met the burden of proof in affirming the administrative decision and whether there was a question of fact as to where the incident occurred.

In an Administrative Appeal, "the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative finding, inferences, conclusions, or decisions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C.Code Ann. §1-23-380(5).

Based upon the facts and testimony contained in the record, I hereby find that the decision to designate the Appellant's dog as a "dangerous animal" was supported by the evidence on the whole record and was neither arbitrary nor capricious

THEREFORE, the Appeal is denied.



The Honorable Marvin H. Dukes, III
Master In Equity and
Special Circuit Court Judge

This 14 day of October 2013
at Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE MAGISTRATE'S COURT
Civil Case Number: 2012CV0710401536

STATE OF SOUTH CAROLINA)
Vs.)
MARE BARACCO,)
Defendant)

ORDER
RULE TO SHOW CAUSE
Re: BEAUFORT COUNTY ORDINANCE 14-35

THIS MATTER COMES BEFORE THE COURT on a Motion raised by the Defendant through her attorney, Kimberly L. Smith, seeking revocation of a "Dangerous Animal" Notice.

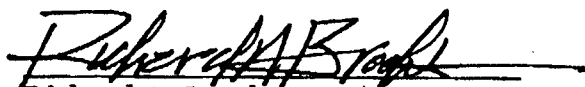
The Defendant, Mare Baracco, on July 9, 2012, was issued an Official Notice by Lance Corporal Brittany Chaplin of the Beaufort County Sheriff's Office, Animal Control Division. The Official Notice informed the Defendant that her dog, Bodi, had been declared a "dangerous animal" pursuant to Beaufort County Code Section 14-35.

A Rule to Show Cause Hearing was held March 12, 2013, in the Beaufort County Magistrate's Court. Testimony established the key, salient, undisputed facts: that on July 4, 2012, Defendant's dog, Bodi, escaped from his enclosure and attacked Zoe, a neighbor's dog; at the time, Zoe was on her owner's leash walking on a public sidewalk; as a result of injuries sustained in the attack, Zoe died on July 6, 2012.

Beaufort County Code of Ordinances Section 14-35 states: "Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals."

NOW, THEREFORE, upon reviewing the facts and law, the Defendant's Motion to reverse the "Dangerous Animal" Notice is denied.

SO ORDERED.


Richard A. Brooks, Magistrate

Beaufort, South Carolina
March 13, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-02944

THE STATE OF SOUTH CAROLINA

MARE BARACCO

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other Appeal withdrawn
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☒ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CASE CAME BEFORE ME TODAY ON THE APPEAL OF MARE BARACCO, FILED AUGUST 15, 2012. ATTORNEY JOSHUA GRUBER APPEARED FOR THE STATE AND ATTORNEY KIMBERLY SMITH APPEARED FOR THE APPELLANT. AFTER HEARING FROM BOTH PARTIES AND DUE CONSIDERATION I HEREBY REMAND THIS CASE BACK TO THE LOWER COURT.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

Date

12/28/12

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of Dec, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Jan, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

JOSHUA GRUBER

KIMBERLY SMITH

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

1 State of South Carolina) Court of Common Pleas
 2 County of Beaufort) 14th Judicial Circuit
 3 No.: 2013-CP-07-918

4 State of South)
 5 Carolina,)
 6 Plaintiff,)
 7 vs.) HEARING
 8 Mare Baracco,)
 9 Defendant.) February 21, 2014
 10 _____)

11 Hearing reported by Deborah S. Thomas,
 12 Certified Verbatim Reporter and Notary Public in and
 13 for the State of South Carolina; said hearing held
 14 before the Honorable Marvin H. Dukes, III, Beaufort
 15 County Master in Equity and Special Circuit Court
 16 Judge in accordance with the South Carolina Rules of
 17 Civil Procedure, at the Beaufort County Courthouse,
 18 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 19 on February 21, 2014, at the hour of 8:50 a.m.

20 _____
 21 ABACTIS REPORTING SERVICES
 22 15 Pineapple Drive
 23 Bluffton, South Carolina 29909
 24 (803) 206-7390
 25

COPY

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning, everyone,
4 we are here on case 13-CP-07-00918. This is State
5 versus Baracco. Am I pronouncing that correctly?

6 MS. BARACCO: Yes, sir.

7 JUDGE DUKES: Thank you. And I
8 previously issued an order in this case. That order
9 was simultaneously appealed and the subject of a
10 Rule 60 motion. I have before me the order from the
11 South Carolina court of appeals as a result of Ms.
12 Baracco withdrawing and dismissing her appeal which
13 again places jurisdiction in this court for purposes
14 of the Rule 60 motion. So we are now here on the
15 Rule 60 motion.

16 And, Ms. Baracco, I am happy to hear from
17 you, ma'am.

18 MS. BARACCO: Okay. Thank you.
19 Well, first, Your Honor, we might refer to my
20 original brief.

21 JUDGE DUKES: All right.

22 MS. BARACCO: It's my argument that
23 the second hearing, the March 2013 hearing, was
24 invalid because proper procedures were not followed
25 in terms of paperwork and jurisdiction.

1 JUDGE DUKES: Back on the record
2 again. I apologize, Ms. Baracco. Obviously some
3 construction is going on in the courthouse. Please
4 feel free to pick up wherever you would like, even
5 if you restate things.

6 MS. BARACCO: Well, if we start with
7 the -- your order, Your Honor, to remand the case
8 for a new hearing if the State were to bring charges
9 back upon me for whatever reason.

10 And when I was called back to court for
11 the March hearing, excuse me, as I stated to you I
12 was -- in Exhibit F, I was sent in the mail a
13 magistrate summons for a rule to show cause hearing
14 which this is was an improper way to notify me of
15 the hearing. I was not served with the rule to show
16 cause as I note on Page -- excuse me. I'm sorry.
17 On Page 8.

18 I was not issued a rule to show cause,
19 rule to show cause. There were no supporting
20 affidavits. We had no paperwork served upon me. So
21 I would like to note that I believe that is a fatal
22 defect in the State's case.

23 JUDGE DUKES: All right. Now, let me
24 make sure I know what we are talking about here.
25 Exhibit F to your initial memo --

1 improper. This was a remanded case. This was not
2 an appeal of a notice because once the case was
3 remanded and you dismissed the case in December,
4 there was no dangerous dog notice. The case had
5 ended. And it was as though that had never
6 happened.

7 So in order for the State to recharge me,
8 in addition to the errors in the rule to show cause
9 paperwork, they would have to re-serve me with the
10 dangerous dog notice. And they would have to
11 actually bear the burden of proving their case
12 against me.

13 There was no appeal. I've never appealed
14 this case. I've always been the Defendant. And it
15 was upon the State to bring me back to court if that
16 was what they were planning to do and prove their
17 case, not me prove my innocence of a charge that
18 doesn't even exist.

19 So my argument is that the entire March
20 hearing is completely invalid and void. And may I
21 add to that they also were trying me in the wrong
22 court. They were calling this administrative
23 finding. And that would occur in the administrative
24 court of law, not in a magistrates' court.

25 And they used that same argument in the

1 appeal, that it was the appeal of an administrative
2 finding, but again jurisdictionally that was not
3 correct. That is my case on that part.

4 JUDGE DUKES: On that part? All
5 right. So since it's multi-part appeal, I'm happy
6 to allow the State to take it one at a time or wait
7 until Ms. Baracco is finished and do it all in one
8 shot. You all's option. What would you like to do?

9 MS. COPPAGE: I wouldn't mind taking
10 it in parts if you don't mind so that I can
11 accurately address each of her points.

12 JUDGE DUKES: All right. Well, let's
13 take the first one.

14 MS. COPPAGE: The first issue, I
15 guess, regarding the rule to show cause March 12th
16 motion in this transcript is provided is, quite
17 frankly, this is not appropriately for a Rule 60
18 motion.

19 A Rule 60 motion very clearly moves on the
20 grounds that there is newly discovered evidence or
21 there was fraud, misrepresentation, or misconduct by
22 the adverse party. None of the -- the rule to show
23 cause, I understand, was actually a hearing in the
24 interim after you remanded the case to magistrate
25 court for a new trial to ensure that in the interim

1 before the case could go to trial that Ms. Baracco
2 was adhering to the restrictions that had been
3 placed on the dog due to the dangerous animal.

4 It was only to --

5 MR. GRUBER: I'm sorry. Let me
6 correct that.

7 MS. COPPAGE: Oh, I apologize.

8 MR. GRUBER: No, that is all right.
9 Your Honor, you obviously remanded the case after
10 Judge Kline's order. There was a second hearing
11 before Judge Brooks. After Judge Brooks rendered
12 his decision in that matter, there was a subsequent
13 rule to show cause hearing while the matter was
14 pending appeal coming back before Your Honor?

15 And it was at that hearing that Judge
16 Brooks instructed Ms. Baracco that it was his desire
17 that the restrictions concerning the dangerous dog
18 determination be in place while the matter was
19 pending appeal before your court.

20 JUDGE DUKES: So there was a whole
21 another order between this rule to show cause and
22 the --

23 MR. GRUBER: Yeah. There was the
24 second hearing on remand from Your Honor.

25 JUDGE DUKES: Uh-huh.

1 MS. BARACCO: Oh, that was my second
2 hearing. This is actually my third hearing, the one
3 in March.

4 JUDGE DUKES: Okay. But, again, I
5 guess I'm trying to get the chronology in my head
6 about this because it may or may not be important,
7 but you had a hearing with Judge Kline.

8 MS. BARACCO: That was the first
9 hearing.

10 JUDGE DUKES: First you had a hearing
11 with Judge Tupper with regard to --

12 MS. BARACCO: No.

13 MR. GRUBER: Your Honor, that was a
14 separately issued criminal citation from the Town of
15 Port Royal.

16 JUDGE DUKES: Okay.

17 MS. BARACCO: But I would like to, if
18 I may, address that?

19 JUDGE DUKES: Yes, ma'am.

20 MS. BARACCO: The first hearing with
21 Judge Kline which you overturned on appeal, in
22 between your ruling and Judge Kline's case, I had a
23 hearing in Port Royal which found me not guilty of
24 having an animal at-large. According to the State
25 and local statute, local ordinance, and I address

1 that on Page 5 of 11, the Defendant was bewildered
2 by the actions of the State as both the local and
3 State Statutes 1435 and 47-3-710 specified that in
4 order for an animal to be deemed dangerous, quote,
5 the attack occurs in a place other than the place
6 where the animal is confined.

7 And I go on to say, considering the
8 incident occurred on the Defendant's property, I
9 immediately began to research information to request
10 a hearing because my -- my defense in part to this
11 is that this happened on my property. According to
12 the statute I can't even be charged with having a
13 dangerous animal because it happened on my property.
14 And I was also acquitted of having my animal
15 at-large. Therefore I cannot be charged.

16 JUDGE DUKES: All right. And but
17 then there was another hearing in front of Judge
18 Brooks?

19 MS. BARACCO: That was the initial
20 rule to show cause hearing which I claim was
21 improper. And it's fatally flawed because the State
22 did not file a proper serving procedures, the
23 jurisdiction was incorrect. They had me testify
24 first as an appeal.

25 JUDGE DUKES: And what date was that?

1 MS. BARACCO: That was March 12th.

2 It's on the --

3 JUDGE DUKES: That was March 12th?

4 MS. BARACCO: Right.

5 JUDGE DUKES: Okay.

6 MS. BARACCO: May I explain this
7 other hearing that they are referring to? Again, if
8 it was a rule to show cause, I was not notified. I
9 was only notified the day before by my former
10 attorney Ms. Smith that I was due in Judge Brooks'
11 court. And if I might show you why I was called in
12 to court, Your Honor?

13 JUDGE DUKES: All right. And, again,
14 I'm just trying to get the timeline down because for
15 just a moment there I thought maybe we were -- it
16 was entirely -- there was a hearing before this --

17 MS. BARACCO: No. It was actually
18 after. And, again, for them -- for the State to
19 argue that was a rule to show cause, I would argue
20 again I would have to have proper paperwork served
21 upon me. I only had 24 hours notification via a
22 phone call. I never received any kind of a summons.

23 JUDGE DUKES: Okay. Were you
24 represented at that hearing?

25 MS. BARACCO: That was Kimberly

1 Smith.

2 JUDGE DUKES: Okay.

3 MS. BARACCO: But I would like to
4 state to the court why that hearing was called if I
5 may.

6 JUDGE DUKES: Sure, go ahead.

7 MS. BARACCO: Okay.

8 JUDGE DUKES: And, don't worry, I'm
9 going to get back to you all in a second. I'm still
10 trying to get a handle on the timeline which in a
11 minute maybe I'll just do a timeline and figure it
12 out.

13 MS. BARACCO: These documents, which
14 I'm going to give you, Your Honor, this was from
15 that same freedom of information request which I
16 referenced in my supplemental brief which I
17 delivered to you the other day.

18 JUDGE DUKES: I have it right here.

19 MS. BARACCO: And understand that
20 this particular case or argument is that this is
21 simply the intrusion of a politician who is best
22 friends with the dog owners. And everything has
23 been generated by the actions of this town
24 councilman. And his name is Tom Kline.

25 And this is an e-mail that he forwarded

1 Honor.

2 MS. BARACCO: Yes.

3 JUDGE DUKES: Okay. August 8th,
4 2012. Okay. And then --

5 MS. COPPAGE: And then the case was
6 appealed to Your Honor.

7 JUDGE DUKES: And that -- then my
8 remand order was issued when? Let's see. I can
9 probably find it here. It is right there. It is
10 December 28th, 2012; is that right?

11 MS. BARACCO: Right.

12 JUDGE DUKES: Remand, December 28th,
13 2012.

14 MS. BARACCO: And you also have in
15 your supplemental brief, Your Honor, you have
16 documents from the town of Port Royal regarding your
17 order and conversations with Attorney Gruber. That
18 is in your supplemental.

19 MS. COPPAGE: And back to the
20 timeline, then -- so after the case was remanded, it
21 went before Judge Dukes on March 12th, 2013, under
22 the transcript as rule to show cause. I believe
23 that that is stylized --

24 JUDGE DUKES: You mean --

25 MS. COPPAGE: I said Brooks.

1 JUDGE DUKES: You said Brooks? Okay.

2 MS. COPPAGE: I apologize if I said

3 Your Honor.

4 JUDGE DUKES: No, I'm going deaf.

5 Okay.

6 MS. COPPAGE: Judge Brooks --

7 JUDGE DUKES: Judge Brooks --

8 MS. COPPAGE: -- on March 12th, 2013.

9 JUDGE DUKES: March 12th, 2013. Okay
10 and this was --

11 MS. COPPAGE: A bench trial.

12 JUDGE DUKES: Okay. Brooks. Okay.

13 So that is perhaps the fundamental difference or
14 confusion here.

15 MS. COPPAGE: I believe that may be
16 where the confusion is arriving from. And then that
17 finding, which the animal was then again found to be
18 deemed a dangerous animal was appealed to Your
19 Honor.

20 JUDGE DUKES: Okay.

21 MS. COPPAGE: And while the case was
22 on appeal to Your Honor, there was a rule to show
23 cause hearing held before Judge Brooks. And it was
24 to make sure that the appropriate provisions for the
25 dangerous animal were being adhered to.

1 JUDGE DUKES: What date was that?

2 MS. BARACCO: Do you have any
3 documents? I'd like to know if the State has any
4 documents on that? I have never seen any order to
5 attend court. I've never seen any problems --

6 MR. GRUBER: We brought the documents
7 that were relevant to the Rule 60 hearing that we
8 are here on today.

9 JUDGE DUKES: Well, hold on one
10 second. So there was -- we have the hearing that
11 created the appeal today was the one on March 12th,
12 2013?

13 MS. COPPAGE: Yes, Your Honor.

14 JUDGE DUKES: Okay. And I understand
15 that what is confusing me, I guess, and maybe I'm
16 figuring it out, is Ms. Baracco is referring to a
17 rule to show cause hearing. The State is referring
18 to it as the bench trial on remand. And then
19 apparently after that there was another hearing that
20 Ms. Baracco says she was unaware of?

21 MS. BARACCO: Correct.

22 JUDGE DUKES: That's some sort of
23 rule to show cause.

24 MS. BARACCO: That's correct.

25 MR. GRUBER: No, Your Honor. She was

1 MS. BARACCO: -- that I only -- again
2 I -- just being specific because as I understand it
3 there are very specific rules under the Rule 14 rule
4 to show cause. And in the March hearing that you
5 have the transcript of one of my arguments is that I
6 never received proper rule to show cause or proper
7 documents to hail me into court.

8 Further, that since they didn't reissue
9 the dangerous dog notice, because it was supposed to
10 be a new hearing they were supposed to reissue it.
11 In other words, I was being hailed into court for
12 contempt of nothing because there was no
13 notification properly. There was no dangerous dog
14 notice reissued which to me would not only void the
15 March hearing, it would void whatever hearing they
16 are saying happened afterwards that was another rule
17 to show cause hearing which again had no proper
18 documents, no affidavits, no -- I never even
19 received a notification and even in the mail that
20 again improperly. This magistrates summons from
21 March, I never even received one of these. So I had
22 no idea I was due in court. And I had no idea why I
23 was being called in to court.

24 MS. COPPAGE: And at the time Ms.
25 Baracco was represented by Kimberly Smith who was

1 provided with notice. And Ms. Baracco did attend
2 all hearings, but separate and away from that none
3 of these issues are appropriate or pertinent to a
4 Rule 60 motion which is what we are here on today.

5 JUDGE DUKES: Okay. And, yeah, we've
6 gotten a little far afield. And, of course, any
7 time we end up with a pro se litigant and a timeline
8 that involves a remand, I'm just trying to
9 understand it all.

10 MS. BARACCO: May I just also
11 interject for a moment, Your Honor?

12 JUDGE DUKES: Sure. Go ahead.

13 MS. BARACCO: I don't believe that,
14 you know, delayed justice means I don't get justice
15 at all. The fact that a Judge, the attorney for the
16 State, and the Defendant's attorney all had no idea
17 how to conduct the March hearing and didn't have
18 proper paperwork, didn't have it in the correct
19 court, had me testify first as an appeal when it
20 clearly was not an appeal.

21 There was no notice of a dangerous dog
22 because you had remanded the case for a new hearing.
23 So my argument is that the entire proceeding doesn't
24 even exist. It's completely void. And simply
25 because I am pro se today doesn't mean I shouldn't

1 get proper justice or proper notification according
2 to the laws of the State of South Carolina.

3 JUDGE DUKES: All right. Let's do
4 this. This is still on your first point; is that
5 right?

6 MS. BARACCO: That the entire March
7 hearing is completely null and void because it was
8 conducted improperly by the State. The Judge did
9 not issue the proper paperwork. And regardless of
10 what -- whether my attorney did or did not represent
11 me properly is not the issue. The entire hearing is
12 completely invalid according to the law.

13 JUDGE DUKES: All right. Let me just
14 look at your appeal right here.

15 MS. BARACCO: And I did include your
16 order, Your Honor, to remand the case. And that is
17 Exhibit C. I'm sorry. E, Your Honor. I apologize.
18 And may I add one thing to that?

19 JUDGE DUKES: Go ahead.

20 MS. BARACCO: Also I believe that in
21 my supplemental motion that the document that I
22 attached with the ex parte communication by Attorney
23 Gruber asking for a change in magistrate wholly
24 denied me any due process for any hearing thereafter
25 that they are claiming was proper. I'm claiming was

1 improper because they were improperly Judge
2 shopping, for lack of a better word.

3 MR. GRUBER: Your Honor, if I may
4 address that real quick just because it is somewhat
5 of a serious allegation for ex parte communications.

6 JUDGE DUKES: Go ahead, Mr. Gruber.

7 MR. GRUBER: After your determination
8 to remand for a new hearing I spoke with Ms. Smith,
9 Ms. Baracco's attorney, and discussed with her the
10 fact that because Judge Kline had issues with his
11 order, which obviously gave rights to the remand,
12 that I was really speaking with the chief magistrate
13 to ask that it be re-assigned to an alternative
14 magistrate. And she agreed with that. And then
15 subsequently I contacted the chief magistrate to
16 request that. No discussions of the underlying case
17 occurred whatsoever. And there was no conversations
18 that occurred that Ms. Baracco or Ms. Baracco's
19 attorney did not have knowledge of.

20 MS. BARACCO: If I may respond to
21 that, Your Honor? I believe that -- first of all, I
22 was never notified of any conversation that Mr.
23 Gruber had with Ms. Smith on the issue. And I also
24 believe that on this e-mail, which I attached to the
25 supplemental order, if he was, in fact, going to or

1 had had conversation with my former counsel, she
2 would have been cc-ed on it along with Sergeant
3 Hires and Van Willis. I don't know why Van Willis
4 would supersede counsel in this case. I don't know
5 why Van Willis would even be contacted, frankly.

6 JUDGE DUKES: Let me ask you this,
7 Ms. Baracco.

8 MS. BARACCO: Uh-huh.

9 JUDGE DUKES: I guess I'm looking at
10 your notice of appeal --

11 MS. BARACCO: Yes..

12 JUDGE DUKES: -- filed April 10th,
13 2013. Is that the appeal that we are here about
14 today?

15 MS. BARACCO: Which -- is that the
16 one I attached or which one is that, Your Honor?

17 JUDGE DUKES: Well, it's the notice
18 of appeal.

19 MS. BARACCO: I'm sorry. Which one
20 are you referring to?

21 JUDGE DUKES: It is -- it was
22 actually filed by Kim Smith.

23 MS. BARACCO: Yes. Is that the one
24 in October?

25 JUDGE DUKES: Well, it says

1 I'm just not seeing it although it might be in here
2 somewhere?

3 MS. BARACCO: No. What I'm arguing
4 Your Honor, is that the State -- regardless of Ms.
5 Smith, the State argued in the appeal that you heard
6 that this was an administrative appeal. And my
7 argument is that in this March hearing -- that
8 anything that followed the March hearing, the entire
9 March hearing, is invalid.

10 Therefore this is all invalid because the
11 State cannot hail me into the wrong court, have me
12 testify first when it's the burden of the State each
13 time they bring this case to try. It's on the State
14 to prove that I am guilty, not on me to prove that I
15 am innocent.

16 They cannot not serve me with -- have two
17 rule to show cause hearings and not serve me with
18 any of the proper paperwork according to Rule 14.
19 And that if they are going to call it an
20 administrative finding, which they do in the March
21 hearing, then they have to serve me in the right
22 court.

23 And my entire argument is that your
24 ordered remanded this for a new hearing. And there
25 are processes that they did not follow according to

1 law. So my argument is that it's a fatal defect and
2 the entire March hearing is void.

3 JUDGE DUKES: Okay. All right. Let
4 me do this. I have let you go for awhile. And the
5 State has been very polite and quiet.

6 MS. BARACCO: Yes.

7 JUDGE DUKES: And so we are just
8 going to allow them to tell us whatever they want to
9 tell us about all of that uninterrupted for awhile.
10 So happy to hear from you.

11 MS. COPPAGE: Your Honor, I mean, I
12 think I can keep it fairly simple. The notice of
13 the motion of appeal has already been heard and
14 ruled upon. Your record dated October 16th, 2013,
15 is when these arguments that Ms. Baracco is
16 currently making were argued by Kimberly Smith who
17 is very competent and capable counsel.

18 And you ruled on all of those issues.
19 Now, what we are here on today is the motion and
20 notice -- sorry. Excuse me. The Rule 60 motion
21 which was filed November 12th, 2013.

22 Ms. Baracco never made a Rule 59 motion to
23 reconsider your October motion. So no issues
24 regarding a motion to reconsider your order from
25 October should be considered today. We are here

1 JUDGE DUKES: Well, we've gone far
2 afield from a Rule 60 motion.

3 MS. BARACCO: And I apologize for
4 that. I --

5 JUDGE DUKES: That's okay. It's
6 important for me to understand the whole situation,
7 but -- although I can understand the whole
8 situation, I'm still bound by what the motion is.

9 MS. BARACCO: I understand. I
10 believe that my motion very clearly states that the
11 March hearing was conducted improperly by the State.
12 They did not follow the State rules of service.
13 They did not have affidavits. They did not have
14 proper documents.

15 They were supposed to, according to your
16 order, Your Honor, they were supposed to present
17 their case against me. This was not an appeal as
18 Attorney Gruber stated in the -- that section that
19 you read. It's not an appeal of an original notice.

20 There was no dangerous dog notice as of
21 that March hearing. I was never re-served with any
22 warrant. I was never re-served with a notice. And
23 according to my understanding of the Rule 14, if
24 they do not serve me with the correct paperwork, it
25 is a fatal defect in their -- flaw in their case and

1 the ruling is void.

2 JUDGE DUKES: Let me -- was that your
3 second point also? I mean, I guess I'm trying to
4 make sure you've got your -- both your points?

5 MS. BARACCO: Well, I wanted to point
6 out, Your Honor, that also in my memorandum that the
7 State actually owned the animal. And the State
8 adopted the animal out to me. If the State had
9 determined at that point that the dog was a
10 dangerous animal, they never would have adopted the
11 animal out to me.

12 So the dog was actually determined not
13 dangerous even before this. Then Officer Chaplin
14 found the dog to be not only not dangerous, but she
15 was impressed with the animal. And nothing
16 occurred -- no other incident occurred between her
17 assessment and her supervisor's overturning that
18 assessment from his office without observation.

19 So we have two determinations by the State
20 that this dog is not a dangerous animal. And our
21 contention is is that the only reason that this
22 entire case has even been brought to this point is
23 because Sally Germer and Homer Brown, who are the
24 other dog owners have their best friends, the town
25 councilman of Port Royal named Tom Kline, and

1 The Movant has the responsibility to by
2 clear and convincing evidence show there is newly
3 discovered evidence which by due diligence could not
4 have been discovered in time to move for a new trial
5 under 59(b). I do not believe any evidence to that
6 point has been shown. All evidence has gone to
7 issues that could have been brought up at the
8 initial trial or the remand and the second bench
9 trial on which Judge Dukes -- I mean Judge Brooks
10 made his decision.

11 And secondly, the allegation of fraud,
12 misrepresentation, or other misconduct of an adverse
13 party, I do not believe there has been any evidence
14 that has gone to show that there has been such
15 misconduct.

16 And based on those reasons, we would ask
17 that in the court's discretion that you deny the
18 Rule 60 motion.

19 MS. BARACCO: May I rebut that just
20 for a moment?

21 JUDGE DUKES: I'm happy to hear from
22 you. Try to as we narrow this, try to keep it to
23 Rule 60 if you can.

24 MS. BARACCO: Well, I'm saying that
25 simply because the Judge and the prosecutor and my

1 former attorney did not conduct the hearing
2 correctly doesn't mean that an improper hearing and
3 findings, appeals and such based on an improper
4 hearing that should be voided would mean that I
5 don't get my due process. The evidence that the
6 hearing in March was conducted improperly, I
7 believe, is succinct. I believe I have proven my
8 point that the proper procedures were not followed
9 by the officials in this community that are charged
10 with making sure trials are conducted fairly.

11 I believe that I was not charged fairly,
12 that the hearing was conducted improperly. And that
13 simply because I am seeking justice today under my
14 Rule 60 doesn't mean that I should be denied justice
15 simply because I have brought it to the court's
16 attention now because I am no longer represented by
17 that attorney.

18 That, again without getting into that,
19 that I believe that a person who is not an attorney
20 depends on the professionals running the court to be
21 sure it's run properly. And I believe I have
22 submitted sufficient evidence to the court that
23 shows that the case -- the trial was not conducted
24 properly by the State.

25 It was not conducted properly according to

1 your order to remand it for a new trial. And I
2 don't believe that my husband and I -- our family
3 should continue to suffer under this false charge.
4 It has always been a false charge. And this has
5 become almost a Kafkaesque nightmare where I am
6 showing evidence in my brief that shows this hearing
7 should be voided according to South Carolina law.

8 And simply because it's brought to your
9 attention now doesn't make it less pressing or
10 urgent. And justice to me in this case delayed has
11 been justice denied.

12 And we are asking the court to correct
13 what has been an egregious error by the State. And
14 suppressing my due process right to a fair trial.

15 JUDGE DUKES: Anything else?

16 MS. COPPAGE: No, Your Honor.

17 JUDGE DUKES: All right. Well, I
18 will take a look at it. I mean, again, you
19 understand I'm constrained by Rule 60. That was
20 your motion. And so I can't really look at -- I
21 wanted a background and an overview, and you gave it
22 to me. And, of course, I have the file, but the
23 State is correct in that I'm not really permitted to
24 dig back into many of the things that you have
25 mentioned.

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State of South Carolina) Court of Common Pleas
County of Beaufort) 14th Judicial Circuit
No.: 2013-CP-07-918

State of South)
Carolina,)
Plaintiff,)
vs.) HEARING
Mare Baracco,)
Defendant.) October 3, 2013

Hearing reported by Deborah S. Thomas,
Certified Verbatim Reporter and Notary Public in and
for the State of South Carolina; said hearing held
before the Honorable Marvin H. Dukes, III, Beaufort
County Master in Equity and Special Circuit Court
Judge in accordance with the South Carolina Rules of
Civil Procedure, at the Beaufort County Courthouse,
102 Ribaut Road, Room 212, Beaufort, South Carolina,
on October 3, 2013, at the hour of 4:00 p.m.

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8 EXHIBIT INDEX

9 Exhibits: Marked at Page

10 (None were proffered.)

11 * * * * *

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good afternoon then
4 everyone. We are here on case 13-CP-07-918. This
5 is State versus Baracco. Did I pronounce that
6 correctly?

7 MS. SMITH: Yes, Your Honor.

8 JUDGE DUKES: This is an appeal filed
9 by the Defendant. And I'm happy to hear from you.

10 MS. SMITH: Judge, we are before you
11 today -- actually we've been before you before on
12 this same case.

13 JUDGE DUKES: This sounds familiar.
14 Did something happen or we did --

15 MS. SMITH: You granted us a new
16 trial. Judge Kline originally heard it.

17 JUDGE DUKES: Oh, that's right.

18 MS. SMITH: And there were some
19 discrepancies with the order.

20 JUDGE DUKES: That was it.

21 MS. SMITH: And that was the basis
22 for that appeal.

23 JUDGE DUKES: That sounds familiar.

24 MS. SMITH: It has now been heard by
25 Judge Brooks. It is a dangerous animal

1 determination. The Animal Control of Beaufort
2 County Sheriff's Office issued a dangerous animal
3 notice on July 9th, 2012. This matter was before
4 Judge Brooks. Of course, my client has contested
5 that. This matter was before Judge Brooks on
6 March 12th, 2013.

7 And he issued an order on the 13th deeming
8 the dog or basically affirming the administrative
9 agency ban, the Beaufort County Sheriff's Office
10 Animal Control, affirming their decision that the
11 dog is a dangerous animal under Section 1435 of the
12 local ordinance.

13 We basically appealed on two basis today.
14 One, the first thing Judge Brooks' order is attached
15 to my appeal. We would contend that Judge Brooks
16 erred as a matter of law in affirming the
17 administrative decision of Jody Hires with the
18 Beaufort County Sheriff's Office Animal Control as
19 the testimony was that he was the one that made the
20 determination.

21 The basis for that that we feel the court
22 erred in affirming that decision is that Mr. Hires
23 did not testify at the hearing nor did he provide a
24 report nor did he take an active role in the
25 investigation.

1 The officer that is here today is Officer
2 Chaplin with Animal Control. And she testified at
3 the first hearing and at the second hearing, was the
4 only officer from Animal Control that testified at
5 the second hearing.

6 Officer Reeves was also involved from
7 Animal Control. She did not testify. Once again,
8 Mr. Hires didn't. Officer Chaplin is the one that
9 initially came out to investigate this. If you will
10 recall, this was an incident involving two dogs. My
11 clients own a Rhodesian Ridgeback and the other was
12 a smaller dog.

13 And there was just a couple seconds of
14 contact. And the other dog ultimately died after
15 being taken to the vet and going into surgery.
16 Officer Chaplin came out after Port Royal Police
17 responded. They issued my client an animal at-large
18 ticket.

19 They contacted Animal Control.
20 Ms. Chaplin came out and investigated the matter.
21 Met with my clients. Observed her dogs. She
22 actually testified at the hearing on this case that
23 she advised my clients the dogs appeared friendly.
24 She was impressed with their behavior. And at that
25 point did not deem them dangerous.

1 It was only after on July 9th, after the
2 other dog died, that they issued the dangerous
3 animal notice. And it was based on Mr. Hires'
4 opinion, her supervisor. However, she testified at
5 the hearing on this, Page 18 of the transcript, that
6 -- I asked her, did Mr. Hires ever go observe these
7 dogs? No. Okay, what did he base his assessment
8 on? Previous experience and his education. And I
9 asked her previous experience with what? And she
10 said he's a dog trainer.

11 He never did any specific investigation to
12 these specific dogs? No. So all of this is just
13 based on his opinion as to the dogs and their
14 behavior, correct? And she said, and the County
15 ordinance. And they did not -- this occurred on
16 July 4th. They did not make this determination
17 until July 9th.

18 So we find that there was no basis
19 presented at the hearing as Officer Chaplin was the
20 only one that testified at that hearing. And
21 basically she testified, well, my supervisor made
22 the determination. And there was some testimony
23 presented that people contacted him and they talked
24 to the victims and that was the basis of the
25 determination, not necessarily what actually

1 happened.

2 The other -- another reason that we would
3 argue that there is no basis for the determination,
4 the attorney for the County, you know, argued at the
5 hearing on this case that the standard was that the
6 burden was on us to prove that the agency, being
7 Animal Control's decision had to be unsupported by
8 the evidence, but it has to be to the level that it
9 is found to be clearly erroneous in view of the
10 reliable, probative, and substantial effort on the
11 whole record, or is either arbitrary or capricious
12 or characterized by abuse of discretion.

13 We think this is clearly an arbitrary
14 determination and an abuse of discretion. And since
15 that time, unfortunately or fortunately, my client
16 came into some possession of newly discovered
17 evidence. She was approached -- this thing has been
18 in the paper a couple of times and was approached by
19 Althea Hicks who is with The Colony over in Bluffton
20 about some dog attacks that were occurring at the
21 same time at Colleton River from May to December of
22 2012.

23 And these dogs -- the same two dogs that
24 were on the loose, four occasions that Beaufort
25 County Sheriff's Office were contacted and only

1 three that they responded to where these dogs were
2 killing cats. And they only issued animal at-large
3 citations and never issued -- never issued a
4 dangerous animal notice or determination, even
5 though death occurred. I mean, there were death of
6 cats and other animals out there.

7 And the same exact people investigating
8 these incidents; Jody Hires, Officer Reeves, Officer
9 Chaplin. And every single time only an animal
10 at-large citation was issued.

11 I have the reports. There are three
12 reports from the Beaufort County Sheriff's Office
13 Animal Control, of these incidents. And I would
14 like to have the court, if you would consider them.
15 Like I say, we are arguing this under newly
16 discovered evidence as we had no idea this was going
17 on. And someone actually let my client know based
18 on what she heard about her situation.

19 JUDGE DUKES: Let me make sure I
20 understand what the newly discovered evidence is.
21 It's not -- the assertion is not that these two dogs
22 bit -- what is the other dog's name?

23 MS. SMITH: Zoey.

24 JUDGE DUKES: Zoey. The assertion is
25 just some sort of -- I don't know. Some assertion

1 that maybe the prosecution is not balanced as far as
2 some of these --

3 MS. SMITH: Correct. Selective
4 prosecution and that --

5 JUDGE DUKES: There is the term that
6 I was looking for.

7 MS. SMITH: Selective prosecution.
8 And, you know, there was a statement made at the
9 previous trial that the sole basis necessary for the
10 officer to make this determination on behalf of the
11 County is the fact that an attack occurred. And
12 based -- I mean, it's clear that that is not the
13 basis that Animal Control is using for making this
14 determination as that is not what they've done in
15 the Colleton River incidents.

16 And this was occurring -- we are talking
17 the same timeframe. And much -- and not just one
18 or -- you know, not just a dog getting out for a
19 couple minutes. These are dogs that are running
20 around the neighborhood for hours at a time, the
21 same two dogs on four different occasions killing
22 cats. They were found a mile and a half from their
23 home at times.

24 To that is why we are introducing it, just
25 to illustrate that the determination made in the

1 case at hand involving my clients by Officer Chaplin
2 or Officer Hires, whoever, you know, wants to take
3 responsibility for it, that it was arbitrary and
4 abuse of discretion as they clearly have no set
5 guidelines or rules that they follow in making this
6 determination. They make it however they feel like
7 it or based on the fact that there is too much
8 publicity involved in a case or they get too much
9 pressure from victims. And that is why we would be
10 introducing that.

11 And like I say, I've got the reports and
12 be glad to hand them up to you and to counsel.

13 JUDGE DUKES: Let me first get a --
14 hear from the State on this. And you all help me
15 out with the burden of proof and what this court can
16 do with regard to appeals of administrative
17 decisions. I'm sure you all will tell me at some
18 point so I know what to listen for. So happy to
19 hear from the State.

20 MS. COPPAGE: I will be happy to
21 address it. First I would like to say that Lance
22 Corporal Smith is with us here today. It is
23 Corporal Chaplin, but she has gotten married. So I
24 didn't want there to be any confusion regarding
25 names if I refer to her as Smith.

1 Basically the appeal that is before us
2 today is -- it can only be -- the decision at the
3 magistrate level can only be overturned if there was
4 clearly erroneous inferences, conclusions in view of
5 reliable, probative, and substantial evidence on the
6 whole or is arbitrarily and capricious which is
7 completely what the appellate has referenced.

8 The burden is on the appellate. And I do
9 believe that the findings of Judge Brooks were based
10 on the testimony and evidence presented at
11 magistrate's court. And they clearly support the
12 determination of the dangerous dog determination or
13 dangerous animal determination.

14 As to the issue of Heirs not testifying or
15 Hires I believe his name was not testifying, absent
16 and away from Hires who did not have any knowledge
17 or -- he didn't have any personal knowledge of the
18 incident, the determination was able to be made that
19 this was a dangerous animal based on the responding
20 officer who was Lance Corporal Smith.

21 I think the burden strongly falls on the
22 appellant and -- the definition or ordinance is that
23 a dangerous animal means any animal that the owner
24 knows or reasonably should know has a propensity,
25 tendency or disposition to attack or an animal that

1 commits an unprovoked attack anyplace other than the
2 place where the animal is confined.

3 In this incident the dog attacked another
4 dog and the dog was subsequently killed. Those
5 facts fit clearly within the ordinance to determine
6 that it was a dangerous animal.

7 JUDGE DUKES: Let's see. I can begin
8 by listening to the tape if you all would like.
9 Does anyone remember how long this is?

10 MR. GRUBER: Is this a tape of the
11 trial or was this tape of --

12 JUDGE DUKES: I don't know. I
13 haven't listened to it yet. I'm assuming this is a
14 tape of the hearing before the Magistrate's Court.
15 Does anyone know?

16 MS. SMITH: He must have submitted it
17 with the return. I did not submit that.

18 MR. GRUBER: Nor did we.

19 MS. COPPAGE: Neither one of us did.

20 MR. GRUBER: He must have submitted
21 it with his return.

22 JUDGE DUKES: Ordinarily I would
23 listen to it unless both sides don't want me to.
24 I'm happy not to.

25 MR. GRUBER: I don't think anything

1 that occurred at the hearing is necessarily in
2 controversy.

3 JUDGE DUKES: All right.

4 MR. GRUBER: I mean, Sergeant Hires
5 was not produced, but our argument is he was not
6 required to be produced.

7 JUDGE DUKES: Was there any
8 evidence -- what is the contention of the appellant,
9 that there was no evidence?

10 MS. SMITH: Right. And I have just
11 another part. The first being that it was based on
12 the determination was made by Sergeant Hires. And
13 he did not testify at the hearing. And Ms. Chaplin
14 could not give any other reason. She testified at
15 the hearing, I've got the transcript here, that -- I
16 asked her what made you change your mind to make
17 that determination? Because when she first went out
18 to see my client she said everything was fine. She
19 was impressed with their behavior.

20 And then all of a sudden four days
21 later -- five days later -- four days later she
22 comes back and says issues of a notice saying it's a
23 dangerous animal. And I asked her what made you
24 change your mind and made that determination. And
25 she said the attack and injured -- severely injured

1 and which caused bleeding to death of a small
2 canine.

3 And just prior to that I asked her what
4 did she do. I contacted my supervisor and advised
5 him up to this point that that is the investigation.
6 And she talked to Sergeant Hires. And then that was
7 the only reason that she gave for the reason that
8 they made a determination. Not why -- Sergeant
9 Hires never observed the dog. Never -- and that he
10 based that decision based on his education and
11 experience.

12 And what I'm saying is and what our
13 argument's done is that if it was his determination,
14 there was no testimony at the hearing as to why he
15 made that determination. Nor did he ever submit a
16 report.

17 JUDGE DUKES: And I guess I'm trying
18 to think of this analogous to typical prosecutions
19 with the solicitor's office.

20 MS. SMITH: Right.

21 JUDGE DUKES: I mean, in any law
22 enforcement area I would suppose that it is not
23 unusual for higher-ups to make these calls, but not
24 necessarily appear at trial to testify. I mean, is
25 there anything different about this than that?

1 MS. SMITH: Only -- I think the
2 reason that we -- and there have been two hearings
3 on this at this point.

4 JUDGE DUKES: Right.

5 MS. SMITH: But the point that she
6 was not the one that made the determination. And I
7 think that if you are going to issue this notice,
8 then the person that makes the determination needs
9 to be the one that testifies as to why.

10 JUDGE DUKES: Well, do they testify
11 as to why? You know, it would seem like the finder
12 of fact would just need someone who is aware of the
13 facts, not necessarily -- and I think what you all
14 are telling me is Hires would not have been a fact
15 witness. Conceivably you would have objected or
16 somebody could have objected to his testifying
17 because he really wasn't a fact witness at all. So
18 to the fact that he wasn't there, I guess I'm trying
19 to figure this out.

20 MS. SMITH: Well, and I think -- and
21 what we are trying to -- the reason that we think
22 that it's such a -- or my clients and I think it's
23 such a crucial piece of this is that the whole basis
24 for this determination and asking Officer Chaplin
25 why it was made, she could never -- she said the dog

1 got attacked. Okay. That is the basis, but then
2 she went out to the investigation -- she
3 investigated it and said everything was fine. And
4 then turns around and says, well, my boss made me do
5 it. I'm deeming this dog dangerous. And we don't
6 feel like they provided my clients with the reason
7 as to why or don't feel like there was an adequate
8 basis for it. And that is why we argued Hires.

9 JUDGE DUKES: But the Magistrate
10 heard all of that, I assume, the weight, the
11 credibility and put whatever weight he thought was
12 appropriate based on I'm sure your cross examination
13 of her.

14 MS. SMITH: Yes, Your Honor, but that
15 is what we argued that he erred.

16 JUDGE DUKES: Okay.

17 MS. SMITH: The other part -- the
18 other part is that in his order that we also say he
19 erred in finding the testimony established and the
20 language of his order, it's the third paragraph,
21 that the testimony established the key salient
22 undisputed fact that my clients' dog escaped from
23 the enclosure and attacked Zoey on the public
24 sidewalk. It's in paragraph 3 of this order.

25 JUDGE DUKES: All right.

1 MS. SMITH: We would argue that
2 that -- that there was clearly a question of fact as
3 presented by the testimony of the witnesses as to
4 where the incident occurred. My clients, Mare
5 Baracco, who watched the incident testified that
6 they were right there at the fence. And then
7 Ms. Brown testified or her husband testified that it
8 was outside of the enclosure. So we don't think
9 there is anything undisputed about that.

10 In addition, my client testified that she
11 was found not guilty at the trial of the animal
12 at-large citation in Port Royal Municipal Court.
13 And even -- and we would argue that the court should
14 take judicial notice of that. Even if you don't buy
15 the argument that she was found not guilty of animal
16 at-large meaning the animal was not running at-large
17 by a jury trial, we would say it's a clearly
18 disputed fact as to where the incident occurred.
19 And that would be the other basis for our appeal.

20 JUDGE DUKES: Be happy to hear from
21 you all on that or both or anything that you would
22 like to say.

23 MS. COPPAGE: Regarding the last
24 point, the standard for the municipal court finding
25 would have been beyond a reasonable doubt as opposed

1 to here it's arbitrary and capricious. And you are
2 dealing with two different standards and, hence, why
3 we are probably arriving at two different findings.

4 Going through the -- I did want to address
5 something that I did not address earlier is the
6 newly introduced evidence. I think that that is
7 separate and apart from this appeal. It doesn't go
8 to showing that this was an arbitrary finding.

9 I do believe that there was substantial
10 evidence in the record that supports the court's
11 finding. And that the fact are not in dispute at
12 this point. The only thing we are looking at is
13 whether or not there is an error of law before us.

14 And the definition is clear and the facts
15 are also very clear in support of Judge Brooks'
16 return.

17 JUDGE DUKES: And, again, the
18 standard that I have to live by with regard to an
19 appeal of an administrative decision, which is
20 exactly what this is, is what? Do you remember the
21 exact terminology that is -- I always have to look
22 it up. We don't do many of these here.

23 MS. COPPAGE: A court can reverse an
-24 agency's finding, inferences, conclusions or
25 decisions only if there are clearly erroneous -- if

1 they are only clearly erroneous in view of the
2 reliable, probative, and substantial evidence on the
3 whole of the record.

4 JUDGE DUKES: So it's a pretty high
5 burden.

6 MS. COPPAGE: It is a very high
7 burden.

8 JUDGE DUKES: All right. Anything
9 else?

10 MS. SMITH: Judge, just one thing,
11 just on behalf of my clients. I mean, the reason is
12 that we are not trying to belabor the point, and
13 while this seems like a simple thing, Animal
14 Control's assessment deemed this dog dangerous, has
15 kind of empowered this community. I don't know if
16 you saw anything in the paper about it, but in Port
17 Royal and my clients have been ostracized as a
18 result of this. And it's just been very emotional
19 and very difficult for them. And so, like I say, we
20 are not trying to belabor the point and come back
21 before you again, but this is -- this is -- it may
22 not seem like a big deal but it's a huge deal to
23 them. And it's caused them -- essentially forcing
24 them out of their community. And they probably will
25 move after all this.

1 JUDGE DUKES: Okay.

2 MS. SMITH: Thank you, Judge.

3 JUDGE DUKES: All right. Thank you
4 very much. What I'll do is take a look at this and
5 get back with you all probably -- do I have -- I
6 don't know if I have both of your e-mails, I'm sure
7 I do separately. If somebody could just send me an
8 e-mail saying you got this under advisement with
9 both of your e-mails so I can respond. That would
10 be helpful to me. I'll try to get back with you
11 probably next week. All right. Thank you all very
12 much. That concludes the record.

13 (Whereupon, the hearing
14 was concluded at 4:23 p.m.)

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Certificate of Reporter

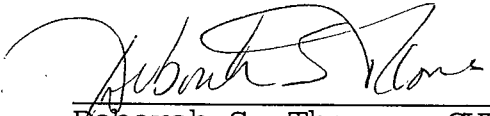
I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of State of South Carolina vs. Baracco, on the 3rd day of October, 2013: and that the foregoing 21 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to the Mare Baracco Deckard, 1006 Madrid Avenue, Port Royal, South Carolina 29935.

In witness whereof I set my hand and seal this 24th th day of April, 2014.

My Commission
expires 1/4/18


Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

**RULE TO SHOW CAUSE HEARING
BEFORE THE HONORABLE
RICHARD BROOKS**

held
March 12, 2013

in the matter of

State of South Carolina

-vs-

Mare Baracco
[2012-CV-07-10401536]

**COMPRESSED TRANSCRIPT
AND WORD INDEXING**

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Rule To Show Cause before Judge Brooks held March 12, 2013

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1 STATE OF SOUTH CAROLINA)
2) IN THE MAGISTRATE'S COURT
3 COUNTY OF BEAUFORT)
4)
5)
6)
7 STATE OF SOUTH CAROLINA,)
8)
9 Plaintiff,)
10) Case Number
11 -versus-) 2012-CV-07-10401536
12)
13 MARE BARACCO,)
14)
15 Defendant.)
16)
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18)
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Transcript of a Rule To Show Cause
Hearing before the Honorable Richard Brooks taken
on the 12th day of March, 2013, in the Arthur
Horne Building, Beaufort County Government
Center, 100 Ribaut Road, Beaufort, South
Carolina, commencing at approximately 9:14 a.m.

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1 THE COURT: Okay. Good morning. I'm Judge
2 Richard Brooks. This is Beaufort County Magistrate's
3 Court. It is Tuesday, March the 12th, 2013, and we are
4 here for a rule to show cause in the matter of -- where is
5 that caption -- State of South Carolina versus Mare
6 Baracco? Am I pronouncing that correctly?
7 MS. SMITH: It's Mare.
8 THE COURT: Mare?
9 MS. SMITH: Baracco.
10 THE COURT: Mare Baracco. And this is civil case
11 number 2012-CV -- excuse me -- 07-10401536, and for the
12 State, we have Mr. Josh Gruber --
13 MR. GRUBER: Good morning, Your Honor.
14 THE COURT: -- the Beaufort County Attorney, and
15 for the Defendant, we have Ms. Kimberly Smith of the Moss,
16 Kuhn & Fleming law firm. And this is a rule to show cause
17 on an issuance of a dangerous animal notice by Beaufort
18 County. All right. Is there anything we need to address
19 before we proceed?
20 MR. GRUBER: No, Your Honor. I'd just put on the
21 record, as we discussed in chambers, I believe this matter
22 arises as more of an appeal of the determination made by
23 the officer, and as such, the appellant would bear the
24 burden of proving this matter and would, therefore, go
25 first.

South Carolina vs. Baracco

Rule To Show Cause before Judge Brooks held March 12, 2013

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1 MS. SMITH: And we agree.
2 THE COURT: Also your understanding, Ms. Smith?
3 MS. SMITH: Yes, sir.
4 THE COURT: All right. I would ask you both --
5 I know that some of these facts have been presented,
6 previously, but they've not been presented to me. So this
7 is -- consider me a blank slate, tabula rasa, as it were.
8 Throwing out Latin before noon. Ms. Smith, if you're ready
9 to proceed?
10 MS. SMITH: Judge, just by way of background and
11 maybe just to put on the record before we get started --
12 THE COURT: Okay.
13 MS. SMITH: -- kind of how we got back to here --
14 THE COURT: Okay.
15 MS. SMITH: -- the notice that we're here about
16 was issued on July 9th, 2012, the dangerous animal notice
17 to my client. We came before the Magistrate Court on
18 August 8, 2012, pursuant to that notice. Judge Klein ruled
19 on the case on August 13th and emailed that ruling out to
20 everyone on August 15th, 2012. We filed a notice of appeal
21 on August 15th, 2012. That went before Judge Dukes, who
22 has now remanded it back here for a new trial. Like I say,
23 I'm just putting that on there for purposes of letting --
24 THE COURT: I understand.
25 MS. SMITH: -- letting you know kind of the time

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1 line and what we're doing. At this time, I'd like to call
2 Officer Chaplin.
3 THE COURT: Okay. Deputy Chaplin, if you would
4 state your name and affiliation for the record, please?
5 L.CPL. CHAPLIN: Lance Corporal Brittany Chaplin,
6 Beaufort County Sheriff's Office.
7 THE COURT: And raise your right hand, please.
8 (WHEREUPON, LANCE CORPORAL BRITTANY CHAPLIN,
9 called as a witness, having been first duly sworn, was
10 examined and testified as follows:)
11 DIRECT EXAMINATION
12 BY MS. SMITH:
13 Q Good morning, Officer Chaplin.
14 A Good morning.
15 Q Where do you work?
16 A Beaufort County Sheriff's Office Animal Control
17 Division.
18 Q How long have you worked there?
19 A Almost four years.
20 Q Okay. I'm going to refer you to the incident
21 that occurred on July 4th, 2012, in Port Royal. Do you
22 recall that incident?
23 A Yes, ma'am.
24 Q Okay. How were you contacted about this?
25 A I was contacted on July 5th, the day after the

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1 incident, by Sergeant Bush, who is my supervisor. She was
2 on call status on July 4th, when the incident occurred.
3 She was notified by Port Royal. She notified me the next
4 day in reference to following up on the investigation.
5 Q Who contacted her from Port Royal? Was it --
6 A I'm --
7 Q -- the Port Royal Police Department?
8 A -- not aware. Yes, ma'am, the police department.
9 Q Okay. Did they give you a copy of their report?
10 A Yes, ma'am.
11 Q What had happened in Port Royal?
12 A According to their police report, Ms. Baracco's
13 dog, Bodi, came off of -- came out of the fence and
14 attacked a small dog on the sidewalk.
15 Q Where did it occur?
16 A I believe on the sidewalk. I was not present.
17 Q Do you have the address?
18 A 1008 Madrid Avenue.
19 Q Are you -- are you sure that that's the address?
20 Do you need a copy of your report --
21 A I'm sorry.
22 Q -- to see what --
23 A Yes, ma'am. 1006. I'm sorry.
24 Q Okay. And I know it's been a while.
25 A Yes.

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1 Q You know, that's why I told you if you needed
2 your report to refresh your memory, it's okay. So you were
3 contacted on July 5th. What did you do next?
4 A I obtained a copy of the Port Royal Police report
5 and reviewed that first. I then responded to the
6 veterinary clinic to observe the victim's canine, Zoey.
7 Q Okay.
8 A She was just out of surgery when I observed her.
9 I observed multiple injuries to the canine; however -- and
10 I obtained the disk of photos with the -- during the
11 surgery, the injuries. When I left there, I met with Ms.
12 Baracco and her husband at their residence and went inside
13 and met the two dogs there.
14 Q Okay. What kind -- what kind of dogs were they;
15 do you know?
16 A According to the records, Bodi was a Rhodesian
17 Ridgeback mix, and I'm not sure what the other dog was.
18 Maybe a Lab mix.
19 Q Okay. When you went into their house, did you go
20 by yourself that day?
21 A Yes.
22 Q Okay. How did the dogs appear to you?
23 A They appeared friendly. Of course, they were
24 inside their residence and in their owners' presence at the
25 time.

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Rule To Show Cause before Judge Brooks held March 12, 2013

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1 Q Okay. And what was your conversation with Ms.
2 Baracco and Mr. Deckard? I don't know if they were both
3 there or if it was just Ms. Baracco?
4 A I met with Mr. Deckard first.
5 Q Okay.
6 A And Ms. Baracco showed up later on. I advised
7 them that the dogs did appear friendly, and I was impressed
8 with their behavior.
9 Q Okay. Did Ms. Baracco provide you with any
10 information, any additional information about the dog, the
11 dogs, or a video, or anything like that?
12 A Yes, she showed me a video of Bodi playing
13 outside. I'm not sure if it was another facility or her
14 residence. He was outside, interacting with some other
15 dogs. And she also demonstrated the way that she and her
16 husband walk their canines on their bicycles outside her
17 residence.
18 Q Did she tell you about any specific training that
19 her dogs underwent or --
20 A She did mention --
21 Q -- facilities that she'd sent him to?
22 A -- a personal trainer, Kevin McHale, who assisted
23 her in training her canines.
24 Q Okay. While you were at the home, did you ever
25 observe any aggressive behavior?

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1 A No, ma'am.
2 Q Beyond that of a normal dog?
3 A No, ma'am.
4 Q What was your assessment at that point?
5 A At the time, once again, I was -- both canines
6 were in their home and in the presence of their owners,
7 under their control. I did not feel that they were
8 dangerous in that environment.
9 Q Okay. And I believe, if you refer to your
10 report, you state, "Concluding my interview, I did not feel
11 that this was a dangerous animal, and I advised Baracco
12 that I was impressed with her canines' behavior. I advised
13 her I'd continue the investigation." Do you put at any
14 time in the report that you did not feel they were
15 dangerous because they were inside the home?
16 A No, ma'am.
17 Q Okay. After that interview with Ms. Baracco and
18 Mr. Deckard, what did you do next, as far as this case was
19 concerned?
20 A Immediately leaving the residence, I contacted my
21 supervisor and advised him of, up to this point, the status
22 of the investigation.
23 Q Let me stop you a second. Who was your
24 supervisor?
25 A Staff Sergeant Jody Hiers.

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1 Q Okay. Continue. I'm sorry.
2 A After further examination, continuing the
3 investigation, it was determined that these animals needed
4 -- I'm sorry, the animal in question, Bodi, needed to be
5 declared dangerous.
6 Q Okay. Why was that? What made you change your
7 mind and make that determination?
8 A He attacked and injured, severely injured, and
9 which caused bleeding to death to a small canine.
10 Q Okay. And I believe we've been here before.
11 Under the stat -- the ordinance you're charging the dog
12 under is 14-35?
13 A Um-hum.
14 Q And it's the definition of a dangerous animal,
15 and there are four -- essentially, four subsections
16 underneath it. Which one are you referring to? And I
17 believe you're referring to number one, but let's clarify
18 for the record. "Any animal which the owner knows or
19 reasonably should know has a propensity, tendency, or
20 disposition to attack unprovoked, cause injury, or
21 otherwise endanger the safety of human beings or domestic
22 animals." The next section talks about injury to a human
23 being, which I'm assuming you're not, but we'll read it for
24 the record: section two, "an animal which makes an
25 unprovoked attack that causes bodily injury to a human

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1 being and the attack takes place other than the place where
2 the animal is confined." Are you referring to that
3 section?
4 A The first section.
5 Q Okay. Now, you just testified that you changed
6 your mind and you made the determination after talking with
7 your supervisor to deem my client's animal dangerous after
8 he attacked and killed another dog; is that correct?
9 A Yes.
10 Q Okay. What about the second requirement in
11 14-35(a)(1) that the owner has to know or reasonably know
12 that their dog has a propensity to attack unprovoked,
13 causing injury? Where --
14 A That's what this notice is for.
15 Q Okay. So what you're saying is that the notice
16 -- the knowledge provision in this statute, that if you can
17 prove attack, then you can issue the dangerous notice on
18 the -- dangerous animal notice on a person, and then once
19 that's -- that that's their knowledge?
20 A Yes, this -- her dog attacked and killed a small
21 dog. That's her knowledge.
22 Q And do you not believe that there should be --
23 that there's not a requirement under this statute that the
24 person, before this happens, has to know or reasonably know
25 that this could possibly occur, that their dog has a

Rule To Show Cause before Judge Brooks held March 12, 2013

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1 propensity to do something like that?
 2 A Can you rephrase the question?
 3 Q Okay. A dangerous animal -- and let's just go
 4 through this. We've done it before. "Any animal which the
 5 owner knows or reasonably should know has a propensity,
 6 tendency, or disposition to attack unprovoked, cause
 7 injury, or otherwise endanger the safety of human beings or
 8 domestic animals." There's no question we have some sort
 9 of altercation --
 10 A Um-hum.
 11 Q -- and we ended up with another dead animal?
 12 A Right.
 13 Q What I'm asking you is, what did you rely on to
 14 meet the elements of the statute that my client knew or
 15 reasonably should have known that her dog had a
 16 propensity (sic) -- a propensity to do that?
 17 A That her dog attacked and killed a small dog.
 18 Q And that's all you're basing --
 19 A Yes.
 20 Q -- that determination on?
 21 A Um-hum.
 22 Q So, based on that, anybody that -- anybody's dog
 23 that bites another dog or bites another person should be
 24 deemed a dangerous animal?
 25 A Yes.

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1 Q Throughout Beaufort County?
 2 A Um-hum.
 3 Q Okay. How many dangerous animals do y'all have
 4 in Beaufort County?
 5 A I have issued at least four or five notices.
 6 Q So you've only had four or five dog bites in all
 7 of Beaufort County?
 8 A No, ma'am.
 9 Q Okay. But you just testified, if a dog bites
 10 another dog, you're going to issue a dangerous animal
 11 notice, did you not?
 12 A I'm not understanding what you're asking.
 13 Q I'm merely reading the statute. I believe that
 14 the intent of the statute requires the owner to have
 15 knowledge that their animal would do that, and I'm asking
 16 you what you're referring -- what you were relying on when
 17 you issued the dangerous animal notice that my client had
 18 knowledge that her animal would have done that.
 19 A The notice is to prevent this issue from
 20 happening again. There are certain requirements on the
 21 form that the owner would have to meet to prevent this
 22 from happening again. The animal has attacked and killed
 23 a small canine. So, therefore, she knows that the animal
 24 had the propensity to do it again. So this notice will
 25 prevent that from happening again. That's why the notice

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1 was issued.
 2 Q Okay. And I guess this is where we disagree.
 3 You issue the notice. The knowledge comes after you issue
 4 the notice. Is that what you're saying?
 5 A After the attack occurred. And that states on
 6 the bottom of the form the reasoning, why the notice was
 7 issued, based on case number -- leading to death of a small
 8 canine.
 9 Q What did -- did you ever find out what happened
 10 that day during the incident that we're here about today?
 11 A I can refer back to the Port Royal Police report.
 12 Q Okay. Well, do you want to do that?
 13 A Um-hum.
 14 Q Unless Port Royal is here. I can question them.
 15 A (Examines file.) Okay. Here it states that they
 16 received a call of a pit bull that jumped a fence and
 17 attacked a smaller dog at the incident location of 1006
 18 Madrid Avenue.
 19 Q I guess this is my thing. Did you interview any
 20 of the witnesses to this incident to find out what
 21 happened?
 22 A Yes.
 23 Q Okay.
 24 A Both parties involved.
 25 Q Okay. What did they tell you happened, then?

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1 What do you recall that they told you happened?
 2 A Ms. Baracco stated that she was inside her
 3 residence; and the gate -- the latch must have been undone
 4 when the mailman came, and Bodi jumped up on the fence, and
 5 the latch pushed open, and he went out; and she explained
 6 that she was responsible for everything that happened and
 7 she was sorry that it happened.
 8 Q Did she tell you that they had done anything
 9 about the bills, the medical bills for the animal, or
 10 anything like that?
 11 A Yeah, she said that she would volunteer to help
 12 them out.
 13 Q What did Mr. Germ -- Ms. Germer or Mr. Brown tell
 14 you about the incident?
 15 A They were walking --
 16 Q The owners of the other dog.
 17 A -- both of their dogs on-a-leash near the
 18 incident location when Bodi came out and began attacking
 19 their small dog, and they had to jerk him up by a leash --
 20 by the leash, to get them away from this dog, and
 21 immediately rushed him to the vet.
 22 THE COURT: Excuse me. Who is Mr. Brown?
 23 MR. BROWN: (Raises hand.)
 24 THE COURT: Okay. All right.
 25 MS. SMITH: The owners of the other dog.

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1 THE COURT: Okay.
2 BY MS. SMITH:
3 Q Did you interview anybody else about the
4 incident?
5 A No.
6 Q Okay.
7 A Several residents in the area provided written
8 statements in reference to issues with Bodi.
9 Q Did you actually go and get those statements from
10 the --
11 A Yes.
12 Q -- individuals?
13 A Um-hum.
14 Q Or did you just provide the forms to the alleged
15 victims?
16 A I provided them to the people who wrote the
17 statements.
18 Q Okay. And the reason I ask that is there may be
19 some confusion. In the last sentence of page two of your
20 report, you said, "I provided statement forms and advised"
21 -- you're referring to Ms. Germer -- "to have her neighbors
22 write a statement in reference." So I didn't know if you,
23 personally, went and interviewed them, or if you got them
24 to give them --
25 A No, I didn't interview them. I provided

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1 statements.
2 Q Statement forms to her?
3 A Um-hum.
4 Q To go solicit these statements?
5 A Um-hum.
6 Q Okay. Thank you. Were you the only one to make
7 this determination, or did anybody else in your department
8 assist you?
9 A My supervisor.
10 Q Mr. Hiers?
11 A Yes.
12 Q Did Mr. Hiers ever go observe these dogs?
13 A No.
14 Q Okay. What did he base his assessment on; do you
15 know?
16 A Previous experience and his education.
17 Q Previous experience with what? Dogs?
18 A Um-hum. He is a dog trainer.
19 Q But, these dogs, he never did any investigation
20 into these specific dogs?
21 A No.
22 Q So this is all just based on his opinion as to
23 dogs and their behavior; correct?
24 A And the county ordinance.
25 Q Okay. Did he ever look at any of the videos or

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1 anything that you provided -- that she provided you?
2 A No, ma'am.
3 Q Okay. Do you know why that is?
4 A No, ma'am.
5 Q Okay. Does he routinely make these
6 determinations without actually visiting the animals in
7 question or assessing the specific situation, or does he
8 deem every dog dangerous, as well?
9 A No, ma'am.
10 Q No, ma'am, what?
11 A He -- each case is different. I'm not sure
12 exactly what he does with every case.
13 Q Okay. Did anyone call him about this case or
14 influence him in any way about this determination?
15 A Not to my knowledge.
16 Q Okay. When did y'all make the decision to deem
17 the dog dangerous?
18 A July 9th, 2012.
19 Q Okay. Just a minute -- I might be finished --
20 with the Court's indulgence, please. (Examines file.)
21 Just a couple questions. Did you have any conversations
22 with any members or town officials in Port Royal about this
23 case?
24 A No, ma'am, not prior to the case.
25 Q Okay. After -- and, I guess, prior to -- not

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1 prior to issuing the notice?
2 A No.
3 Q Okay. Have you talked with them since then?
4 A Um-hum.
5 Q Okay. Who have you talked to?
6 MR. GRUBER: Your Honor, I'm going to object
7 at this point. I'm not sure what the relevancy is of
8 questioning what may have happened after the notice
9 was issued. I think anything after that point is
10 irrelevant.
11 THE COURT: Ms. Smith, what is the
12 relevance?
13 MS. SMITH: Judge, they submitted several
14 statements that were taken from witnesses after the
15 notice was issued, as well, from members of Port
16 Royal, including councilmen. Different meetings were
17 held. So I'm trying to figure out -- you know, they
18 issued the notice, but then obtained additional
19 evidence afterwards, and I'm trying to figure out
20 where -- why that was not done prior to issuing the
21 notice.
22 MR. GRUBER: And I'm not sure if any of
23 those statements relate in regards to this direct
24 situation. If they do, I think they are relevant. If
25 they just relate, in general, to the observations that

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1 may or may not have occurred, by these individuals, of
2 the dog in the community, I don't believe that they're
3 relevant to this situation.
4 MS. SMITH: Actually --
5 THE COURT: So the -- the dangerous dog
6 designation had already been issued?
7 WITNESS: Um-hum.
8 THE COURT: And then other witnesses as to
9 what had already been done were interviewed?
10 MS. SMITH: Correct.
11 WITNESS: Um-hum.
12 MS. SMITH: And I guess my question is why
13 that was done. That would actually --
14 THE COURT: Well, I agree with --
15 MS. SMITH: -- be the gist.
16 THE COURT: -- Mr. Gruber that that -- I'm
17 not sure that's relevant, but I also would like to
18 know why.
19 MS. SMITH: And I'll rephrase the question,
20 and maybe this'll work.
21 THE COURT: Okay. That might help me.
22 BY MS. SMITH:
23 Q Why were those statements and interviews
24 conducted, or conversations done, after the notice was
25 issued?

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1 A That was upon request by my supervisor of other
2 residents in the area that had issues with Bodi.
3 Q Okay. And your supervisor being Mr. Hiers?
4 A Yes.
5 Q Okay. And do you know why he requested that?
6 A Other issues with the dog.
7 Q Was he contacted about those issues?
8 A Nothing in relation to the dangerous animal
9 notice, but --
10 Q And one more thing, then I'm going to leave this.
11 It was nothing in relation to the dangerous animal notice,
12 but as part of this case, you went and got statements? Is
13 that what -- I'm not -- I can't quite figure out what the
14 reasoning was for that --
15 A The --
16 Q -- and why your supervisor --
17 A With issues --
18 Q -- didn't document it.
19 A -- with Bodi, the aggression that he shows, other
20 residents that had issues with him. That's the reasoning
21 for the statements.
22 Q And where did he get that information from, that
23 there were -- there was a --
24 A I'm not -- I don't -- I don't know.
25 Q Okay. And he didn't feel the need to disclose

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1 the result of his investigation in this report?
2 MR. GRUBER: Your Honor, the question calls
3 for speculation.
4 MS. SMITH: Withdrawn. One final question.
5 THE COURT: Ms. Smith withdrew the question.
6 BY MS. SMITH:
7 Q Had you had any complaints that you'd documented
8 about these dogs prior to this incident?
9 A No, ma'am.
10 Q Okay. Were you familiar with them prior to this
11 incident?
12 A No, ma'am.
13 Q Or my client?
14 A Hum-um.
15 MS. SMITH: I think that's all I have for
16 you. Thank you.
17 WITNESS: Thank you.
18 MS. SMITH: Wait a second.
19 THE COURT: Hold on.
20 MS. SMITH: He may have some questions for
21 you.
22 THE COURT: Hold on, Corporal Chaplin.
23 MR. GRUBER: Thank you, Your Honor.
24 THE COURT: Mr. Gruber?
25 MR. GRUBER: Just a couple of quick

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1 questions, Your Honor.
2 CROSS-EXAMINATION
3 BY MR. GRUBER:
4 Q Ms. Chaplin, you originally just testified now
5 that the first time you met Zoey was at the veterinary
6 hospital; is that correct?
7 A Yes.
8 Q Okay. And what did you observe the state of Zoey
9 to be at that time?
10 A She was just coming out of anesthesia from
11 operation. She had several deep wounds that were stitched
12 up on her stomach, her abdomen, on her hip area, I mean --
13 Q Puncture wounds?
14 A Yes, sir.
15 Q Did they appear to be from a canine, to your
16 knowledge?
17 A Yes, sir.
18 Q Okay. And to your knowledge, what canine caused
19 those injuries?
20 A Ms. Baracco's canine, Zoey.
21 MS. GERMER: Bodi.
22 WITNESS: Bodi. I'm sorry.
23 BY MR. GRUBER:
24 Q Bodi. And you testified just now that you
25 actually spoke with Ms. Baracco, and she admitted to you

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1 that her dog did cause those injuries?
 2 A Yes, sir.
 3 Q And she went so far as to offer to pay for the
 4 veterinary bills as a result of that occurrence?
 5 A Yes, sir.
 6 Q Is that correct?
 7 A Um-hum.
 8 Q Okay. You also testified that you interviewed
 9 the dog in the home; is that correct?
 10 A Yes.
 11 Q And do you consider that a controlled
 12 environment?
 13 A Yes, sir.
 14 Q Okay. Why do you consider that a controlled
 15 environment?
 16 A The dog is in the owner's presence in an
 17 environment that he's used to in his home.
 18 Q Okay. And to your knowledge, did the alleged
 19 attack occur inside the home?
 20 A No, sir.
 21 Q Where did it occur?
 22 A According to the police report, it was out on the
 23 sidewalk in front of the home at 1006 Madrid Avenue.
 24 Q Okay. And I think you were asked a question
 25 about whether you'd viewed a video of Bodi interacting with

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1 was discussed?
 2 A I informed him of the interviews, of my
 3 observations with the two dogs, and the conditions of Zoey
 4 at the veterinarian.
 5 Q Okay. And did you discuss the county ordinance
 6 at all?
 7 A Yes.
 8 Q And did you review the terms of the county
 9 ordinance?
 10 A Yes.
 11 Q Okay. What items did you specifically look at?
 12 A The propensity and tendency to attack.
 13 Q Okay. And in your opinion, did Bodi meet the
 14 definition of a dangerous animal?
 15 A Yes.
 16 Q And why is that?
 17 A I feel that he has the propensity and tendency to
 18 do this again, so the issue -- the notice was issued based
 19 on that.
 20 Q And what leads you to believe that he has the
 21 propensity and tendency to attack, injure, and/or kill a
 22 domestic animal?
 23 A Based on this attack.
 24 Q So the fact that it occurred is what gives you
 25 knowledge?

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1 other dogs; is that correct?
 2 A Yes.
 3 Q Okay. And to your knowledge, did Bodi -- is it
 4 possible that Bodi had previously interacted with those
 5 animals before?
 6 A Yes.
 7 Q And been socialized to interact with those
 8 animals?
 9 A Yes.
 10 Q All right. And if a dog is socialized to
 11 interact with those animals, it would tend to reason that
 12 it would not attack those animals that it's been socialized
 13 with; correct?
 14 A Yes.
 15 Q But it did attack Zoey?
 16 A Yes.
 17 Q And to your knowledge, what ultimately happened
 18 to Zoey as a result of those injuries?
 19 A She passed away.
 20 Q Let's talk now about how you came to write the
 21 citation. You stated that you interviewed Ms. Baracco.
 22 You met with the dog. You then went back and spoke with
 23 your supervisor.
 24 A Um-hum.
 25 Q And what -- speaking with your supervisor, what

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1 A Yes.
 2 Q If it gives you knowledge, would it stand to
 3 reason that it gives the dog's owner knowledge --
 4 A Yes.
 5 Q -- that this kind of event can occur?
 6 A Yes, sir.
 7 Q Okay. And because the owner now has that
 8 knowledge, it would then stand to reason that they should
 9 be placed on notice that their animal was dangerous to
 10 prevent further attacks from occurring?
 11 A Yes, sir.
 12 Q There was a question of gathering information.
 13 Do you normally solicit testimony as part of your
 14 investigation?
 15 A Yes.
 16 Q And that includes getting witness statements,
 17 including, you know, leaving the witness testimony sheet,
 18 as you stated?
 19 A (Witness nods head; no verbal response.)
 20 Q And is it possible that you were soliciting
 21 information after the citation was written to prepare for
 22 defense of an appeal --
 23 A Yes.
 24 Q -- that you knew would be forthcoming?
 25 A Yes.

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1 Q To your knowledge -- actually, let me step back
2 just a minute. Can you describe Bodi, physically?
3 A He is red in color. He's probably about 60 to 70
4 pounds. He appeared friendly inside his home and in his
5 owner's presence.
6 Q Okay. Would you consider him to be a large
7 animal?
8 A Yes.
9 Q Could you also describe Zoey?
10 A She was a small dog, about five pounds. I didn't
11 really get to see her, other than confined in a cage at the
12 veterinarian, but she was gray in color.
13 Q Do you have any knowledge to think that Zoey,
14 being a five-pound dog, would attack Bodi, a 60-pound dog?
15 A No.
16 Q So it's your knowledge that, based upon the
17 events, Bodi jumped at the gate; the gate pops open; he
18 lunges out and attacks Zoey, a small five-pound dog --
19 A Yes.
20 Q -- punctures, injures, and kills him?
21 A Yes, sir.
22 MR. GRUBER: Thank you. Your Honor, I have
23 no further questions.
24 THE COURT: Ms. Smith, do you have any --
25 anything else?

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1 REDIRECT EXAMINATION
2 BY MS. SMITH:
3 Q Did you state in your report where this incident
4 occurred -- in your specific report, where it occurred?
5 A It's on the front page.
6 Q Right. But I mean as far as like, like,
7 physically, at that location where it occurred, referring
8 to the sidewalk or --
9 A No.
10 Q -- inside the fence or anything?
11 A No, it was based on the Port Royal Police report.
12 Q Where did they say it occurred?
13 A I don't believe they did.
14 MS. SMITH: That's all I have. Thank you,
15 Judge.
16 THE COURT: Okay. Corporal Chaplin, I have
17 a couple of questions, mainly as it relates to a time
18 line.
19 EXAMINATION
20 BY THE COURT:
21 Q The incident occurred on July 4th?
22 A Yes, sir.
23 Q Is that correct?
24 A Um-hum.
25 Q Port Royal Police were called that day?

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1 A Yes, sir. We were not on duty.
2 Q And you were called the next day?
3 A Yes, sir.
4 Q And Zoey died on what day?
5 A July 6th.
6 Q July 6th. So we've got July 4, July 5, July 6.
7 And the notice was issued on what day?
8 A July 9th.
9 Q July 9th. And you were not on duty on July 4th
10 because it was a holiday?
11 A Yes, sir.
12 Q Or animal control was not on duty --
13 A Right.
14 Q -- because of the holiday.
15 A (Witness nods head; no verbal response.)
16 Q And I think I know this, but I'm going to ask it
17 anyway. Excuse me. Municipalities in Beaufort County do
18 not have animal control sections, units, whatever --
19 A Um-hum.
20 Q -- that the Beaufort County Sheriff's Office
21 would handle incidents, cases, within the municipalities --
22 the various municipalities?
23 A Yes, sir.
24 Q Is that correct?
25 A Um-hum.

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1 Q And the Beaufort County ordinance, are there
2 municipal ordinances that you enforce, or you --
3 A We enforce Beaufort County --
4 Q You enforce the Beaufort County ordinance --
5 A Um-hum.
6 Q -- within municipalities?
7 A Yes, sir.
8 THE COURT: Okay. All right. That's it.
9 Thank you.
10 L.CPL. CHAPLIN: Okay. Thank you.
11 THE COURT: All right. Ms. Smith?
12 MS. SMITH: Judge, at this time, I call Mare
13 Baracco.
14 THE COURT: All right. Ms. Baracco, if you
15 would, state your full name for the record, please.
16 MS. BARACCO: Mare Baracco.
17 THE COURT: And raise your right hand.
18 (WHEREUPON, MARE BARACCO, called as a
19 witness, having been first duly sworn, was examined and
20 testified as follows:)
21 THE COURT: Okay. Thank you. Have a seat,
22 and I apologize for mispronouncing --
23 WITNESS: That --
24 THE COURT: -- your name earlier.
25 WITNESS: That's all right.

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DIRECT EXAMINATION

1
2 BY MS. SMITH:
3 Q Mare, where do you live?
4 A 1006 Madrid Avenue.
5 Q And who do you live there with?
6 A My husband, Tim Deckard, and our two dogs.
7 Q Okay. How long have you lived in Port Royal?
8 A Almost 15 years.
9 Q What do you do for a living, Mare?
10 A We own boat businesses, and I am an independent
11 rep for a manufacturer.
12 Q Okay. How long have you had dogs as pets?
13 A Well, all my life.
14 Q Okay. How many dogs do you think you've had?
15 A Well, I've been working with animal rescue --
16 both my husband and I -- for many years; myself, over 30
17 years. So I've had a lot of dogs, and have fostered a lot
18 of animals, as well, not just dogs, but primarily dogs.
19 Q And the two dogs that you have now, are they also
20 rescue dogs?
21 A Correct.
22 Q Okay. How old are those dogs?
23 A Smiley is, I believe -- it's -- you know, when we
24 adopted them, ages were uncertain, but I'd say Smiley is
25 probably six or so, and Bodi is about three, three and a

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1 half now, I believe, maybe almost four.
2 Q And what kind of dogs are they?
3 A Smiley is a black Lab -- as near as we can tell,
4 a black Lab mix. We don't know what the other part is.
5 And Bodi is a Rhodesian Ridgeback. Well, he's classified
6 at the vet as a Rhodesian Ridgeback.
7 Q Okay. And how big are these dogs?
8 A Smiley is about -- well, they're both within a
9 couple of pounds of each other. I'd say about 55 or so
10 pounds, approximately.
11 Q Do you have these dogs doing any activities or
12 any training?
13 A Yes, we've been working with a behaviorist in
14 Beaufort, Kevin McHale, for the last, you know, about two
15 years, since we -- let's see. About two years. And as far
16 as exercise, we bike them, usually, once or twice a day,
17 and they're walked on unstructured, what we call, training
18 walks, three, sometimes four times a day.
19 Q Tell me this. Why do you send your dogs to a
20 behaviorist?
21 A Well, I guess it was after watching Cesar Millan
22 and his show and being involved in animal rescue and just
23 wanting to know a little bit more about psychology, just as
24 an interest. You know, I just think responsible ownership
25 is important.

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1 Q Did you ever have any specific incident that led
2 you to take him to the trainer, or you did it just because
3 you were interested in it and wanted to know?
4 A No, just wanted to learn more. I was -- had
5 actually met Kevin at one of the Port Royal festivals, and
6 he had three dogs with them, and they were all walking
7 right next to him, just like Cesar Millan's dogs, and we
8 got to talking, and I just, you know, remembered that we
9 had had that conversation, so we just started working with
10 him.
11 Q Okay.
12 THE COURT: Excuse me for a minute. The
13 behaviorist's name is Kevin --
14 WITNESS: McHale.
15 THE COURT: -- McHale, M-c-H-a-l-e?
16 WITNESS: H-a-l-e. He owns McHale Dog.
17 THE COURT: Okay. Thank you. Sorry to
18 interrupt.
19 BY MS. SMITH:
20 Q Okay. Let's go to the day in question that we're
21 here about today, the incident on July 4th.
22 A Um-hum.
23 Q Were you present during the incident with the
24 dogs?
25 A I was.

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1 Q Okay. Why don't you tell us what you saw and
2 where you were?
3 A Well, may I preface it? May I preface that, that
4 morning, for a moment?
5 Q Sure.
6 A We used to take our dogs, Bodi and Smiley, to the
7 neighbors' to just have free play with her dogs. She has a
8 -- she had a large dog and a Brookshire Terrier, and Ms.
9 Germer started bringing her dog, Zoey, there. I think, at
10 the time, she just had one dog. This was about eight
11 months before the incident, and her dog was very aggressive
12 to Bodi.
13 And I took the dogs, and I took them home, and I
14 called my trainer, Kevin McHale, and I just related what
15 had happened. I was very startled by it. All the dogs
16 were, you know, very mellow. He approach in a very, you
17 know, calm way, tail low, ears down, and I was just taken
18 aback by it, and I just wanted to learn maybe why that had
19 happened, so we had a conversation about it.
20 Q Who had a conversation?
21 A I had a conversation with my trainer, Kevin
22 McHale, and we discussed what could be, possibly, reasons
23 for that, and how to deal with it if it were to happen
24 again, because we enjoyed taking our dogs to play at this
25 free play.

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1 And it happened again, and I offered Ms. Germer
2 to have her dog and my dogs get together with the trainer
3 -- I'd pay for it, you know, neighborly -- so they would be
4 friends. And she said she wasn't interested, and I said
5 okay. And I told my husband about it, and we just decided
6 we weren't going to do that yard thing anymore. She was
7 going to be there with her dogs, and it would just be best
8 if we didn't have contact. Just different philosophy,
9 maybe, but, you know, we just wanted to not have to deal
10 with that, and that was how we left it. If we saw them
11 walking, we went to the to the other side of the street.
12 We never explained ourselves. We just continued that way
13 until this encounter on July 4th.

14 Q And you testified this was about eight months
15 prior to July 4th?

16 A Correct.

17 Q Okay. Did y'all have any other encounters before
18 -- between that time and July 4th, other than passing them
19 on the street?

20 A No.

21 Q Okay. Let's go to July 4th, then. What did you
22 witness that day?

23 A I had -- well, it was a holiday. I got up, and
24 it was about -- I think it was a little before 8:30. I let
25 the dogs out in the yard to use the restroom because I was

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1 going to take them for their morning walk, which is our
2 daily routine. And I went upstairs to my bedroom to get
3 something, and -- I think to get my phone.

4 And I heard all of this commotion outside my
5 bedroom window, which the bedroom and the great room have
6 windows that face the front yard, and we have a fenced
7 yard, and I ran to the window because it was -- there was
8 so much noise. And I looked out, and I saw the Germer-
9 Browns with their two dogs. They had gotten another dog
10 since the playing at the yard, but I'd never met that dog,
11 and the dogs were about four feet out ahead of them, and
12 their dogs were about to make contact with the corner of my
13 fence, where my dogs were inside the fence at the same
14 corner. And judging by the noise and how far out they
15 were, and that they were all going to make contact at the
16 fence, I -- and having had the experience with the dog
17 before, I just wanted to get my dogs in, and I didn't want
18 to have any problems with dogs fighting at the fence, or
19 her dog trying to get under my fence. I just wanted to get
20 my dogs inside.

21 And I went running down the stairs, and this all
22 took place within a 10-second period. So, as I was running
23 down the stairs, my stairs actually parallel the windows in
24 the front of the house, and I could see them continuing
25 along that path, and all the dogs are fighting at the

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1 fence, and the noise. And they're not picking their dogs
2 up or removing them, and I just want to bring my dogs in.
3 And then Mr. Brown started screaming at Bodi, at
4 the top of his lungs, and all this noise was just creating
5 more chaos. And I saw him put his hands up, and I didn't
6 see his dog's leash, and I went running to the front door.
7 And at that moment, Bodi was jumping backwards and had
8 jumped up and hit the gate, and the gate just opened. And
9 as he was trying to regain his footing, a little dog just
10 got right into my gate, and they only had about a second's
11 worth of contact. And, I mean, I didn't even think they
12 had contact, it was so quick.

13 And I called Bodi. I, at that point, was out in
14 my walkway. I called Bodi. He came right to me. Mr.
15 Brown picked his dog up, and I said, "Is everybody okay?"
16 Ms. Germer was dangling her dog at this point by the leash,
17 and then I said, "Is everybody okay? Is your dog okay?"
18 And then I heard the dog crying. He said, no, they're not.
19 He's not. The dog's not. And then they just went down the
20 street. I mean, it literally was within seconds.

21 And I had -- I had closed the gate myself the
22 night before when I watered the plants at the mailbox,
23 which I do at that point in the year when it's hot out. I
24 water my plants. And I had latched the gate myself. I did
25 not know until afterwards that someone had put the

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1 newspaper in our yard and that we also had two air
2 conditioning men working on the side of the house, but
3 it's behind our living fence. So I didn't even know
4 anybody was there. But I had secured the gate myself the
5 night before, and it looked secure. It looked like it
6 always looked, so --

7 Q What happened after that? Did the Germer-Browns
8 leave? Did they say anything else to you?

9 A No, they just said, "Oh, no, it's not okay," or
10 something to that effect. I was, of course, hysterical at
11 that point. I just couldn't believe this had happened. So
12 I went to -- I leashed by dogs, and I was very upset, and I
13 went to take a walk.

14 And I left the house, and I went around the
15 block, and as I came by, down 10th Street, I ran into
16 Councilman Klein, who's very good friends with the Germer-
17 Browns, and he told me I'd better do something about my
18 dangerous dog, or he was going to go over there and hurt my
19 dog. And I just -- I couldn't believe it, because this had
20 just happened. I didn't even know how anybody could even
21 know this had just happened, and it turned out that they
22 were actually on their way over to their good friend,
23 Councilman Klein's home.

24 And when I got back, the air conditioning people
25 told me that the police had been there and that they were

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1 coming back, and so I waited for the police to get there.
 2 Q Okay. Did the police come to your house?
 3 A They did.
 4 Q Who came to your house?
 5 A There were two officers. One was Officer
 6 Puryear. I don't know the other -- who the other officer
 7 is.
 8 Q And what did they say to you?
 9 A They said they had gotten a call that my dog had
 10 jumped my fence, and I said, "Well, that's not correct."
 11 And I explained how some -- there was a newspaper in my
 12 yard, and the air conditioner people were there, and I --
 13 you know, that was really all I knew, it had happened so
 14 quickly. I was, you know, just very upset. And they said
 15 they were issuing me an animal at large notice.
 16 Q Was it a ticket?
 17 A A ticket, yes.
 18 Q Okay. And did they say anything else to you?
 19 A No, but they came in the home, obviously. They
 20 interacted with my dogs. We went outside, and I was, you
 21 know, explaining, you know, what had transpired.
 22 Q What happened with the animal at large ticket?
 23 A I was found not guilty.
 24 Q And about when was that?
 25 A I had a trial on -- I believe it was in November.

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1 November 9th, I believe. I had a jury trial, and they
 2 found that I was not guilty of having the animal outside of
 3 my property.
 4 Q After you met with the Port Royal Police, when
 5 were you next contacted by law enforcement?
 6 A I had an unannounced -- they said that animal
 7 control would be contacting us, and then, the next day,
 8 Officer Chaplin came by unannounced.
 9 Q Okay. And what was -- what happened with your
 10 visit with her?
 11 A I believe she was there for about an hour and a
 12 half. We went up to my office. I showed her two videos.
 13 One was Bodi, just recently -- it was a couple weeks prior
 14 -- at doggie day care, at the Bark Shack, with numerous
 15 dogs. And he actually does not know -- they have different
 16 dogs that come in to day care, so whatever dogs are there
 17 that day are the dogs that he's socializing with. And the
 18 owner of the Bark Shack had just sent me the video just to
 19 show me our dogs playing at the day care. Just -- it was a
 20 -- you know, a fun video.
 21 And I also showed her a video -- and I also
 22 emailed the links to her so she would have them -- a video
 23 of Bodi playing at the sandbar downtown, and at the
 24 sandbar, you know, you have people come up with their
 25 boats, and they have all kinds of dogs that show up, and

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1 you don't know -- they're unknown dogs. You wouldn't know
 2 what dogs are going to be there. So there were probably
 3 about -- I don't know -- six or seven other dogs from --
 4 large dogs to very small dogs that Bodi was playing with at
 5 the sandbar.
 6 Q What else did she do when she was there? Was she
 7 by herself?
 8 A She was by herself. We went outside. I
 9 demonstrated my walking technique. I --
 10 Q What's your walking technique?
 11 A The way that we walk the dogs is, they're not
 12 allowed to be out in front of us. When your dog is out in
 13 front, according to the dog behavioral science, if you
 14 will, the dog is the leader. The dog is in charge. And we
 15 want our dogs to know that we're in charge. So our dogs
 16 cannot go ahead of the -- the foot that is the foot that's
 17 walking first, the dogs are not allowed to go past that.
 18 So they always have to be by your side so you're able to
 19 control them. In case anything should occur, you have them
 20 right next to you. So that is our process, and that's the
 21 kind of training walks we do three or four times a day, and
 22 I demonstrated our technique, and then also went over how
 23 we bike the dogs and how we control them when we're riding
 24 on our bicycles and the kind of socialization they get. We
 25 just had conversation. A lot of interaction between Bodi

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1 and Officer Chaplin, as I recall.
 2 Q What did she tell you as far as her investigation
 3 and her determination or assessment of your dogs at that
 4 point -- your dog at that point?
 5 A At the conclusion of the visit, she said that she
 6 wouldn't -- could not in good conscience say the dog was
 7 dangerous, and that she, further, was impressed with our
 8 dog's behavior, Bodi's behavior. She was talking about
 9 Bodi, specifically.
 10 Q Okay.
 11 A So we were relieved, and we didn't feel -- when
 12 we knew animal control was coming, we felt that our dogs
 13 would be as well behaved as they always are. We weren't
 14 concerned about that.
 15 Q When did you hear from animal control next?
 16 A Well, I -- she asked me to send her the videos,
 17 which was our evidence that showed that, you know, we had
 18 no knowledge that this would occur, and it went on to show
 19 he was social with other animals. That was on the 5th, I
 20 believe, and then she -- I sent her the videos to her
 21 office.
 22 And then she contacted me on the 9th, which was
 23 on Monday, and told me she was going to be coming back
 24 over, and I asked her why, and she said she would talk to
 25 me when she got there.

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1 Then she arrived with another officer and said
2 that her supervisor, Jody Hiers, had overturned her
3 assessment. And I said, "Why?" And she said she didn't
4 know. And I said, "Well, did you show him the videos?"
5 And she said he refused to look at them. And I said,
6 "Well, I'm not accepting this notice. I'm going to, you
7 know, take this further."
8 And I called and spoke to Lieutenant Spencer at
9 the sheriff's office, and then we went there and had a
10 meeting with Lieutenant Spencer.
11 Q And what came of that meeting, if anything?
12 A Well, in my phone call to Lieutenant Spencer, I
13 explained what had happened, how we had gotten this
14 assessment that said the dog was not dangerous, and the
15 officer was impressed with the dog, and I was surprised and
16 shocked, number one, that we were -- this decision had been
17 overturned, that it was related to us the supervisor
18 wouldn't look at our evidence that showed we, you know,
19 were not in violation, and that I already was -- I
20 disagreed with the ticket for the animal at large, and I
21 went into all that. And I asked him how it could be that
22 this assessment could be overturned by her supervisor, but
23 he had never come out to the house and never looked at the
24 dogs. How could he make an assessment on the dogs if he'd
25 never seen them? So he said he was going to send --

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1 MR. GRUBER: Your Honor --
2 WITNESS: -- Mr. Hiers.
3 MR. GRUBER: -- I'm going to object to the
4 hearsay at this point.
5 THE COURT: Ms. Smith?
6 BY MS. SMITH:
7 Q Only testify to what the officer told you, not
8 what an officer told the officer told the officer.
9 A Oh, so not my conversation with Lieutenant
10 Spencer?
11 Q You can tell us your conversation with Lieutenant
12 Spencer, but not --
13 A I questioned as to how a dog could be determined
14 dangerous by someone who had never seen the dog, and,
15 further, that my case had not been adjudicated. I was
16 pleading not guilty to the animal at large, and my story
17 differed from the complainants', and that there wasn't
18 anything in the report to suggest that my dog had gone over
19 my fence or that I had stated that my dog was outside my
20 property, and further that, the videos that I sent, I was
21 disturbed that they were not being looked at.
22 Q Since this notice was issued, have you had any
23 contact with the Germer-Browns?
24 A Yes.
25 Q Specifically, what?

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1 A Within 24 hours of this incident, we were
2 basically hostage in our home. We were --
3 MR. GRUBER: Your Honor, I think I'm going
4 to object at this point. Anything that may have
5 occurred after the notice was issued is irrelevant in
6 determining whether or not there was grounds for the
7 notice to be issued in the first place.
8 MS. SMITH: She was testifying to the day
9 after the incident. The notice was not issued until
10 the 9th.
11 THE COURT: I was going to ask you, where
12 does this occur on the time line?
13 MS. SMITH: The time line. Is that correct?
14 WITNESS: Correct.
15 THE COURT: So the notice still had not been
16 issued --
17 WITNESS: Correct.
18 MR. GRUBER: Okay.
19 THE COURT: -- at the time that you're
20 talking about?
21 WITNESS: Correct.
22 MS. SMITH: Correct.
23 MR. GRUBER: I withdraw my objection, then,
24 Your Honor.
25 THE COURT: Okay. Thank you.

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1 WITNESS: Correct. We were literally under
2 siege. Between the incident with the councilman
3 threatening our dog and the activities of the Germer-
4 Browns post this incident, we ended up in a situation
5 where we had to contemplate, and we did get that
6 following day, surveillance equipment for our
7 property, because we were highly concerned that harm
8 would come to our dog.
9 After the 5th, on the 6th, we were at home.
10 Again, we were in our home for at least a couple of
11 days because of what was going on outside our home,
12 and we were going to get the surveillance equipment.
13 And that Friday evening, which was the 6th, we had an
14 officer come to our home that we knew and --
15 BY MS. SMITH:
16 Q Who was that?
17 A Officer Trisha Gutterson.
18 Q Okay.
19 A And also Captain Mike Culligan was there from
20 Parris Island, as well. And we were in the midst of a
21 discussion about what we should do to protect ourselves and
22 our dogs, and we looked out the window, and the Germer-
23 Browns came by with their other dog and lifted their dog up
24 to our fence line and held it over the fence, the entire
25 way down the fence line, in a way that was very provocative

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1 in terms of baiting our dog, or our dogs. And it was just
2 shocking to see that, and that's one of the reasons that we
3 got the surveillance equipment, was because of the sense
4 that this was going to be a long siege, and we wanted to be
5 able to document anything that was going on on our
6 property, because we were very -- at that point, very
7 frightened. And that has continued up until -- it's
8 continued -- it's been nine months now that we've been
9 dealing with this --

10 Q Okay.

11 A -- with the Germer-Browns.

12 MS. SMITH: I have a video, and I don't know
13 if you want to object to it. You've seen it before.
14 It's what she submitted to Officer Chaplin. It's from
15 the trainer. It's about, like, ten minutes.

16 MR. GRUBER: I'm not going to object, Your
17 Honor.

18 THE COURT: Okay.

19 (WHEREUPON, a brief recess was held to
20 access the video.)

21 MS. SMITH: And Judge, my client, if she can
22 testify a little bit while explaining to you what
23 you're going to see in each sequence?

24 THE COURT: Okay.

25 WITNESS: Well, this was actually what the

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1 THE COURT: After the incident?

2 WITNESS: Correct. Yes. And then these are
3 videos at our house, showing Bodi in the yard,
4 reacting to other dogs. These are just two strange
5 dogs that are, you know, unknown to -- unknown to him.
6 And there's our other dog, and they're going up to the
7 fence, which is normal. (Pause.) And again just to
8 demonstrate the outside behavior, normal.

9 THE COURT: What's the other dog's name?

10 WITNESS: Smiley.

11 THE COURT: While I've got this in front of
12 me, how tall is that fence on the sidewalk?

13 WITNESS: It's -- I think it's five feet,
14 four and a half feet.

15 THE COURT: And the fence on the side?

16 WITNESS: It's, I think, four and a half
17 feet. (Pause.) And this is at the Doggie Lama. We
18 brought Bodi in cold to an entire group of dogs, no
19 socializing beforehand. We just brought him in and
20 let him go. (Pause.) I think there are 11 dogs
21 there, Your Honor, plus Bodi.

22 THE COURT: Okay. I'll take your word for
23 it. I can't count them.

24 WITNESS: Well, there are a lot of dogs --

25 THE COURT: It's a lot of dogs.

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1 dog trainer who was coming was going to testify to.
2 It's just the relation of the fence to the sidewalk
3 where -- that was just someone we knew that had two
4 small dogs, where the property is, and that sort of
5 thing, just to give you an idea of where it was.

6 This is just demonstrating --

7 THE COURT: Is that your fence?

8 WITNESS: No, this is actually at the Doggie
9 Lama. We were just showing our dogs' reaction to
10 other dogs and how dogs can react to each other, the
11 energy of the dogs. That's Bodi. That's us walking
12 our dogs, the way we walk them, our process of
13 walking. As you can see, they're not out ahead of us,
14 and then, also, we were bringing other dogs out to
15 show how certain dogs' energies can create excitement,
16 and then these are just various dogs that were brought
17 out. (Pause.) So what they did was, they would just
18 go get different dogs and bring them out to show, in
19 this part of the DVD, how, when a dog is out ahead,
20 sometimes you can get that energy created, and how
21 dogs react to other dogs, as you can see. And our dog
22 is not -- he's looking, but he's continuing to walk,
23 and then she is reining that other dog in.

24 THE COURT: When was this video made?

25 WITNESS: That was done on July 14th.

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1 WITNESS: -- as you can see. They keep
2 coming in. They keep letting more dogs in from the
3 other -- there's an enclosed area, and they just kept
4 letting more dogs in. (Pause.)

5 This is at the Bark Shack. This was on May
6 30th, prior to the incident, in Bluffton. It's at dog
7 boarding. This I sent to -- this is one of the videos
8 that Officer Chaplin viewed on the 5th of July, and
9 there are, I think, six or seven dogs in this
10 particular sequence. There was another video that I
11 have sent that Officer Chaplin viewed which was Bodi
12 at the sandbar, and so that was also one that I had
13 sent over to her office.

14 THE COURT: So the first part of that video
15 was on July 14th, and --

16 WITNESS: Yes. Correct.

17 THE COURT: -- the second part at the, what
18 -- the Bark Shack in Bluffton was on --

19 WITNESS: Was on May 30th.

20 THE COURT: -- May 30th.

21 WITNESS: And the one of Bodi at the sandbar
22 was, I don't know, a couple months, maybe three months
23 or so. I don't remember the exact date of that one.
24 And there were probably at the sandbar -- I don't
25 know. Officer Chaplin could probably tell you, as

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1 well -- from very small dogs to large dogs. There
2 were probably six or eight dogs, plus Bodi, at the
3 sandbar. And, of course, they're not leashed at the
4 sandbar, as well, so --
5 THE COURT: Shouldn't they be?
6 WITNESS: No, not at the sandbar. Nobody
7 seems to do that.
8 MR. GRUBER: Maybe.
9 THE COURT: I'm serious. I think we have a
10 leash law.
11 MS. SMITH: Judge, I have just a couple more
12 questions, and I'm done with this witness.
13 THE COURT: Okay.
14 BY MS. SMITH:
15 Q Kind of in follow-up, have you ever had any
16 instances or any incidents where your dogs have gotten over
17 the fence, or any problems with that fence, prior to July
18 4th?
19 A No. And since the incident, we have not had any
20 issues of any kind.
21 Q Okay. Have your dogs ever gotten out before, out
22 of the fence?
23 A No.
24 Q Okay. When you walk your dogs, do you walk them
25 on a leash?

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1 A Always, yes.
2 Q Had you ever been cited by the Town of Port Royal
3 or by animal control for your dogs prior to this incident?
4 A No.
5 Q Had you ever had any tickets, any complaints?
6 A No.
7 Q Any calls from law enforcement regarding these
8 animals prior to July 4th?
9 A No.
10 MS. SMITH: Okay. That's all I have.
11 Please answer any questions Mr. Gruber has for you.
12 THE COURT: Mr. Gruber?
13 MR. GRUBER: Thank you, Your Honor. And
14 before I begin my cross-examination, let me apologize
15 to the Court for my cell phone going off. I know
16 that's highly disrespectful, but just so you know, my
17 wife is due to give birth tomorrow, so I have it on me
18 just in case. So I'm going to ask for your
19 indulgence, but I wanted to let you know I certainly
20 do not want to disrespect the Court.
21 THE COURT: I understand. Good luck with
22 that.
23 CROSS-EXAMINATION
24 BY MR. GRUBER:
25 Q Good morning, Ms. Baracco. I just have a couple

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1 quick questions for you.
2 A Yes, sir.
3 Q To your knowledge, is the Germers' dog Zoey
4 deceased?
5 A Yes.
6 Q And how did Zoey come to be deceased?
7 A As I understand, from the contact that their dog
8 had with my dog in my yard.
9 Q Okay. So your dog bit or injured their dog and
10 led to its death?
11 A I don't actually know the -- what type of injury
12 it was, other than what the vet, Dr. Marikay, told me.
13 Q And what did she tell you?
14 A She said -- well, she told me the dog was not
15 bitten, that that's -- that there were no puncture wounds.
16 That was my understanding. I don't really know what
17 transpired in the contact they had.
18 Q So there was no puncture wounds or lacerations to
19 the dog whatsoever?
20 A I -- that's only from my understanding. I never
21 -- I've never seen any reports or anything.
22 Q Okay. So how did the dog come to be at the
23 veterinary hospital, then?
24 A From the encounter with my dog.
25 Q But if there was no bites or lacerations, why

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1 would they take the dog to the vet?
2 A Well, I know the dog was injured. I don't know
3 its --
4 Q Okay. How was the dog injured?
5 A By the encounter with my dog.
6 Q Okay. And can you describe those injuries?
7 A No, I can't. I don't know what the injuries
8 were, specifically.
9 Q So you --
10 A I was not told.
11 Q You know it was injured, but you don't know what
12 injury?
13 A Correct.
14 Q Is it possible that the dog, your dog, Bodi, bit
15 Zoey?
16 A If it is, I don't know. It wasn't explained to
17 me, the specifications of the injuries.
18 Q Okay. And if their dog Zoey had lacerations and
19 cuts, it could've been caused by Bodi?
20 A I -- I don't --
21 Q They didn't just magically appear, is what I'm
22 trying to say.
23 A No, I'm not disputing what you're saying. I
24 wasn't informed of the specifics. That's all I'm saying.
25 Q Okay. If their dog is now deceased and Bodi,

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1 your dog, was the canine that caused the injuries to their
2 dog, which ultimately caused it to be deceased, do you now
3 know that it's possible for Bodi to attack and injure
4 another animal?
5 A No, I dispute that.
6 Q So it's not within --
7 A I dispute your --
8 Q -- the realm of possibility?
9 A I dispute your characterization.
10 Q So it can't physically happen?
11 A No, I didn't say that. I just dispute your
12 characterization of --
13 Q Okay. Well --
14 A -- the occurrence.
15 Q -- how would you characterize it, then?
16 A As I testified, the, I'll use the word, "energy"
17 created at the fence between all the dogs led to
18 excitement. When my gate opened, their dog got on my
19 property, and my dog had an encounter with their dog.
20 That's how I would characterize it.
21 Q Does energy kill a dog?
22 A No, what I was saying was, was that the
23 excitement that was created by the dogs fighting at the
24 fence --
25 Q Okay. Then does excitement kill a dog?

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1 A I -- as I explained, when the gate opened and the
2 dog got on my property, I said my dog had an -- they
3 obviously had a second's worth of contact, which obviously
4 created the injury. I don't know any more specifics.
5 Q Okay. But you do know, or at least you just now
6 admitted, that your dog caused an injury to their dog.
7 Now, you don't know the extent of it, but you do know that
8 he caused an injury, and that ultimately resulted in a
9 dog's death. So it is physically possible for your dog to
10 injure another dog?
11 A I would say any dog is capable of injuring
12 another dog.
13 Q I wouldn't disagree with you, but in this case,
14 you now know, because this incident occurred, that your dog
15 can physically injure and kill another animal?
16 A I don't know how to answer your question. It was
17 -- this happened --
18 Q How about you answer yes or no? Is it physically
19 possible?
20 A I guess it was -- it's possible for a --
21 Q And you --
22 A -- for a --
23 Q And you are aware that it's physically possible?
24 A Well, I'm aware that it happened, and I expressed
25 that Mike was -- as I testified, I was hysterical over the

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1 incident. We have apologized to the Germer-Browns. They
2 wouldn't take our calls. I paid all the vet bills. We
3 offered to get them another dog. I don't know what else to
4 tell the Germer-Browns. We -- except for how sorry we are.
5 This is something that happened. It was an incident that
6 happened.
7 Q And as you said, you paid the vet bills?
8 A Yes. Immediately.
9 Q And that's because you realized that your dog
10 injured their dog --
11 A It was on --
12 Q -- and caused its injuries?
13 A -- my property, and I thought I -- number one, I
14 thought that I should, and I also felt it was the right
15 thing to do.
16 Q Okay. How big is Bodi?
17 A I think I just testified he is 50, maybe 55
18 pounds.
19 Q So he's a large dog?
20 A He's considered, I guess, a medium large dog.
21 Q And how big was Zoey?
22 A I -- I don't know, specifically. She was a small
23 dog.
24 Q All right. And I think you testified that, at
25 one point in time, the Germers took their other small dog

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1 and held him over the fence?
2 A Correct.
3 Q Like this (indicating)?
4 A Yes.
5 Q Baiting your dog --
6 A Correct.
7 Q -- to come attack their dog?
8 A Yes.
9 Q So what you're asking the Court to believe is
10 that they wanted to sacrifice their dog?
11 A I actually don't know why they did that. I was
12 -- I was shocked. I couldn't believe what I was seeing.
13 I've been shocked by a lot of behavior I've seen over the
14 last nine months.
15 Q In the incident that occurred with Zoey --
16 A Yes.
17 Q -- did they hold the dog over the fence and ask
18 Zoey to bite it?
19 A Well, first of all, that wasn't the dog. What
20 are you -- I'm sorry. What are you talking about?
21 Q I'm asking --
22 A Which incident are you talking about?
23 Q -- on July 4th -- on July 4th --
24 A Yes.
25 Q -- did the Germers take their dog and hold it

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1 over the fence and ask your dog -- or invite your dog to
2 bite it?
3 A No. As I explained, their dogs were at my fence.
4 There was a fight between all the dogs at the fence.
5 That's what I witnessed.
6 Q Your --
7 A That's what I said.
8 Q Your 55-pound dog and their small dog?
9 A They were all fighting at the fence.
10 Q Okay.
11 A Barking at each other, yes.
12 Q You testified that you were found not guilty of
13 an animal at large citation?
14 A Correct.
15 Q Is that correct?
16 A Yes.
17 Q Isn't it true that you were cited with public
18 nuisance?
19 A No.
20 Q And let me clarify, because I -- you were cited
21 for an animal that is at large; correct?
22 A Are you talking about the ticket from Port Royal
23 on July 4th?
24 Q That's correct.
25 A Yes.

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1 Q Okay. And isn't it true that, under that
2 definition, that is considered a public nuisance? That's
3 one of the elements of a public nuisance?
4 A I'm not an attorney. I don't -- I only know it
5 was an animal at large ticket, and I appeared in court on
6 that ticket.
7 Q Were you there as a criminal defendant? Correct?
8 A (To Ms. Smith) Is that a criminal? I'm sorry. I
9 don't understand the question.
10 Q Were you facing either a fine or jail time?
11 A I guess, yes.
12 Q To your -- to your knowledge?
13 A I --
14 Q Okay. So you were there as a criminal defendant?
15 A Okay.
16 Q And are you aware that the burden of proof in a
17 criminal case is different than what we have here today?
18 A I'm -- I'm not understanding your question.
19 Q Yes or no. Are you aware that the burden of
20 proof in today's case is different than the burden of proof
21 that was in the criminal case that you've testified to that
22 you were found not guilty of?
23 A I -- I don't understand the distinction.
24 Q You can say you don't understand it.
25 A Well, I don't. I don't know.

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1 Q Ms. Baracco --
2 A Yes.
3 Q -- you did receive a copy of the notice from
4 Officer Chaplin?
5 A (Witness nods head; no verbal response.)
6 Q That's correct?
7 A I did.
8 Q Okay. And on the notice, did it state why your
9 dog was being deemed a dangerous animal?
10 A Yes.
11 Q Okay. And what was that reason?
12 A I -- well, I'd have to look at the notice. I
13 didn't agree with it, so -- which I stated to the officer.
14 Q Is that a copy of the notice you received?
15 (Tenders document to Witness.)
16 A Yes.
17 Q Okay. And what does it state on there was the
18 reason that you were receiving that notice?
19 L.CPL. CHAPLIN: It's at the bottom.
20 WITNESS: Involving an animal attack in
21 which the victim's canine died, reference case -- it
22 just has a reference case. I don't understand what --
23 oh, that's the date. Yeah, it referenced the case.
24 BY MR. GRUBER:
25 Q Okay. So you received the notice?

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1 A Yes.
2 Q And it contains a description of why you were
3 receiving it?
4 A Okay.
5 Q Okay. You showed a series of videos just now.
6 A Yes.
7 Q Did any of those videos show any interaction
8 between your dog and Zoey?
9 A No.
10 MR. GRUBER: I have no further questions,
11 Your Honor.
12 THE COURT: Ms. Smith?
13 MS. SMITH: I have nothing further for this
14 witness.
15 THE COURT: Okay. Do you have another
16 witness?
17 MS. SMITH: I do. I have a couple of short
18 witnesses, and I'll be done.
19 THE COURT: Okay. I'm just looking for a
20 recess opportunity. We can go ahead and do your --
21 WITNESS: Should I -- am I done?
22 MS. SMITH: Yeah, you can come sit here.
23 I've got four witnesses, if you want to take a break
24 now, or --
25 THE COURT: Sure. Let's do that.

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1 (Brief recess.)
 2 THE COURT: All right. We're back on the
 3 record. Having been outside, it's one of those days
 4 where we might as well be inside. I wanted to ask Ms.
 5 Baracco a couple of questions just for clarification
 6 about the video that we saw, which was sort of a
 7 compilation of different time elements.
 8 WITNESS: Should I get back up there?
 9 THE COURT: No, it's okay. You can --
 10 you're still under oath, and you can answer from right
 11 there.
 12 WITNESS: Okay.
 13 EXAMINATION
 14 BY THE COURT:
 15 Q The part of the video where the various dogs on
 16 leashes were being walked up and down the sidewalk near
 17 your home --
 18 A Correct.
 19 Q -- that part of the video was made after the Zoey
 20 incident; is that correct?
 21 A That was on July 14th by our trainer.
 22 Q On July 14th; okay. And then the Bodi at the --
 23 I think it was the Doggie Lama with the other dogs?
 24 A Which -- of the -- okay. So not the Bark Shack,
 25 but the Doggie Lama?

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1 Q Right.
 2 A Okay. Yes.
 3 Q At the Doggie Lama --
 4 A Okay.
 5 Q -- where the other dogs were -- you said there
 6 were about 12 dogs there?
 7 A Correct.
 8 Q That was also filmed after the incident; is that
 9 right?
 10 A Correct. Just a few days after.
 11 Q And then, the latter part of the video with the
 12 dogs at the Bark Shack -- is that correct?
 13 A Yes.
 14 Q That was filmed before the incident?
 15 A That was May 30th.
 16 Q May 30th?
 17 A Right.
 18 Q Okay. I just wanted to be clear on that.
 19 A Okay.
 20 THE COURT: Thank you. Ms. Smith, if you'd
 21 like to continue, call your next witness.
 22 MS. SMITH: Judge, we call Mike Culligan.
 23 THE COURT: Mr. Culligan?
 24 MR. CULLIGAN: Yes, sir.
 25 THE COURT: Would you state your full name

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1 for the Court, please?
 2 MR. CULLIGAN: Yes, sir. Captain Michael
 3 Culligan, United States Marine Corps.
 4 THE COURT: And raise your right hand.
 5 (WHEREUPON, MICHAEL CULLIGAN, called as a
 6 witness, having been first duly sworn, was examined and
 7 testified as follows:)
 8 DIRECT EXAMINATION
 9 BY MS. SMITH:
 10 Q Captain Culligan, where do you live?
 11 A I live at 2201 Mossy Oaks Road, Apartment G-9,
 12 Beaufort.
 13 Q Okay. How do you know my clients, Mare and Tim?
 14 A I met them through my now wife, Trisha Culligan,
 15 who was Trisha Gutterson at the time of the incident. I've
 16 known them for about a year.
 17 Q And are y'all friends? Are you and your wife
 18 friends with Mare and Tim?
 19 A Yes, we are.
 20 Q Okay. Have you been over to their home in Port
 21 Royal?
 22 A Multiple times, yes, ma'am.
 23 Q Okay. Have you had any type of interaction with
 24 their dogs?
 25 A Yes.

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1 Q Okay.
 2 A As late as yesterday, actually.
 3 Q Okay. Do y'all have dogs of your own?
 4 A We do.
 5 Q Okay. What kind of dogs do you have?
 6 A We currently have a Walker Coonhound named
 7 Douglas. He's about a 60-pound dog. And we had a small,
 8 about a 10- or 11-pound Chihuahua named Nacho, but,
 9 unfortunately, he passed a few months ago -- or a couple
 10 months ago.
 11 Q I'm sorry to hear that. Did both of those dogs
 12 interact with both of Mare's dogs?
 13 A Yes. Nacho more than Douglas, but yes.
 14 Q And that's the smaller --
 15 A That's the small --
 16 Q Well, that's the small dog?
 17 A That's the Chihuahua.
 18 Q Okay. Did they -- were Mare's dogs, specifically
 19 Bodi, ever aggressive towards your dogs?
 20 A No, not that I ever saw.
 21 Q Okay. Were they ever aggressive towards you --
 22 A No.
 23 Q -- or Trish?
 24 A Not at all.
 25 Q Okay. Did y'all ever take care of the dogs?

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1 A I know my wife has. I've never, personally, been
2 left alone with the dogs.
3 Q Okay. And she had taken care of them for days at
4 a time --
5 A Yes.
6 Q -- when Mare and Tim were out of town?
7 A Correct. That's my understanding.
8 Q Have you ever seen them running around outside of
9 the fence or running around the neighborhood or anything
10 like that --
11 A No.
12 Q -- and not on a leash?
13 A No. Only inside the fence.
14 Q Okay. Did you have -- were you at Mare and Tim's
15 house around July 6th of last year?
16 A Yes, and I'm not certain it was the 6th. It was
17 a couple days after the incident, and I believe it was the
18 Friday after July 4th.
19 Q Okay.
20 A And I would put the time roughly -- it was late
21 evening, but that time of the year, I'd put the time
22 roughly around 1900, 1930; or 7:00, 7:30 p.m.
23 Q Okay. And what did you witness that night?
24 A As you're standing on the porch, from the right
25 to the left, Mr. Brown and his wife were walking past the

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1 fence. At that time, they had a -- Mr. Brown was closest
2 to the fence, and he was carrying his dog -- I'm not sure
3 of his dog's name -- in his arm. They were less than a
4 meter away from the fence, and I wouldn't say he was
5 holding it over the fence, but he was carrying it above the
6 fence line in clear sight. We were standing in the living
7 room at the time.
8 Q Okay. And why was that so -- were y'all shocked
9 by this --
10 A Yeah.
11 Q -- occurring?
12 A Yes. Yes, ma'am, we were, because it didn't make
13 sense as to why -- I could see how they could take that
14 route past the house, because I believe the friend lives
15 there, the councilman, on the other side of the house. I'm
16 not sure of his name either.
17 Q Okay.
18 A But I wouldn't see why they would feel the need
19 to be so close to the fence line, and specifically holding
20 their dog above the fence line. As it happened, it seemed
21 to be for no other reason than to provoke another incident
22 or to make some sort of a statement as they walked past.
23 Q Okay. And --
24 MR. GRUBER: Your Honor, I'm going to object
25 at this point again. Can we get clarification as to

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1 the timing of this event? Again, if it occurred after
2 the incident which led to the ticket being issued, I'm
3 going to object on grounds of relevancy.
4 THE COURT: Ms. Smith?
5 MS. SMITH: He testified it was on July 6th.
6 The notice was issued on the 9th.
7 THE COURT: Given that it -- all right. I
8 was going to ask that very question. It occurred
9 after the incident and before the citation. I'm going
10 to let this continue.
11 MS. SMITH: Okay.
12 THE COURT: I don't know if it has any
13 relevance either, but that's what I'm looking for, if
14 you'd go in that direction, please.
15 BY MS. SMITH:
16 Q Okay. Other than -- are you aware of any other
17 aggressive acts by these dogs that you've been around?
18 A No, I'm not, and like I said, him and my smaller
19 dog, Nacho, who used to live directly next to them?
20 Q Right.
21 A Those were the people we got him from. They used
22 to interact all the time. So it's not so much a matter of
23 small versus big, apparently, judging from the interactions
24 he had with Nacho, over a dominance issue, which any dog of
25 any size could be dominant, or attempt to be dominant, over

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1 another dog.
2 Q And as much as your dogs were around each other,
3 specifically Nacho, were you ever worried or concerned --
4 A No, not at all.
5 Q -- that something was going to happen?
6 A No.
7 Q Was he more aggressive than your dog --
8 A No.
9 Q -- at any time? No?
10 A No.
11 MS. SMITH: Okay. That's all I have for
12 this witness. Thank you so much.
13 THE COURT: Mr. Gruber?
14 MR. GRUBER: Just a couple of quick
15 questions, Your Honor.
16 CROSS-EXAMINATION
17 BY MR. GRUBER:
18 Q You stated that you are social friends with the
19 appellants; is that correct?
20 A Yes, sir.
21 Q Okay. Have you had any direct knowledge of the
22 events that occurred on July 4th?
23 A What do you mean "direct," sir?
24 Q Were you at the appellants' house on July 4th?
25 A No.

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1 Q Did you witness the event?
2 A No.
3 Q When you testified that you were at their house
4 on the 6th, when you spoke to -- or referred to the
5 Gerners, when you said that they walked by the house, were
6 they walking on a public sidewalk?
7 A They were, yes, sir.
8 Q So they weren't trespassing on the appellants'
9 property?
10 A They were not.
11 Q And they were holding the dog in their arms?
12 A Close to the side, so on his -- it would've been
13 his left side, closest facing the house, along the fence
14 line.
15 Q And given the fact that their other dog had been
16 attacked and killed two days prior, would it be reasonable
17 for them to pick up their dog as they walked past this
18 property?
19 A Yes, but I would assert it wouldn't be reasonable
20 to walk that close to the fence line --
21 Q But they were --
22 A -- if they were concerned --
23 Q -- on a public sidewalk?
24 A They were on a public sidewalk.
25 MR. GRUBER: Okay. No further questions,

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DIRECT EXAMINATION

1 BY MS. SMITH:
2 Q Mr. Fraley, where do you live?
3 A 1001 10th Street, Port Royal.
4 Q Okay. And do you know Mare and Tim Baracco?
5 A I do.
6 Q And how long have you known them?
7 A I've known Mare for probably 10 years, and Tim
8 for probably eight.
9 Q Okay. Do you go over to their home?
10 A I do.
11 Q Do you have dogs?
12 A I do.
13 Q Do you -- what kind of dogs do you have?
14 A I have a Shepherd Lab, about four years old. Big
15 dog.
16 Q And do you let your dog interact with their dogs?
17 A I do.
18 Q Have you ever witnessed any attacks or aggression
19 by their dogs against your dog, or other dogs, for that
20 matter?
21 A I have not.
22 Q How -- what is their behavior like?
23 A Their interaction with my dog is very playful.
24 They -- typical dog behavior -- jump on each other. My dog

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1 Your Honor.
2 THE COURT: Thank you. Ms. Smith?
3 MS. SMITH: That's it for this witness.
4 THE COURT: Thank you, Captain Culligan.
5 WITNESS: Yes, sir.
6 MS. SMITH: We call Mike Fraley.
7 THE COURT: Hold on just one moment. Let me
8 state for the record that I just realized that I have
9 met Captain Culligan, and I know his wife, Trish
10 Gutterson, through her law enforcement capacity.
11 MR. GRUBER: I'd waive any claim of
12 conflict, Your Honor.
13 THE COURT: All right. Just noting it for
14 the record.
15 MS. SMITH: Thank you.
16 THE COURT: Thank you. Would you state your
17 name for the record, please?
18 MR. FRALEY: Mike Fraley.
19 THE COURT: Mike Fraley?
20 MR. FRALEY: Yes, sir.
21 THE COURT: And would you raise your right
22 hand, please?
23 (WHEREUPON, MIKE FRALEY, called as a
24 witness, having been first duly sworn, was examined and
25 testified as follows:)

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1 is younger, so she is somewhat passive, but most for the
2 part (sic), they know each other. And at the beginning of
3 their interaction, we greeted them together and made sure
4 that they kind of knew each other, which, you know, I think
5 you should do if you own dogs. The same way you should
6 walk up to a dog with your hand turned backward so they
7 can, you know, acknowledge who you are. And whenever that,
8 you know, occurred, they just played, friendly, like normal
9 dogs do.
10 Q Mr. Fraley, do you have any children?
11 A I do.
12 Q How old are they?
13 A Twelve, 14, and 16.
14 Q Have you allowed your children to be around
15 Mare's dogs?
16 A Yes, I have. Sometimes without her knowledge.
17 I've been asked to go check on the dogs or feed the dogs,
18 and my 12-year-old daughter is very comfortable with going
19 to see Bodi and Smiley and walk up to their house and feed
20 them or just play with them.
21 Q Okay. And this -- you've gone over there when
22 Mare or Tim were not home; is that correct?
23 A On -- on Friday of last week. Yes.
24 Q Do you have any knowledge of any attacks or any
25 injury they've caused on other animals or other people

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1 Besides the one we're here about today?
 2 A None at all.
 3 Q And do you have any personal knowledge as to what
 4 happened that day?
 5 A Other than Mare called me that day, very upset,
 6 and I came over. And then through -- I mean, this whole
 7 incident is ridiculous. It's dividing the community. It's
 8 kind of -- I've heard from other people, you know, that
 9 they're talking about what's going on and what's happening.
 10 But, you know, it was an accident that occurred, and it's,
 11 in my opinion, blown way out of proportion, and that's
 12 really about all I know about it. It's unfortunate, and
 13 it's dividing the community. But, you know, other than
 14 that, I have no, you know, knowledge of, that day, what
 15 actually happened, other than hearsay from other people.
 16 MS. SMITH: Okay. Thank you, Mr. Fraley.
 17 That's all I have for you. Please answer anything Mr.
 18 Gruber has.
 19 MR. GRUBER: Thank you.
 20 CROSS-EXAMINATION
 21 BY MR. GRUBER:
 22 Q Mr. Fraley, just to confirm, you were not at the
 23 appellants' house on July 4th; correct?
 24 A I was not. Correct.
 25 Q Okay. And have you ever witnessed any direct

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1 interaction between Bodi and the now-deceased Zoey?
 2 A No.
 3 MR. GRUBER: I have no further questions,
 4 Your Honor.
 5 THE COURT: Anything else, Ms. Smith?
 6 MS. SMITH: That's it for this witness.
 7 THE COURT: Thank you, Mr. Fraley.
 8 MS. SMITH: Judge, we'd call J.R. Thorpe.
 9 THE COURT: Mr. Thorpe, would you state your
 10 full name for the record, please?
 11 MR. THORPE: Francis Thorpe, Jr.
 12 THE COURT: And raise your right hand.
 13 (WHEREUPON, FRANCIS THORPE, JR., called as a
 14 witness, having been first duly sworn, was examined and
 15 testified as follows:)
 16 DIRECT EXAMINATION
 17 BY MS. SMITH:
 18 Q Mr. Thorpe, where do you currently live?
 19 A 1004 10th Street.
 20 Q Okay. Is that next door to Mare and Tim?
 21 A That street actually runs perpendicular to their
 22 address, but we share a common back driveway to the
 23 residence. So we're maybe five houses down from them.
 24 Q Gotcha.
 25 A Um-hum.

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1 Q Okay. How long have you known Mare and Tim?
 2 A Since 2007. So right around seven -- six years,
 3 seven years.
 4 Q Do you interact with them on a regular basis?
 5 A Almost on a daily basis.
 6 Q Okay. Do you -- have you been around their dogs?
 7 A Often.
 8 Q Okay. And --
 9 A Almost on a daily basis, so --
 10 Q Okay. And what's their interaction been like
 11 with these dogs? How have they behaved?
 12 A In my opinion, I've -- if somebody categorizes or
 13 calls Bodi a dangerous dog, I just -- I don't see it.
 14 That's -- that is not, in my opinion, even remotely close
 15 to this particular animal. I've never seen anything that
 16 would remotely describe his actions, remotely justify
 17 describing that dog, as being dangerous.
 18 Q Does he behave like a normal dog?
 19 A He does behave like a normal dog.
 20 Q Does he bark?
 21 A He does bark.
 22 Q Does he lick?
 23 A He licks. The dog licks a lot. That's why it's
 24 so shocking to me that this interaction occurred, because
 25 what I know of Bodi is a dog that licks a lot. When he

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1 come -- whenever they're walking by or they stop by the
 2 house, that's what I know of Bodi. Bodi just goes right up
 3 to you and starts licking all over the place. We -- you
 4 know, I have a --
 5 Q Well, I was going to ask, do you have any
 6 children?
 7 A I do have children, and I have a -- at the time
 8 of the incident, it would've been about a four-and-a-half-
 9 year-old and a one-year-old. Their dogs, Smiley and Bodi,
 10 interact with my children, and they get face to face with
 11 my children. I know them that well. I know those dogs
 12 that well. I feel that comfortable. That might be
 13 shocking to some, but like I say, what I know of Bodi and
 14 how I've interacted with that -- with that dog, and my
 15 children have interacted with that dog, I have no -- I have
 16 not seen anything like what happened or what was described.
 17 I've never seen any -- anything that he's ever done in that
 18 manner.
 19 Q And you have dogs?
 20 A I do. I have another rescue shelter dog. She's
 21 about a -- we think, about an eight-year-old, mixed Lab,
 22 and she's, you know, 60 pounds; probably about 10 pounds
 23 overweight, but she broke a hip. And they interact with
 24 the dogs all the time. You know, I see Mare and Tim
 25 walking, and I just -- if they're out walking, I try to

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1 tak: my dog for a walk at the same time just to -- you
2 know, just as a neighborly thing, and as a fun thing, so --
3 Q Have these dogs ever been aggressive to you or
4 any one of your dogs?
5 A Never.
6 Q Have you ever seen these dogs outside of their
7 yard, running loose, or not -- walking without a leash?
8 A Never. And, you know, I -- that's another thing.
9 You know, we mentioned about the fence being -- the front
10 of the fence is higher, and then the side of the fence is
11 way lower, and I think she testified it's four and a half
12 feet, and I -- and I think she way overestimated. It's
13 much lower. It's -- it seems to me --
14 Q Why is that?
15 A Well, it's because the house -- the street is on
16 a slant, and so, from my -- from my understanding -- I just
17 know that they mentioned that they were going to change the
18 fence line to make it look parallel to the street. So,
19 before they made the changes to the fence, it just -- it
20 looked kind of awkward, because it was going at a slant.
21 Now, whenever you're facing the house, aesthetically, it
22 becomes more pleasing because you've got this nice,
23 horizontal facade or fence.
24 But as we saw on the video, the sides of the
25 fence are -- are, you know, at least a foot and a half

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1 shorter, and the dog could get out at any time he wants to,
2 any time he wanted to.
3 Q Are you aware of him getting out of that fence?
4 A And I've never seen -- I've never seen the dogs
5 at large or leaving the -- leaving the yard without being
6 on a leash.
7 Q Do you let your dogs stay in the yard with Mare
8 and Tim's dogs?
9 A I do. And if they come over to the house, they
10 unleash their dog, and their dogs run out -- run about our
11 house.
12 MS. SMITH: Mr. Thorpe, thank you. I think
13 that's all I've got for you.
14 WITNESS: You're welcome.
15 MS. SMITH: Please answer any questions Mr.
16 Gruber has for you.
17 MR. GRUBER: Mr. Thorpe, real quick, and
18 we'll let you off the stand.
19 CROSS-EXAMINATION
20 BY MR. GRUBER:
21 Q Were you at the appellants' house on July 4th?
22 A No.
23 Q Have you ever witnessed any interaction between
24 Bodi and the now-deceased Zoey?
25 A No.

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1 MR. GRUBER: No further questions, Your
2 Honor.
3 MS. SMITH: Judge, this is the last witness
4 we have.
5 THE COURT: Okay.
6 MS. SMITH: Shonna White.
7 THE COURT: All right. Ms. White, would you
8 state your full name for the record, please?
9 MS. WHITE: Shonna Jean White.
10 (WHEREUPON, SHONNA WHITE, called as a
11 witness, having been first duly sworn, was examined and
12 testified as follows:)
13 DIRECT EXAMINATION
14 BY MS. SMITH:
15 Q Good morning, Ms. White.
16 A Good morning.
17 Q How do you know Mare and Tim?
18 A I have known them for about two years now. They
19 were professional contacts that I made in a networking
20 group we were a part of called BNI, which is Business
21 Networking International. It's a referral-based networking
22 group, and we're members, and -- my company was a member.
23 I own Low Country Maid Services, which is a housecleaning
24 company, and they own Castaway Charters and Vintage
25 Voyages, and Mare also became -- through the group, became

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1 one of my customers.
2 Q So do you do work for Mare and Tim now?
3 A Yes, we do.
4 Q And do you clean their house?
5 A Yes, we do.
6 Q When -- how often do you do that?
7 A Mare normally calls us about -- every three to
8 four months, she'll call -- she'll either, you know, call,
9 text, or email, and let me know she needs us to come in and
10 give her a cleaning. And we have also shampooed her
11 carpets twice for her.
12 Q Okay. Were the dogs, the two dogs we've been
13 talking about today, Bodi and Smiley -- were they in the
14 house --
15 A Yes, ma'am.
16 Q -- when you were there?
17 A I did her initial estimate in May of 2011, and I
18 actually went to the house. I do all of the estimates for
19 my homes. I went to the house. Both dogs were off-leash.
20 They were very friendly, came up to greet me. Mare gave me
21 treats to give to them, and they followed us throughout the
22 house as Mare -- as she was showing me the house.
23 Q Were you ever scared of these dogs, or were they
24 ever aggressive towards you?
25 A No, ma'am, and they've never been aggressive

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1 towards any of my cleaners either.
 2 Q And they're -- have they always been there --
 3 A Yes, ma'am.
 4 Q -- when y'all have been at the house, cleaning?
 5 A Yes, ma'am. They're there every time for the
 6 cleaning, and then right before we get ready to mop her
 7 hardwood floors, Mare takes them outside so they won't mess
 8 up her floors.
 9 Q Okay. Have you ever seen them attack anyone or
 10 any other animal?
 11 A No, ma'am. We -- in fact, we've shampooed her
 12 carpets now twice, and the first time they were shampooed,
 13 in -- last year -- 2012, Bodi followed me upstairs when I
 14 went to go do it, and I was doing some floor work along the
 15 baseboards, and he was just licking my face, and Mare had
 16 to take him because he was just showing me too much
 17 friendly attention
 18 MS. SMITH: Thank you, Ms. White. That's
 19 all I have.
 20 CROSS-EXAMINATION
 21 BY MR. GRUBER:
 22 Q Ms. White, just the same two questions I've asked
 23 everybody else. Were you at the appellants' house on July
 24 4th?
 25 A No, sir.

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1 Q Okay. And have you ever witnessed any direct
 2 interaction between Bodi and Zoey?
 3 A No, sir.
 4 MR. GRUBER: No further questions.
 5 THE COURT: All right. Thank you, Ms.
 6 White. You can step down.
 7 MS. SMITH: Judge, that's all I've got.
 8 ---oOo---
 9 THE COURT: All right. Mr. Gruber?
 10 MR. GRUBER: Your Honor, at this point, I would
 11 move for a directed verdict, if I can make my argument to
 12 the Court?
 13 THE COURT: You may.
 14 MR. GRUBER: For what little it may be worth.
 15 THE COURT: You may.
 16 MR. GRUBER: Your Honor, I believe the standard
 17 in this case -- and we discussed it very briefly a little
 18 bit ago -- is that this is stylized as an administrative
 19 appeal. It's an appeal of the administrative decision made
 20 by the animal control officer, and it arises out of the
 21 county ordinance. It is Section fourteen twenty --
 22 14-35(c). That section states, "An animal control officer,
 23 in his or her discretion, observes that a particular animal
 24 is a dangerous animal as defined in this article, may
 25 declare such animal a dangerous animal by delivering a

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1 written notice of declaration to the owner. The notice
 2 shall include a description of the animal and the basis for
 3 the declaration of dangerousness."
 4 Now, if you go back and look at the definition of
 5 a dangerous animal, which is earlier on in the code,
 6 Section 14-26, it says that a "Dangerous animal means any
 7 animal which the owner knows or reasonably should know has
 8 a propensity, tendency, or disposition to attack
 9 unprovoked, comma, cause injury, comma, or otherwise
 10 endanger the safety of human beings or domestic animals."
 11 While not contained within the county code
 12 section, the state enabling legislation under the dangerous
 13 animal act contains a definition for the term "injury."
 14 It's found under Code Section 47-3-710, Subsection -- let's
 15 see here -- Subsection "E", and it states, "As used in this
 16 article, 'injury' or 'bodily injury' means, one, broken
 17 bones; two, lacerations; three, punctures of the skin; or
 18 four, any physical injuries resulting in death."
 19 The testimony that's been presented to you thus
 20 far can only lead to one determination, and that
 21 determination is that the animal control officer was
 22 justified in declaring Bodi to be a dangerous animal,
 23 because Bodi attacked and killed Zoey. There has been
 24 uncontroverted testimony that that event occurred, and
 25 because that event occurred, Bodi's owner, the appellant,

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1 now knows or should know that it is possible and that her
 2 dog, under those same situations, has a tendency to attack
 3 and kill another animal, and we know that because it
 4 occurred.
 5 When you look at the standard that the appellants
 6 bear in this matter -- and I would submit to the Court the
 7 case of Waters v. South Carolina Land Resources
 8 Conservation Commission. It's a supreme court case from
 9 1996, Your Honor. In that case, the court stated that the
 10 standard of review in these matters is as, quote, "This
 11 court's review of the administrative agency's finding of
 12 fact are limited. The court shall not substitute its
 13 judgment for that of the agency as to the weight of the
 14 evidence on questions of fact. A court can reverse an
 15 agency's findings, inferences, conclusions, or decisions
 16 only if they are ... 'clearly erroneous in view of the
 17 reliable, probative, and substantial evidence on the whole
 18 record,' or 'arbitrary or capricious or characterized by
 19 abuse of discretion or clearly unwarranted exercise of
 20 discretion.'"
 21 I have not heard any testimony here today that
 22 controverts that this event occurred, and if this event
 23 occurred, the animal control officer is justified under
 24 this ordinance in classifying this animal as a dangerous
 25 animal, and for that reason, Your Honor, we would move for

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1 a directed verdict.
2 THE COURT: Ms. Smith?
3 MS. SMITH: Judge, I'll kind of go in reverse.
4 First and foremost, as to the standard of review, I think
5 that we have presented testimony that would cause a -- at
6 this point, that would lend itself to believe that she --
7 her decision was arbitrary and capricious, by her own
8 testimony. She at one time testified, she said, "I feel
9 that this animal has the propensity and tendency to do
10 that," and then she refers to testimony where she refers to
11 her supervisor, who made that determination; and she could
12 never provide a basis other than the one attack, not any
13 other investigation or assessment, or that she depended on
14 her supervisor, Mr. Hiers, who never testified, who never
15 provided any evidence, who never did an assessment. He
16 never even did a report as to why they made this
17 determination. And she could not -- the only thing that
18 she said was that the dog attacked Zoey, Bodi attacked
19 Zoey, and therefore was a dangerous animal, that my client
20 now has knowledge.
21 I don't believe that's what the law says. I
22 believe the law says there has to be -- a reasonable person
23 should know that the dog has a tendency or propensity,
24 which would be a natural inclination, to do this, and I
25 believe that that part of the statute -- I would move on a

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1 directed verdict on that, saying that they have not -- or
2 stating that they have not proven that element of the
3 statute. I don't believe that the statute, the ordinance,
4 was enacted with a knowledge element, saying that, "Well,
5 once we charge you with it, now you have knowledge." I
6 believe you're supposed to determine whether they have the
7 knowledge prior to this incident occurring, and I believe
8 that we presented here the testimony that a directed
9 verdict is not appropriate at this juncture.
10 MR. GRUBER: If I could briefly respond, Your
11 Honor, with the Court's indulgence?
12 THE COURT: You may.
13 MR. GRUBER: Your Honor, with regards to
14 interpretation of this statute, as I know you're very well
15 aware, one of the rules of statutory construction is that
16 you should never interpret a statute that would result in
17 an absurd conclusion. And what you're being asked to
18 determine is that the fact that this statute says
19 "knowledge" means that not only has one incident had to
20 have occurred, but, in fact, two incidents would've had to
21 have occurred before you could actually place this label on
22 an animal to keep a third instance from happening, and
23 that, Your Honor, is an absurd result.
24 The whole point of declaring the animal a
25 dangerous animal is to protect other animals and people

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1 from the incident occurring again. That's clear from the
2 face of the statute, that that's what this was intended to
3 do.
4 As far as the evidence that's been presented
5 today, the officer testified, and it's been uncontroverted,
6 that her basis for writing the citation was that the one
7 attack occurred, and that is the basis for her citation.
8 The statute and the language of the ordinance allows her to
9 base her determination upon that event. The fact that she
10 went back after meeting with the dog, reviewing it with her
11 supervisor, and then reaching that conclusion is
12 irrelevant. The statute does not say that you have to make
13 an immediate determination. It just states that you have
14 to find that the animal is a dangerous animal as defined in
15 the ordinance, and the officer did that based upon the
16 facts that have been uncontroverted today. Thank you.
17 THE COURT: All right. Ms. Smith, anything else?
18 MS. SMITH: No, Your Honor.
19 THE COURT: All right. At this moment, Mr.
20 Gruber, I'm going to deny your motion, and likewise Ms.
21 Smith's motion, and hear more testimony, hopefully,
22 specifically about what occurred on July 4th. And we've
23 had a lot of testimony about before and after that date,
24 and if you would like to continue now?
25 MR. GRUBER: Yes. Thank you, Your Honor.

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1 ---o0o---
2 MR. GRUBER: I'd call Ms. Germer to the
3 stand, please.
4 THE COURT: All right. Would you state your
5 name for the Court, please?
6 MS. GERMER: Sally M. Germer.
7 THE COURT: And would you spell your last
8 name for me?
9 MS. GERMER: G-e-r-m-e-r.
10 (WHEREUPON, SALLY M. GERMER, called as a
11 witness, having been first duly sworn, was examined and
12 testified as follows:)
13 DIRECT EXAMINATION
14 BY MR. GRUBER:
15 Q Good afternoon -- or good morning, still, Ms.
16 Germer. It seems to be getting a little longer in the day.
17 Where do you live?
18 A At the time of the incident, I lived at 1107 12th
19 Street. I owned that house, and I also owned the house at
20 the corner, which is a duplex, of 1022 11th Street, which
21 is where I live now.
22 Q And when you say "incident," are you referring to
23 the incident on July 4th?
24 A Yes.
25 Q Okay. Can you explain for the Court in your

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1 testimony what occurred on that day?
2 A I can. My husband and I were walking our two
3 dogs on leashes, and we passed -- the house at the corner
4 is a duplex, and we had vacation rentals, and we had guests
5 who were staying in the side that was at 1104 Madrid, and
6 so we stopped and chatted with those two people, and they
7 -- we talked about dogs.

8 And then we continued walking down the sidewalk
9 and got to -- crossed over 11th Street and got to the
10 corner where the fence of 1106 is, and Bodi rushed up to
11 the fence and started aggressively attacking the fence,
12 barking, jumping. His chest would come up to a level
13 higher than the fence, and he jumped a couple of times at
14 the fence, and then, when he got to the gate, he knocked
15 the gate open.

16 I immediately, with the leash, grabbed my dog,
17 the one that I was holding. I had Caye. Buddy had Zoey.
18 And Buddy reached down to try to get Zoey, and Bodi came
19 after her, and so he kicked Bodi in the head. And by that
20 time, Bodi had gotten Zoey, and she was making this
21 horrific, screaming noise. And he went to get -- try to
22 kick at the same time and get the dog, get our dog, and
23 finally got her up. And she's, like, frantic because she's
24 so scared, and he kicked Bodi one more time.

25 And Mare came out of the house, and on the porch,

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1 she yelled at Bodi and said, "What happened?" and Buddy
2 said, "Your dog attacked our dog."

3 We turned around, and we went into the other side
4 of the duplex at 1022. We thought we could lay her down.
5 We couldn't. She was screaming. So I called the Port
6 Royal animal vet and explained what happened, and they
7 said, "We'll be right there." We couldn't put her down, so
8 we physically walked her to the vet's office, and they
9 pulled up maybe five, 10 minutes -- maybe not even 10
10 minutes later.

11 And we went inside, and they were trying to give
12 her morphine because they couldn't touch her. While they
13 were administering the second group of morphine, Marikay,
14 who's the vet, said, "What happened?" And I said, "The
15 neighbor's pit bull attacked her," and she said, "This
16 isn't Bodi, is it?" and I said, "Yes, it is." She said,
17 "You need to call the police and make a report," and that's
18 what I did. And the police came, and I made my report.

19 Q Did you in any way provoke Bodi to attack?

20 A No. You know, we always -- my husband and I
21 always thought this was pretty interesting. You know, we
22 have little dogs, and they bark, but those dogs -- our dogs
23 didn't bark when they would walk past that fence, and I
24 don't know if it was fear or what it was. We always were
25 confident that this fence would hold our dogs. We were

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1 walking on a public sidewalk, and so we were confident that
2 it would be okay.

3 Q So you weren't in the appellant's property? You
4 were on --

5 A No.

6 Q -- standing on the public sidewalk?

7 A Yeah, we were.

8 Q Okay. How did Bodi come to get out on the
9 sidewalk where you were at?

10 A He knocked the gate open and came out.

11 Q And so that is where -- if you'd explain for the
12 Court where the attack occurred?

13 A It actually happened on the outer edge of the
14 sidewalk almost on the grass right at that tree. There's a
15 tree there, and that's where it happened.

16 Q Could you tell, after the incident occurred, if
17 Zoey had any injuries?

18 A The only blood I saw was my husband's blood,
19 because Zoey had grabbed him because she was so scared, and
20 the vet said that's a common thing. When dogs are
21 attacked, they're just going to reach out and grab whatever
22 they can, and I saw no blood on Zoey.

23 And what Marikay told me -- what the vet told me
24 when they were trying to get Zoey calm was that, when a big
25 dog attacks a little dog, it's not the external injuries

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1 you have to worry about. It's the internal injuries. And
2 what she -- what Bodi actually did to Zoey was puncture her
3 stomach, the outer lining of the wall of her stomach, and
4 compromise the intestines.

5 Q And do you know if that's what caused Zoey to
6 pass away?

7 A It is.

8 Q And that's what the vet told you?

9 A Yes.

10 Q Did you believe that it was possible for Bodi to
11 attack you?

12 A Oh, yeah. In fact, I was very glad I wasn't the
13 first, in front.

14 Q So you were scared?

15 A Yes, um-hum.

16 MR. GRUBER: I believe that's all the
17 questions I have for this witness, Your Honor.

18 THE COURT: Ms. Smith?

19 MS. SMITH: Just a couple of questions.

20 CROSS-EXAMINATION

21 BY MS. SMITH:

22 Q Ms. Germer, had Bodi ever attacked your dogs
23 before?

24 A Yes.

25 Q Where was that?

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1 A In the yard of a neighbor. I was sitting on the
2 porch with Zoey in my lap, and Bodi came after her. I
3 immediately jumped up and walked out the front door and
4 didn't do that again.
5 Q Where was this? Which neighbor's?
6 A Alley, Adam's house, right behind.
7 Q Is this the incident we were talking about
8 before?
9 A Uh-huh.
10 Q Or that was testified to earlier today by my
11 client?
12 A Um-hum.
13 Q The same incident?
14 A Um-hum.
15 Q What was -- did your dogs not do anything? Did
16 they not bark, or any kind of interaction?
17 A Well, it was just Zoey. She was sitting on my
18 lap, and I -- she was in my arms. So I immediately grabbed
19 her when he went aggressive at her, and I left. I didn't
20 wait around.
21 Q Do you recall having a conversation with my
22 client about doing some training, getting these animals
23 together, prior to this?
24 A My dog didn't have a problem, and my dog weighs
25 five pounds.

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1 Q And I --
2 A This dog was aggressive toward my dog. Why would
3 I put a five-pound dog with a 60-pound dog?
4 Q And I'm -- I'm asking you to answer my question.
5 A And I just did.
6 Q No, you didn't. I said did you -- do you recall
7 having a conversation --
8 A I do.
9 Q -- with my client. Okay. That's what I was
10 asking. Have you ever called Port Royal Police Department
11 or animal control about these dogs before?
12 A No.
13 Q Did you not feel threatened enough by the
14 previous incident you were talking about to call them about
15 the dog?
16 A I just didn't put myself back in that position.
17 Q How often did you walk by my client's house?
18 A I walked on the public sidewalk often, daily,
19 several times a day.
20 Q Are you aware of any other -- strike that. Had
21 the dog ever attacked you or caused an injury to you prior
22 to this day?
23 A No, he just attacked the fence.
24 Q And when you say "attack," you said that he
25 approaches the fence, and he barks?

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1 A No, he's aggressive. He is -- he aggressively,
2 viciously rushes the fence.
3 Q Okay. Can you explain that in a little more
4 detail as to what that -- what you're calling "aggressive?"
5 He runs towards the fence when people are walking by? Is
6 that correct?
7 A No, that's not correct. He -- he rushes the
8 fence.
9 Q Okay. Have you ever seen him jump over the fence
10 or through the fence or --
11 A No.
12 Q -- anything like that?
13 A (Witness shakes head; no verbal response.)
14 MS. SMITH: I have nothing further for this
15 witness.
16 THE COURT: Mr. Gruber, anything else?
17 MR. GRUBER: One quick question, Your Honor.
18 THE COURT: Okay.
19 REDIRECT EXAMINATION
20 BY MR. GRUBER:
21 Q On the day that this incident occurred on July
22 4th, you were on the public sidewalk; correct?
23 A Yes.
24 MR. GRUBER: No further questions, Your
25 Honor.

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EXAMINATION
1 BY THE COURT:
2 Q Ms. Germer, let me ask you one more thing, if I
3 can find it, and it refers to the previous testimony from
4 Ms. Baracco. Let's see. Ms. Baracco testified earlier
5 that Zoey was very aggressive to Bodi, and you just
6 testified that Bodi had been aggressive toward your dog,
7 and my question is, when did this meeting occur? Was this
8 --
9 A I can't give you an exact date. It was before.
10 It was before.
11 Q I think Ms. Baracco said it was months prior to
12 this incident; is that correct? Is that --
13 A I think that would be -- yeah.
14 Q Okay. Again, I'm just trying to get all the --
15 the time frame consistent. So this was months before when
16 whatever happened at this encounter between Zoey and Bodi?
17 A Yes, sir.
18 THE COURT: Okay. Thank you. That's it.
19 WITNESS: Okay.
20 THE COURT: And Mr. Gruber, do you have
21 another witness?
22 MR. GRUBER: I do. One more, Your Honor.
23 THE COURT: All right.
24 MR. GRUBER: Mr. Germer.
25

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1 MS. GERMER: Mr. Brown.
2 MR. GRUBER: Mr. Brown. I apologize.
3 THE COURT: Mr. Brown, would you state your
4 full name for the record?
5 MR. BROWN: Homer Brown.
6 (WHEREUPON, HOMER BROWN, called as a
7 witness, having been first duly sworn, was examined and
8 testified as follows:)
9 DIRECT EXAMINATION
10 EY MR. GRUBER:
11 Q Good morning, Mr. Brown.
12 A Good morning.
13 Q Where do you currently live?
14 A 1022 11th Street, now. But those days, we lived
15 at 1107 12th Street.
16 Q And on July 4th, where did you live?
17 A 1107 12th Street.
18 Q And can you tell the Court your explanation of
19 events that occurred on July 4th?
20 A Sure. We go for a lot of walks, and we usually
21 stop by and see Tom and Mary at the corner. And we had
22 both dogs out that morning, and normally, Sally would walk
23 Zoey. This morning, I had Zoey. And we stopped and talked
24 to the guests that were in our house and continued down the
25 sidewalk.

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1 And the dog had -- their dog had a tendency to
2 jump at the fence, and we usually just scoot around it on
3 the right side of the sidewalk. And Zoey was beside me,
4 and the dog, you know, lunged at the -- at the fence, and
5 we continued just to scoot around, because, see, the --
6 because, you know, we didn't think the gate would be open
7 -- and wasn't fast enough. And the dog broke through the
8 gate between where Zoey was, on the grass part, between the
9 sidewalk and the street, and before I could kick it and get
10 it away from Zoey, she had attacked and -- and the -- done
11 the damage to Zoey.
12 And I -- so I kicked the dog, and then Mare comes
13 out of the house and said, "What happened?" I said, "Your
14 blankety-blank dog just attacked Zoey," and I was trying to
15 get care of Zoey. And I don't know what happened to their
16 dog, or her, or anything. I was just trying to get Zoey in
17 my hand. She was on a leash. Both of them were on the
18 leash, and very close to me, but I wasn't fast as that dog
19 was.
20 And -- and, you know, then we took the dog back
21 up to the house to try and figure it out. She was biting
22 me because she was in so much pain, and we couldn't see a
23 whole lot of damage. We were hoping that I was fast
24 enough, but we couldn't put her down, couldn't move her,
25 because she was screaming, and we walked up the street to

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1 the vet's.
2 Q So Zoey was injured as a result of that
3 encounter?
4 A Absolutely.
5 Q And what happened as a result of that injury?
6 A She passed away the 5th, the next day. We had --
7 we thought we got there fast enough, and we were hoping the
8 surgery would take care of it, and I know the vets did all
9 they could. You know, there must've been some sort of
10 infection. I don't know.
11 Q And during this encounter, did you ever believe
12 that you may be attacked?
13 A I wasn't -- I was so concerned about the dog, I
14 really didn't care. You know, I just assumed the dog would
15 attack me, but it -- you know, it wasn't really anything I
16 was thinking about at the time.
17 Q Did you believe that it was possible for the dog
18 to have attacked you?
19 A Oh, absolutely.
20 Q And were you in any kind of fear or apprehension
21 as a result of that possibility?
22 A Not at the time. I was too focused on protecting
23 Zoey.
24 MR. GRUBER: No further questions, Your
25 Honor.

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1 THE COURT: All right. Ms. Smith?
2 MS. SMITH: Just one question.
3 CROSS-EXAMINATION
4 BY MS. SMITH:
5 Q Mr. Brown, you just testified that it was a
6 possibility the dog would -- you believe there was a
7 possibility the dog would attack you?
8 Q I thought --
9 A Is that correct?
10 A (Witness nods head; no verbal response.)
11 Q Why was that?
12 A Because every time I -- you know, I'd walk down
13 the sidewalk, the dog would attack the fence, and, you
14 know, that's the only thing I can say. He wasn't very
15 friendly --
16 Q When you --
17 A -- towards --
18 Q I'm sorry.
19 A It wasn't very friendly towards people that I
20 know.
21 Q And when you say "attack the fence," do you mean
22 running and barking?
23 A Aggressively jumping at the fence, trying to
24 lunge at you.
25 Q Did it ever make it over the fence or touch you

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1 or attack you?
 2 A I was never that close to the fence. I always,
 3 you know, got to the far side, and he couldn't reach that
 4 far, not that I knew of.
 5 Q Were you closer to the fence on the day in
 6 question that --
 7 A No, we --
 8 Q -- we were just talking about?
 9 A We always go to the far side of the sidewalk.
 10 MS. SMITH: Judge, I don't have anything
 11 further of this witness. Thank you.
 12 THE COURT: Mr. Gruber?
 13 MR. GRUBER: No redirect, Your Honor.
 14 EXAMINATION
 15 BY THE COURT:
 16 Q Let me ask you, sir, Mr. Brown, when you said
 17 that you called the vet --
 18 A No, Sally called. I was holding the dog. I
 19 couldn't call.
 20 Q Okay. What was the -- what vet did you call?
 21 A Port Royal animal hospital, and that was on a --
 22 was the 4th a Sunday? I don't remember, but they came over
 23 pretty quickly.
 24 Q And that is --
 25 A And we walked up the street.

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1 Q That's right on Paris Avenue; right?
 2 A Yeah. Yeah. We walked from our house --
 3 Q Blocks?
 4 A -- up the street.
 5 Q Blocks? Maybe two, three blocks away?
 6 A Probably, yeah, at least.
 7 Q And somebody from the vet's office came to your
 8 house?
 9 A No, that's -- we met them at the vet.
 10 Q You met them at the vet?
 11 A Yeah. Yeah, because we knew she needed some
 12 serious surgery, or whatever. They needed to --
 13 Q Right. I was unclear whether the --
 14 A Yeah.
 15 Q -- vet came to you or you went to the vet.
 16 A No.
 17 Q Either way, it's very close?
 18 A Yeah.
 19 Q Okay.
 20 A Thank you, sir.
 21 THE COURT: Thank you.
 22 MR. GRUBER: I have no further witnesses,
 23 Your Honor.
 24 ---o0o---
 25 THE COURT: All right. At this time, if you

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1 would -- Ms. Smith, if you would argue the rule to show
 2 cause motion here and let Mr. Gruber respond?
 3 MS. SMITH: Judge, this is an unfortunate
 4 incident. It's a one-time accident. I'm not saying -- I
 5 believe that Counsel earlier said that you get three
 6 strikes, essentially, before you can be deemed a dangerous
 7 animal, is the way that I'm reading the law. This was an
 8 accident, but nothing -- this had not occurred before.
 9 There has been no testimony today that this dog, Bodi, who
 10 belonged to Mare Baracco and Tim Deckard -- that he had
 11 been involved in anything like this before, that he had
 12 attacked another animal or a person, before or since this
 13 incident occurred.
 14 We do not dispute that because of the interaction
 15 between these dogs, whether it be a puncture wound or some
 16 sort of internal bleeding based on the roughhousing that
 17 was going on at the fence line, resulted in the death of
 18 Zoey, the Germer-Brown's dog. We don't dispute that that
 19 occurred that day.
 20 We do dispute whether the attack was -- if you
 21 want to call it an attack -- unprovoked, as there was
 22 testimony that they were walking right next to the fence
 23 for some period of time, and their dog was actually at the
 24 fence and going through the fence, the slats in the fence,
 25 barking at my client's dog. There were four dogs out

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1 there. I find it hard to believe that they all weren't
 2 barking at one another and jumping at the fence. That's
 3 what normal dogs do. The other thing that's been made --
 4 so our argument there would be that this was not an
 5 unprovoked attack.
 6 And based on my client's testimony that she had
 7 had an encounter with Ms. Brown, who tells a very different
 8 story, some eight months later -- eight months prior, with
 9 their dogs acting aggressively towards one another,
 10 specifically Zoey acting that way towards Mare's dog, Bodi,
 11 that -- that that's precisely what happened that day, that
 12 Zoey was actually provoking Bodi, whether it be barking --
 13 I don't think this is a small dog versus little dog -- or
 14 small dog versus big dog case.
 15 Small dogs can be just as aggressive and loud and
 16 energetic as a big dog. That doesn't mean -- I mean, I
 17 think we're focusing on that. That's not the issue here
 18 today. A small dog can still provoke a bigger dog to
 19 engage them by barking, nipping, whatever. I've watched it
 20 happen. We all have. I don't think it's because the
 21 Germer-Browns had a small dog that my client's dog attacked
 22 them. We had testimony from Mike Culligan that he and his
 23 wife's Chihuahua played with the dog constantly and, up
 24 until a couple of months ago, was very loving and
 25 affectionate for it, and it was -- I should say, not an

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1 aggressive dog, but a very -- it had a lot of emotion and
2 played with the dog. So I think that putting the focus on
3 that is definitely not where we should be.

4 The other point that I have, and this is the way
5 that I am interpreting the statute, is that it requires
6 that the animal owner have knowledge or reasonably know
7 that their dog has a tendency, propensity, or inclination
8 to attack another dog. I believe that that knowledge
9 requirement -- that you cannot charge someone with
10 something and say, "Well, now you have knowledge." I think
11 that knowledge was required beforehand, that they had to
12 have known that their dog would behave in such a manner,
13 that their dog was aggressive.

14 A lot of times, in most dangerous animal cases
15 we see, you have pit bulls that people have chained up in
16 pens, and the reason they're there is because they will get
17 -- I mean, they have gotten out, and they have bitten a
18 child, or had a tendency to get loose out of their fence
19 and that type of thing. That's not the case here. These
20 dogs were never outside their fence when they weren't on a
21 leash. There's been numerous testimony to that. They
22 weren't jumping over a fence that they could've easily
23 cleared. One of our witnesses testified it's shorter on
24 one side. If they wanted to get out, they could have.

25 I think that that knowledge requirement is

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1 important. If we go by the interpretation they're trying
2 to give to this statute, if my dog gets -- and I don't have
3 a dog, but if my dog is tussling around with another dog
4 and bites it on its arm, that dog can be declared a
5 dangerous animal because it attacked another dog. That's
6 not what this statute is here for, and I think it does
7 require knowledge of an inclination or a tendency, or a
8 strong urge or propensity, to behave in that way, in a way
9 to attack other dogs or to believe that that dog would
10 attack other human beings, and that is not the case here.

11 There is no testimony that my clients ever
12 thought in a million years that their dog would've done
13 this that day. They have gone to every length imaginable,
14 trying to make sure that these dogs behave in a -- in a
15 normal manner, and even above that, going to a behaviorist.
16 They didn't just take these dogs because they had problems.
17 They've been raising rescue dogs -- Mare has -- for 30
18 years, and have been taking their dogs to places, as the
19 Doggie Lama, the Bark Shack. Kevin McHale, who could not
20 be here today, was going to testify to the same. He was
21 the trainer, or the behaviorist, that these dogs have been
22 sent to. They've taken every imaginable step to avoid
23 something just like this, which, unfortunately, was an
24 accident, and I don't believe that the dog should be deemed
25 dangerous as a result of an unfortunate incident that

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1 occurred that no one could've predicted would've happened
2 that day. Thank you, Judge.

3 THE COURT: Thank you, Ms. Smith. And Mr.
4 Gruber?

5 MR. GRUBER: Thank you, Your Honor. And I will
6 be try to be -- because I know a number of these you
7 already heard in my motion for a directed verdict, but I do
8 want to go back, and I want to begin with making sure that
9 the Court clearly understands what the level of review is
10 in this case. And as I stated, I do believe that Waters v.
11 South Carolina Land Resources Conservation Commission is
12 certainly persuasive in this matter.

13 In that case, it states that the burden is on the
14 appellants to convincingly prove that the agency's decision
15 is not only unsupported by the evidence, but is to the
16 level that it has to be found to be "clearly erroneous in
17 view of the reliable, probative, and substantial effort on
18 the whole record," or is either "arbitrary or capricious or
19 characterized by abuse of discretion."

20 That court went on to further state that just a
21 scintilla of evidence on its face does not meet that
22 definition. It says, "Substantial evidence is not a mere
23 scintilla ... nor evidence viewed blindly from one side,
24 but evidence which, when considering the record as a whole,
25 would allow reasonable minds to reach the conclusions that

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1 the agency reached... The possibility of drawing two
2 inconsistent conclusions from the evidence will not mean
3 the agency's conclusion was unsupported by substantial
4 evidence."

5 I'm not going to sit here and tell Your Honor
6 that this dog tries to attack every animal that's around,
7 or every person that's around. Obviously, it doesn't. I'm
8 not going to sit here and try to prove that to you. But
9 what is uncontroverted is that Bodi attacked and killed
10 Zoey. There's been no evidence to say that did not occur.
11 You know, there was no evidence to say that Zoey was hit by
12 a car or, you know, struck down with a disease. It is
13 uncontroverted that Bodi bit Zoey, which led to the death
14 of Zoey.

15 And when you look at the definition and the
16 language contained in the county's ordinance and in the
17 state enabling legislation, that action clearly is the kind
18 of action that was contemplated under this statute as
19 giving rise to the need to declare an animal to be a
20 dangerous animal. I disagree with Ms. Smith's contention
21 that this is some kind of charge that her client has to be
22 on prior notice of, prior to being charged with it. That
23 is not what this is. This is a labeling or a determination
24 that comes about as a result of an incident. I spoke
25 earlier about, you know, the absurd result that would occur

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1 if you adopted their interpretation in that you would have
2 to have no less than two previous attacks before you could
3 declare an animal dangerous, and what is the intent of
4 declaring an animal dangerous?

5 Well, if you look at what has to happen, once
6 that label has been placed on the animal, what happens
7 following that is a series of precautions, or preventative
8 steps and precautions, that the animal owner must undertake
9 to ensure that the attack does not occur again. The dog
10 has to be -- and I'll read them off the report here. You
11 have to keep the animal microchipped. You have to pay --
12 I'm sorry, you have to keep the animal under restraint at
13 all times. I believe you may have to keep the animal --
14 may have to keep them under confinement any time they go
15 off the property. All of those -- you have to post a sign
16 that says beware of the animal, and I believe you also must
17 have to provide liability insurance on your home.

18 But all of those requirements are requirements to
19 prevent this situation from occurring again, and so long as
20 the officer had substantial evidence -- even if it could be
21 viewed in different lights, so long as the officer had
22 substantial evidence to make her determination, this Court
23 must as a matter of law uphold the officer's determination.
24 Thank you, Your Honor.

25 THE COURT: Anything else?

PAGE 115

1 determination is the fact the attack occurred. Thank you,
2 Your Honor.

3 THE COURT: All right. Thank you both. Thank
4 you all. I am going to take this under advisement and
5 review the testimony, review the county ordinance, and Mr.
6 Gruber, if you would provide me with a copy of the Waters
7 opinion.

8 MR. GRUBER: I've got everything in there, Your
9 Honor, and I've already provided a copy to Counsel.

10 THE COURT: And I will render a decision soon and
11 let you know.

12 MR. GRUBER: Thank you, Your Honor.

13 MS. SMITH: Thank you, Your Honor.

14 THE COURT: And we're adjourned.

15 (WHEREUPON, this hearing was concluded at
16 approximately 11:55 a.m.)

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18 ---o0o---

PAGE 114

1 MS. SMITH: Just a brief rebuttal.

2 THE COURT: Okay.

3 MS. SMITH: Just addressing, you know, what he
4 discussed, the animal patrol officer -- Officer Chaplin's
5 determination for deeming the dog a dangerous animal, I
6 don't believe that she really provided a basis for her
7 determination, besides the altercation.

8 She actually stated in her initial statement,
9 assessment, and investigation that she did not think the
10 dog was dangerous and was actually impressed with its
11 behavior. And then, subsequently, based on her
12 supervisor's education and experience with dogs, they
13 changed that determination, yet he is not here to testify.
14 He has not submitted any reports, and no other witnesses or
15 supervisors from animal control have presented testimony as
16 to why that assessment changed, and I would just like to
17 make that point for the Court, because other than the
18 attack, she has no other basis for the dangerous animal --
19 deeming it a dangerous animal; nor did her supervisor, who
20 apparently felt so strongly to change her opinion on this,
21 or to change her assessment, come and ever interview my
22 clients, visit the dogs in question, either my clients'
23 dogs or the Germer-Brown's. Thank you.

24 MR. GRUBER: Your Honor, extremely briefly, the
25 sole basis necessary for the officer to make that

PAGE 116

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BEAUFORT

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CERTIFICATE OF COURT REPORTER

I, Matthew Hazen Anderson, Court Reporter and Notary
Public in and for the State of South Carolina, do hereby
certify that the foregoing one hundred fifteen (115) pages
of typewritten testimony were taken down by me, and then
transcribed by me; that the same is a true, correct and
complete transcript of the proceedings as stated in the
caption.

I further certify that I am not of kin nor counsel to
any of the parties hereto, and, further, that I have no
interest whatsoever in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 2nd day of April, 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires
April 25, 2021

Betty Anderson & Associates

Beaufort, South Carolina

843.525.0791 800.543.5506

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Port Royal VERSUS

FIRST NAME Marie MIDDLE NAME Baracco LAST NAME

STREET AND NO. 1006 Madrid Ave CITY Port Royal STATE SC ZIP CODE 29935

STATE LICENSED SC DRIVER'S LICENSE NO. 011385879 CDL ☐ YES ☒ NO DRI. LIC. CLASS D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COMM. VEH AUTO PASGR VEH COMB. HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Grimsley STREET AND NO. 700 Paris Ave

DATE OF TRIAL 07/25/12 TIME OF TRIAL 6:00PM CITY Port Royal STATE SC ZIP CODE 29935

VIOLATION - COURT APPEARANCE REQUIRED (YES NO) NO VIOLATION SECTION NO. 3-53

OWNER OF VEHICLE Animals at Large DATE OF ARREST 07/04/12

ADDRESS OF OWNER 07/04/12 DATE OF VIOLATION 07/04/12

BAIL DEPOSITED _____ NAME OF ARRESTING OFFICER Puryear RANK A-C

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

COUNTY	NUMBER																								
<u>BFT</u>	<u>07</u>																								
BADGE	TROOP																								
<u>316</u>	<u>06</u>																								
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<u>94</u>	<u>39533 FY</u>																								

DOCKET NO.

VIOLATOR'S COPY

Bond: \$1,092.50

8/8/12

check of court-843-986-2229

PORT ROYAL MUNICIPAL COURT

P.O. DRAWER 9
PORT ROYAL, SC 29935

DISPOSITION SHEET

Date Printed: 10/07/2014

Case Type: Traffic Ticket 39533FY

Case #: 39533FY

Name: MARIE BARACCO
1006 MADRID AVE
PORT ROYAL, SC 29935

Violation: NT 00-00-0000 / 3-53
ANIMALS AT LARGE

Trial Date: 11/08/2012

Offense Date: 07/04/2012

Disposition: 5 NOT GUILTY JURY TRIAL

Total Fine:

Total Paid:

Sentence:

Certified to be a True Copy
[Signature]
Notary Public South Carolina
Commission expires: 09-27-2023

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time: July 9, 2012 / 2:30 PM
Species: Canine Breed: Rhodesian Ridge Back mix
Name: Bodi Age: 3 yrs Gender: M
Description: Red w/ white chest
Owner / Address / Location of Animal: Mare Baracco
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure floor (such as concrete) attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Receipt left with: [Signature]

Date: 7/9/12

Deputy: Lcpl B. Chaplin

Date: 7-9-12

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD)
and 20120709-508 (B&S) involving an
animal attack where the victim's K9 died.

Signing
under
duress, app

SUPPLEMENTAL INCIDENT REPORT

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 3 PAGES.

Officer's Actions:

I was contacted by Sgt Bush on 7-5-12 in reference to an animal incident that a Port Royal Officer responded to. I made contact with Cpl Williams (PRPD) and met him at the Police Dept to obtain a copy of the incident report. A copy of the incident report and the current rabies vaccination will be attached to this incident report. After reviewing the incident report and speaking with Cpl Williams I responded to Port Royal Vet Clinic where the victim canine "Zoey" was being housed. I met with Dr. Marikay Campbell and observed the canine at the clinic. Dr. Marikay Campbell provided a disc of photos taken of the canine's injuries during surgery. The canine appeared to be in stable condition at this time. She advised that both the victim and the suspect canine are clients at her clinic. She stated she has not had any previous issues with either canine. The photographs of the victim canine will be submitted into evidence as soon as possible.

I contacted SSgt Hiers and advised him of the situation. He advised to make contact with the suspect canine and assess the behavior of the animal. I responded to the incident location and met with the animal owner.

Interview with Suspect (Mare Baracco):

Upon arrival at the incident location I observed two canines inside the residence. I was greeted by the suspects husband and invited inside the residence. Both canines at this location appeared friendly as they greeted me at the front door. Baracco stated that she was very upset over the incident and she and her husband take full responsibility. She stated they would pay the vet bill and that the incident was an accident. Baracco showed me videos of other dog interaction involving Bodi. Baracco stated that Bodi is also trained by Kevin Mackail at her residence as well as other facilities. She stated both of her dogs attend Beaufort Dog or Camp Green dog for doggy day care and have not had any issues at either location. She explained that she has never had any issues with other dogs involving her two dogs. She stated her dogs are leashed and walked three times a day. In my presence, Baracco and I walked outside and she demonstrated her method in walking her canines and riding their bicycle in the evening. Baracco stated that she lets her canine outside in the small front yard to use the bathroom occasionally. Concluding my interview, I did not feel that this was a dangerous animal and I advised Baracco that I was impressed with her canines behavior. I advised Baracco that I would continue the investigation and return to her residence next week.

Officer's Actions:

I contacted Germer and advised her on the status of the investigation. Germer contacted me on 7-6-12 and advised that her dog "Zoey" passed away yesterday evening. I advised Germer that I was sorry for her loss and that the investigation would continue on monday. I contacted SSgt Hiers and advised him of the situation.

On 7-9-12 Cpl Reeves and I responded to the incident location and met with the animal owners. I issued a Dangerous Animal Notice (See Attachment) to Baracco and explained the requirements that needed to be met within 72 hours. Baracco appeared extremely defensive and immediately contacted BCSO to appeal the notice. Cpl Reeves contacted SSgt Hiers and advised him of the situation.

On 7-10-12 I responded to the victim's residence and met with Sally Germer and her husband Buddy Brown. I informed them on the status of the investigation. Germer expressed her concern with the other neighbors in the area being "afraid" of Bodie. I provided statement forms and advised her to have her neighbors write a statement in reference to concerns they have regarding the dog.

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE. ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
				☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE. 1 ☐ OFFENDER DEATH. 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
LCpl B. Chaplin		7-10-12		C3538					
Follow-up Investigation ☐ YES ☐ NO						OFFICER			

AGENCY I: D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

20120709-508

NCIC

INQ

ENTD.

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES.

Officer's Notes:

I request that this case remain open for further investigation.

Attachments:

Copy of Dangerous Animal Notice

Copy of Rabies Certificate through Port Royal Veterinary Hospital

Copy of Incident Report from Port Royal Police Department

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☒ YES ☐ NO

☐ ACTIVE ☐ ADM. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE. 1 ☐ OFFENDER DEATH. 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT
NUMBER

APPROVING OFFICER

DATE

UNIT
NUMBER

LCpl B. Chaplin

7-10-12

C3538

Follow-up
Investigation ☐ YES ☐ NO ☐ OFFICER

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
RULE TO SHOW CAUSE HEARING

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the
Beaufort Magistrate, located at 104 Ribaut Road Post Office Box 2207 Beaufort, SC
29901 on March 12, 2013 at 9:00 AM to serve as a party in a Bench Trial in the case
of:

RE: State Of South Carolina

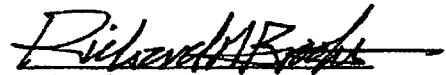
Vs Mare Baracco

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: 2012CV0710401536, Petition.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.


JUDGE

Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901
Phone: (843) 255-5700 Fax: (843) 255-9516

February 5, 2013

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

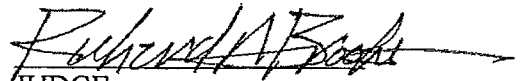
RULE TO SHOW CAUSE

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

MAGISTRATE SUMMONS

IT IS ORDERED THAT YOU APPEAR BEFORE THIS COURT ON May 2, 2013 at 10:00 AM, then and there to be prepared to show cause, if any, why the dog subject to the Order should not be remanded to the custody of Beaufort County Animal Control until such time as you are in compliance with the requirements for keeping a dangerous animal OR Judge Brooks' Order is reversed on Appeal.

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL
PENALTY IN SUCH CASE MADE AND PROVIDED.**


JUDGE

Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901
Phone: (843) 255-5700 Fax: (843) 255-9427

April 17, 2013

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

MARE BARACCO,

Defendant.

) IN THE MAGISTRATE'S COURT

) CIVIL ACTION: 2013-CP-07-00918

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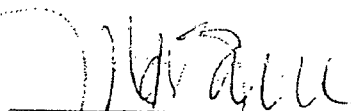
)

2013 NOV 12 AM 9:03

TO: JOSHUA A. GRUBER, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, the Defendant, Mare Baracco, will move before the presiding Magistrate's Judge, on the tenth (10th) day or as soon as she may be heard, for an Order relieving said Defendant from the final judgment and order based on newly discovered evidence and/or fraud, misrepresentation, and/or other misconduct of the adverse party in the above-referenced matter.

This motion is based on the record in this case, and may be supported by supplemental memoranda, affidavits, or other evidence prior to the hearing of this matter.


Mare Baracco, *Pro Se Defendant*.
1006 Madrid Avenue
Port Royal, South Carolina 29935

Port Royal, South Carolina
November 12, 2013.

Certificate of Filing and Service

I certify that on this date, I filed the original of the foregoing Notice of Motion and Motion for an Order Pursuant to Rule 60, SCRCP, with the Clerk of Court for Magistrate's Court, and that I served a copy of the same upon counsel of record by hand-delivery.

November 12, 2013.


Mate Baracco, Pro Se Defendant.

2013 NOV 12 AM 9:03

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT) CIVIL ACTION: 2013-CP-07-00918

STATE OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

MARE BARACCO,)

Defendant.)

) SUPPLEMENTAL
) MEMORANDUM IN SUPPORT OF THE
) MOTION FOR AN ORDER PURSUANT TO
) RULE 60, SCRPC

2014 FEB 19 PM 2:03
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: JOSHUA A. GRUBER, ATTORNEY FOR PLAINTIFF:

The Defendant files this Supplemental Memorandum in support of her motion for an Order pursuant to Rule 60, of the *SCRPC*.

The Defendant filed a request under the Freedom of Information of Act upon the Town of Port Royal and was provided documents, including but not limited to, an email between the State of South Carolina's attorney, Joshua A. Gruber, and Beaufort County Animal Control Officer Brittany Chaplin, copying Beaufort County Animal Control Officer Jody Hiers and Van Willis, the Town Manager for Port Royal. In this email, Attorney Gruber states that he had an *ex-parte* communication with Chief Magistrate Sproatt, wherein he had indicated that due to the error in the previous Order which gave rise to the remand, that they respectfully requested that it be assigned to an alternative magistrate. (See, Exhibit A, attached hereto).

"A judge shall hear and decide matters assigned to the judge except those in which disqualification is required." Canon 3(B)(1). Defendant would state that an unfavorable ruling against the State of South Carolina remanding this case based on a judge's error should not be considered a disqualification of the same and believes that actions of the State of South Carolina's attorney amounted to judge shopping. Further, Defendant believes that the Attorney

for the State of South Carolina has possibly violated Rule 8.4(e) of the South Carolina Rules of Professional Conduct, which provides that "it is professional misconduct for a lawyer to:(e) engage in conduct that is prejudicial to the administration of justice," in seeking that the remanded case to be assigned to another magistrate.

It is Defendant's understanding that the State of South Carolina's attorney also communicated to the Town of Port Royal's Town Manager, Van Willis, and Beaufort County Animal Control, that because this case had been remanded, "it was as though the dog (Bodi) was never labeled dangerous." (See, Exhibit B). Again, Defendant was never served with notice of dangerous animal by the State prior to any hearing after this case was remanded.

For the foregoing reasons, the Defendant again moves this Court to instruct the State of South Carolina to remove from their records any and all references of her personal property, Bodi, being determined to be dangerous. Further, the Defendant moves this Court for an Order dismissing this case, with prejudice, and/or for such other relief as may be determined by this Court. Defendant further amends her prayer for relief in her prior Memorandum and asks for this further relief.



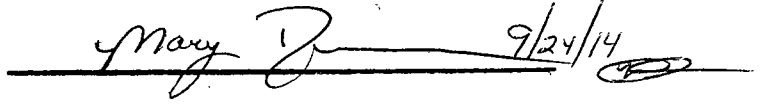
Mare Baracco, *Pro Se Defendant*.
1006 Madrid Avenue
Port Royal, South Carolina 29935

Port Royal, South Carolina
February 19, 2014.

July 10, 2012

I state that this is a true and
Certified copy of the original record
on file with Beaufort County
Magistrate Court.

The Honorable Judge Sproat
Beaufort Magistrates Court
Beaufort SC 29902



Dear Judge Sproat:

The undersigned asks for a hearing on an injunction/revocation of issuance of a "Dangerous Animal Notice" for the following reasons:

- 1) An assessment was made by the Animal Control Officer on July 5. Said Assessment found "the dog is not a dangerous animal". A week after this assessment was made, an Animal Control Supervisor revised the assessment because the victim dog died (due to its size, not the degree of injury). However, per SC Statute 43-3-710, the degree of injury ranges from "broken bones, lacerations, punctures of the skin, or any bodily injury resulting in death" (Section E). Injury alone is not the determining factor in the Assessment. Further, we want to know if pressure from outsiders was a determining factor in this change of Assessment and, we would also like to know how many times previously, a supervisor, who was not on the scene nor present to personally Assess an animal and did not review any of the submitted video evidence, overrode the professional Assessment of a qualified Animal Control Officer. Therefore, we submit the subsequent revision/issuance of the "Dangerous Dog Notice" is invalid.
- 2) We have a pending trial on this issue in Port Royal Magistrate Court. We are submitting evidence in the form of videos, witness testimony from a Port Royal Police Officer, a City of Beaufort Detective, and two professional canine handlers, all of whom have long term experience with this dog and are also familiar with, and have evidence pertaining to the Defense, the case before the court. Our evidence is intended to show that, contrary to Statute 43-3-710, Section "A", *"which the owner knows or reasonably should know "animal" has a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or animals."* that owners did not know of any propensity of the animal in question to attack unprovoked. Further, we will submit evidence of such, through expert and video testimony, and also evidence there was provocation which precipitated the incident.
- 3) It is our contention, based upon the Statute and the circumstances surrounding the revision of the Assessment, that this re-Assessment is in violation of Statute 43-3-710, is overly harsh, unfair, and enforcement of it will impose financial hardship, permanent stigmatization of the dog in question, and a violation of due process.

We ask the court to issue an emergency injunction of this revised order (scheduled to go into effect tomorrow, July 11) and to grant a hearing as to its disposition.

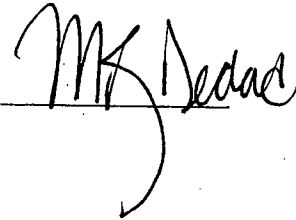
Respectfully,

Tim Deckard



7-10-12

Mare B. Deckard



7/10/2012

FRIDAY, November

IN PORT ROYAL

Owner not guilty in dog attack

In July, Mare Baracco's dog, Bodie, a Rhodesian ridgeback mix, bit a Chihuahua-poodle mix, causing fatal injuries.

By ERIN MOODY
emood@beaufortgazette.com
843-706-8184

A Port Royal resident has been found not guilty of letting her dog run loose during a July incident that resulted in the death of another dog.

A jury of six acquitted Mare Baracco in proceedings before Municipal Court Judge Ned Tupper.

Baracco was charged by Port Royal police after her dog, Bodie, a Rhodesian ridgeback mix, bit Zoey, a Chihuahua-poodle mix, causing fatal injuries.

"This is not an incident where you have a dog running around the neighborhood, wreaking havoc, mauling children. This is a one-time offense," Baracco's attorney Kimberly Smith said.

On the morning of July 4, Sally Germier and Buddy Brown walked their two small dogs on leashes past Baracco's Madrid Avenue home, where Bodie and another dog were in the yard. The dogs started barking at each other, according to testimony from witnesses and the police report. The gate to Baracco's yard opened, Bodie bit Zoey, and Zoey died the next day at Port Royal Veterinary Hospital.

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DOG

Continued from 1A

At issue was whether the incident occurred on Baracco's property or outside the fence on public property.

Brown testified the incident occurred outside the gate. He said Bodie "crashed" through the gate so fast he was unable to remove Zoey from harm's way before the larger dog bit.

Baracco said she was inside her home when the dogs started barking, and she watched the events unfold through windows. She came outside as the altercation came to a head and maintained that Zoey's injury occurred on her property.

Baracco, Brown and Germer were the only witnesses called.

Baracco also is appealing a "dangerous dog" designation by Beaufort County Animal Control. Her attorney, Smith, said a hearing has not been scheduled.

Owners of dangerous animals



File photo

Sally and Buddy Germer sit with their dog and the box containing the ashes of their deceased dog, Zoey, this summer at their home in Port Royal.

must either keep the animals inside their homes or in secure kennels, unless they are leashed and muzzled. The owners also must have at least \$50,000 in liability insurance, according to the notice Baracco was given.

After hearing testimony in August, Judge Joseph Kline ruled Bodie's aggressive behavior led to the death of Zoey, so the court

must find it "a nuisance animal at best or a dangerous animal at worst."

After the incident, Port Royal Town Council discussed creating a dangerous-animal ordinance but postponed any action.

Follow reporter Erin Moody at twitter.com/EyeonPortRoyal.

- (h) *Same—Required.* A valid metal rabies tag and a license tag must be attached to a collar or harness and worn by the dog at all times.
- (i) *Same—Replacement.* A duplicate license for a lost tag may be obtained upon the payment of a one dollar (\$1.00) replacement fee.
- (j) *Records.* The Beaufort County Animal Shelter shall maintain a consolidated record of all identifying county license tags issued and shall make this record available for public inspection.
- (k) *Certificates to be filed.* From the licensing fee collected, all participating veterinarians and animal shelters shall file not less than monthly a certificate with the Beaufort County Council or its designated agency on a form prepared and issued by the Beaufort County Council a certificate as to the licenses issued for the preceding month.
- (l) *Transfer of license.* If there is a change in the ownership of a dog during the licensing year, the new owner may have the current license transferred to his name upon the payment of a transfer fee of one dollar (\$1.00).
- (m) *Use of license for another animal.* No person may use any license (tag) for any animal other than the animal for which it was issued.
- (n) *Exemptions from licensing.* Dogs licensed by any municipal government within Beaufort County are exempt from the licensing provision of this article.

(Ord. No. 83-18, § (4-7), 6-8-83)

Certified to be a True Copy

Travis H. Hurd
Notary Public South Carolina
Commission expires 09-27-2023

Sec. 3-53. Animals running at large.

- (a) *General prohibition.* It shall be unlawful for any owner or custodian of any dog, cat or other animal to permit same to run at large at any time upon any street or highway or other property within the county.
- (b) *Control of animals generally.* No owner shall fail to exercise proper care and control of his animals to prevent them from becoming a public nuisance.
- (c) *Female dogs and cats.* Every female dog or cat in heat shall be confined in a building or secure enclosure in such manner that such female dog or cat cannot come into contact with another animal except for planned breeding.
- (d) *Vicious animals.* Every vicious animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.
- (e) *Animals disturbing the peace.* No person owning or having custody of any dog, or any other animal, shall permit the same to unreasonably bark and/or to otherwise disturb the peace.
- (f) *Leashed animals and their feces removal.* No person owning or having custody of any dog, cat, or any other animal shall permit the animal to depart the owner's/custodian's premises without being leashed and physically controlled. That the owner/custodian of the animal will immediately remove feces deposited by the animal on any public property, public right of way or private property.

(Ord. No. 83-18, § (4-8), 6-8-83; Ord. No. 98-37, 12-2-98)

State law reference— Dogs running at large, S.C. Code 1976, § 47-3-50(a).

Sec. 3-54. Impoundment of animals.

- (a) *Seizure of animals running at large generally.* Any dog, vicious animal or cat running at large may be taken up by the animal control officer and transported to the county animal shelter

Number of colonies in the county if the caretaker maintains more than one colony.

2. Providing the county animal control with descriptions of each cat in the colony and copies of documents evidencing that the cats have been vaccinated and spayed/neutered.

- b. Help to resolve any complaints over the conduct of a colony or a cat within a colony.
- c. Maintain records on the size and location of the colonies as well as the vaccination and spay/neuter records of cats in the colonies.
- d. Mandatory vaccination of the colony population for rabies and making reasonable efforts to update the five-way or equivalent vaccinations on cats that can be recaptured.
- e. Mandatory spaying/neutering of all cats within the colony by a licensed veterinarian. In facilitating the spaying/neutering of cats, caregivers shall be presumed to have acted in good faith in concluding that cats routinely congregating within the colony are feral.
- f. Providing food, water and suitable shelter for colony cats.
- g. Observe the colony cats daily and keeping a record of any illnesses or unusual behavior noticed in any colony cats.
- h. Obtaining proper medical attention to any colony cat who appears to require it.
- i. Obtaining written approval of the owner of any property, on which the colony resides, or to which the caregiver requires access, to provide colony care.
- j. In the event that kittens are born to a colony cat, the caregiver shall remove the kittens from the colony after they have been weaned and be responsible for the placement of the kittens in homes or foster homes for the purpose of subsequent permanent placement.
- k. Caregivers shall make reasonable efforts to find permanent inside homes for colony cats who exhibit the potential for acclimating to such a placement.
- l. Caregiver shall make reasonable effort to maintain the colony as to prevent the colony from running at large beyond the confines of the designated area. (S.C. Code 1976 § 47-7-110)

(c) *Ordinance enforcement.* Nothing shall interfere with the animal control officer's ability to:

- (1) Seize/remove a cat from a colony that is creating a nuisance as defined above if the caregiver has failed to cure the nuisance within a reasonable timeframe.
- (2) Seize/remove a feral cat colony when the caregiver fails to comply with the requirements of this section.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-35. - Regulation of dangerous animals.

- (a) *Definition.* "Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals; an animal which makes an unprovoked

attack that causes bodily injury to a human being and the attack takes place other than the place where the animal is confined; or an animal that commits unprovoked attacks any place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being. A dog will be considered a dangerous animal if it is used as a weapon in the commission of a crime.

- (b) *Confinement.* Every dangerous animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner (S.C. Code 1976, § 47-3-720).
- (1) All dangerous animals shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides.
 - (2) All pens or other structures designed, constructed or used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal.
 - (3) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.
 - (4) No person shall permit a dangerous animal to go outside its kennel or pen unless such animal is securely leashed and muzzled with a leash no longer than six feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the animal and the leash are under the actual physical control of a person 18 years of age or older.
 - (5) Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.
- (c) *Declaring an animal dangerous.*
- (1) An animal control officer, in his or her discretion, observes that a particular animal is a dangerous animal as defined in this article, may declare such animal a dangerous animal by delivering a written notice of declaration to the owner. The notice shall include a description of the animal and the basis for the declaration of dangerousness. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on the premises if no adult is present.
 - (2) The person owning, keeping, sheltering or harboring the animal in question must comply with the requirements as designated in this section within 72 hours of the receipt of the animal control officer's declaration.
 - (3) Any animal that is alleged to be dangerous and that is under impoundment or quarantine at the

animal shelter shall not be released to the owner, until such time that the owner is capable of confining the animal to his/her property in accordance with this section.

- (4) All dangerous animals shall have an identification microchip implant placed under the animal's skin once the animal has been declared dangerous. The owner shall pay the actual fee charged by the shelter or the licensed veterinarian who performed the microchip identification procedure.

(Ord. No. 2010/7, 4-26-2010)

Sec. 14-36. - Enforcement.

(a) *Duties.* The division of animal control shall be charged with the responsibility of:

- (1) Cooperating with the health officers of various state government units and assisting in the enforcement of laws of the state with regard to the control of animals, and especially with regard to the vaccination of dogs and cats against rabies.
- (2) Investigating all complaints with regard to animals covered by this article.
- (3) Enforcing within the unincorporated areas of the county and municipalities, all of the state laws, ordinances enacted by the county and contracts entered into the county for the care, control and custody of animals covered by this article.

(b) *Entering the premises.* The animal control officer shall patrol the properties of the county, public and private, for the purpose of checking animals for the following:

- (1) Rabies.
- (2) Inhumane treatment and the health of animals.
- (3) Boarding.

(c) *Interference with officers.* No person shall interfere with or hinder an animal control officer or any such agent of the county in the performance of such officer's duty or seek to release animals in the custody of the animal control officer or any such agent of the county.

(d) *Penalties.* Any person who violates the provisions of this article shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine up to \$500.00 or 30 days in jail. Each day's violation of any provision of this article shall constitute a separate offense.

(Ord. No. 2010/7, 4-26-2010)

Cross reference— Health and sanitation, ch. 46.

ARTICLE 13.

REGULATION OF DANGEROUS ANIMALS

SECTION 47-3-710. Definitions.

(A) As used in this article "dangerous animal" means an animal of the canine or feline family:

(1) which the owner knows or reasonably should know has a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals;

(2) which:

(a) makes an unprovoked attack that causes bodily injury to a human being and the attack occurs in a place other than the place where the animal is confined as required by Section 47-3-720; or

(b) commits unprovoked acts in a place other than the place where the animal is confined as required by Section 47-3-720 and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being;

(3) which is owned or harbored primarily or in part for the purpose of fighting or which is trained for fighting.

(B) "Dangerous animal" does not include:

(1) an animal used exclusively for agricultural purposes; or

(2) an animal which attacks a person who is trespassing or who appears to be trespassing. A trespasser is a person who is not lawfully upon the premises of the owner, as set forth in Section 47-3-770(A).

(C) An animal is not a "dangerous animal" solely by virtue of its breed or species.

(D) As used in this article "owner" means a person who owns or has custody or control of the animal.

(E) As used in this article, "injury" or "bodily injury" means (1) broken bones, (2) lacerations, (3) punctures of the skin, or (4) any physical injury resulting in death.

HISTORY: 1988 Act No. 515, eff May 9, 1988; 1992 Act No. 374, Section 1, eff May 19, 1992.

SECTION 47-3-720. Dangerous animal not to go unconfined on premises; "unconfined" defined; exceptions.



ALAN WILSON
ATTORNEY GENERAL

August 10, 2011

Marvin C. Jones, Esquire
Jasper County Attorney
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Jones:

We understand you desire an opinion of this Office concerning the enforcement of a county ordinance within an incorporated municipality. In your letter, you provided the following information:

Recently Jasper County Council adopted an ordinance which provides as follows: "Commercial establishments which allow for the on premises consumption of beer, ale, porter, and/or wine shall be prohibited from operating between the hours of 2:00 o'clock A.M. and 6:00 o'clock A.M. on Mondays through Saturdays." A question has arisen as to whether or not this Ordinance has any application within the incorporated portions of the County.

Law/Analysis

Our Supreme Court explained that

[d]etermining whether a local ordinance is valid is a two-step process. The first step is to determine whether the [county] had the power to adopt the ordinance. If no power existed, the ordinance is invalid. If the [county] had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the State.

Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000).

Section 4-9-25 of the South Carolina Code (Supp. 2010) provides the specific powers given to counties by the Legislature. This provision states as follows:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the

Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25.

Our Supreme Court and this Office recognize section 4-9-25 provides general police powers to counties. See Greenville County v. Kenwood Enterprises, Inc., 353 S.C. 157, 164, 577 S.E.2d 428, 431 (2003), overruled on other grounds by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005); Ops. S.C. Atty. Gen., September 22, 2008; April 7, 2008. We believe Jasper County (the "County") has the authority, pursuant to its police power granted by this provision to pass an ordinance regulating the sale of alcohol during certain hours. In addition, we understand from our Supreme Court's decision in Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) that a local government's enactment of an ordinance further regulating the operations of retailers of alcoholic beverages is not preempted by State law. Therefore, we believe a court would likely find the County's ordinance valid.

Nonetheless, your question deals not with the validity of the County's ordinance, but its enforceability within a municipality located in the County. As you mentioned in your letter, in 1988, this Office addressed the applicability of a county ordinance within the incorporated areas of the county. Op. S.C. Atty. Gen., February 25, 1988. Although the passage of the Home Rule Act granted police powers to counties, the opinion states "it is doubtful, that counties have the power to extend their regulatory authority to areas that are within the confines of incorporated municipalities." Id. We stated the Constitution does not provide for such power. Id. In addition, we noted that through the Home Rule Act, the Legislature acknowledged limitations on a county's authority within incorporated areas. Id.

This Office has, on several occasions, expressed its belief that a county's exercise of police power is restricted to the unincorporated areas of the county. In an opinion dated October 2, 1984, the 'intent of the General Assembly to recognize the autonomy of a municipality within its borders and likewise recognizes the autonomy of the county within the unincorporated areas of the county' was discussed. Likewise, in an opinion dated May 21, 1987, we concluded that a Richland County anti-smoking ordinance would be of no effect for facilities of the Richland County Recreation Commission located within a municipality of the county.

Our beliefs are in accordance with the general law on this issue. Counties and cities are viewed as co-equal political subdivisions which are independent of each other politically, geographically, and governmentally. City of Richmond v. Board of Supervisors of Henrico County, 199 Va. 679, 101 S.E.2d 641 (1958); Murray v. City of Roanoke, 194 Va. 321, 64 S.E.2d 804 (1951). As stated in 62 C.J.S. Municipal Corporations § 114:

Constitutions and statutes providing for different types of government for the counties and cities of the state establish the policy of placing urban areas under city government and keeping rural areas under county government. A county has no legal right to legislate for a municipal corporation located within its limits on any subject which is within the scope of the powers granted the corporation, and particularly on any matters involving the police power of the state. When a municipal corporation is organized within the limits of a county, then as much of the territory of such county as is comprehended within the municipal limits of such corporation is, so far as local government is concerned, withdrawn from the county, and any ordinance or regulation passed by the county has no binding force on the municipality as to any matters or subjects as to which the municipality is vested with the power to enact. Constitutional provisions authorizing municipalities to transfer powers to a consenting county do not relate to or affect state powers. [Footnotes omitted.]

See also Hobb v. Abrams, 104 Idaho 205, 657 P.2d 1073 (1983).

Id. We continued on to explain that we believe article VIII, section 13 of the South Carolina Constitution, allowing local governmental bodies to enter into agreements for the joint administration of governmental functions and exercise of powers, further supports the understanding that “a county could not exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county’s exercise of power.” Id. Furthermore, we explained that municipalities are afforded their own sovereign police powers and just because the municipality has not chosen to exercise its powers in a particular area does not give the county the inherent power to regulate the matter within the municipality. Id.

In your letter, you mentioned that we issued this opinion prior to the enactment of section 4-9-25, quoted above, and question whether or not its enactment would change our 1988 opinion. The Legislature enacted section 4-9-25 in 1989. However, we believe our opinion remains valid. While section 4-9-25 gives counties general police powers, we do not believe it gives counties

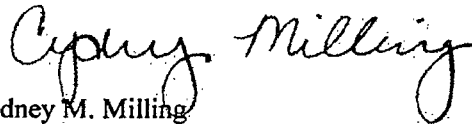
any specific authority over municipalities. Thus, for the same reasons we explained in our 1988 opinion, we believe that despite the passage of section 4-9-25, county ordinances are not generally enforceable within the incorporated areas of a county. However, as we pointed out in 1988 opinion, as well as several subsequent opinions, a municipality may choose to enforce a county ordinance within its boundaries by entering into an agreement with the county.

Our determination is in accord with our more recent opinions. In a 1996 opinion, we concluded that a Pickens County ordinance concerning demonstrations and protest would not be applicable within the Pickens city limits unless Pickens County and the City of Pickens enter into an intergovernmental agreement recognizing the enforceability of the county's ordinance. Op. S.C. Atty. Gen., May 20, 1996. See also Op. S.C. Atty. Gen., February 8, 2011 (finding "[c]ounties and other municipalities may agree to jointly administer services or exercise powers, but a county could not exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county's exercise of power.").

Conclusion

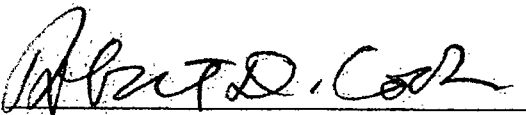
The Legislature's enactment of section 4-9-25 certainly affords general police powers to counties, and we believe a court would likely find the County has the authority to regulate the hours in which alcohol may be sold pursuant to this provision. However, we do not believe that section 4-9-25 affords counties any additional authority over the incorporated areas within their boundaries. Therefore, based on the reasoning of our 1988 opinion, we continue to believe county ordinances generally are not enforceable within municipalities unless the county and the municipality enter into an agreement. Accordingly, we believe the County ordinance you reference is not enforceable within the County's municipalities unless such an agreement exists.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 9:21 AM
To: Van Willis

Hope you had a good Christmas.

Question: Can you check on the status of the dog case with the county. The dog has been on the street without a muzzle the past two days.

--

From Home PC

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 4:13 PM
To: Van Willis
Subject: Re: dog

This is outrageous.

Sent from tablet

Van Willis <vwillis@portroyal.org> wrote:

Case was remanded to another magistrate yesterday, so, for some reason I cannot understand, it's as though the dog was never labeled dangerous. That is what the county attorney advised animal control. Why the determination that the dog was found to be dangerous by the officer doesn't stand until then is beyond my comprehension.

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 5:09 PM
To: Van Willis
Cc: Sally Germer, Joe Lee
Subject: Re.

Thanks for the update. As soon as I am feeling better, I would like to sit down with you and anyone else to discuss our options going forward to not allow this to happen again. In particular, can our code override county's? Can we absorb the costs?

On 12/28/2012 4:57 PM, Van Willis wrote:

~~Just spoke to county attorney.~~ Dukes remanded it because the previous magistrate based his determination on his own research of Rhodesian ridgebacks, which, legally speaking, is very troublesome. The dog has no restrictions and the hearing may happen in next 30-45 days, depending on the docket of the magistrate that gets it. He may be pitching a compromise regarding muzzling and improvements to the fence.
I told him that might be a difficult pill to swallow.

--
From Home PC

Van Willis

From: Sally Germer <sallymgermer@yahoo.com>
Sent: Friday, December 28, 2012 5:10 PM
To: vwillis@portroyal.org
Subject: Re:

No kidding. I have sent an email to the eyewitness to see if they would be willing to come back for a visit at our expense. I am getting an attorney. I can not comprehend this

From: Van Willis <vwillis@portroyal.org>;
To: Sally Germer <sallymgermer@yahoo.com>;
Cc: Tom Klein <tklein@portroyal.org>; Joe Lee <jlee064@embarqmail.com>;
Sent: Fri, Dec 28, 2012 9:57:42 PM

Just spoke to County attorney, Dukes remanded it because the previous magistrate based his determination on his own research of Rhodesian ridgebacks, which, legally speaking, is very troublesome. The dog has no restrictions and the hearing may happen in next 30-45 days, depending on the docket of the magistrate that gets it. He may be pitching a compromise regarding muzzling and improvements to the fence.

I told him that might be a difficult pill to swallow.

Van Willis

From: Gruber, Joshua <jgruber@bcgov.net>
Sent: Thursday, January 10, 2013 2:30 PM
To: Chaplin, Brittany
Cc: Hiers, Jody; Van Willis (vwillis@portroyal.org)
Subject: FW: [Image File] JOSHUA,biv1, #522
Attachments: biv120130110022613.pdf

Officer Chaplin,

I am attaching a copy of the Form 4 Order from Judge Duke's Office that I received in the mail today in the Mare Baracco matter. It appears that it was signed and filed by the Judge back on December 28th.

I have also spoken with Chief Magistrate Sproatt, and requested that he assign this matter for a rehearing as quickly as possible. I also indicated that due to the error in the previous Order which gave rise to the remand, that we would respectfully request that it be assigned to an alternative magistrate.

As soon as I hear from him or the court as to the rehearing date and I will let you know. Please do so likewise should you hear anything from them.

Thanks,

-Josh-

Joshua A. Gruber
Staff Attorney
Beaufort County Legal Department
P.O. Box 1228
Beaufort, South Carolina 29901-1228
Tel.: (843) 255-2059
Fax.: (843) 255-9414

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-----Original Message-----

From: sakon@bcgov.net [mailto:sakon@bcgov.net]
Sent: Thursday, January 10, 2013 2:26 AM
To: Gruber, Joshua
Subject: [Image File] JOSHUA,biv1, #522

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, March 15, 2013 9:22 AM
To: Van Willis
Subject: Re: FW: State v. Mare Baracco

Yes, I just heard the decision.

On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----

From: Gruber, Joshua [<mailto:jgruber@bcgov.net>]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----

Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst
Court Administrator
Beaufort Magistrate Courts
843-255-5641

-----Original Message-----

From: magbftkon@bcgov.net [<mailto:magbftkon@bcgov.net>]
Sent: Friday, March 15, 2013 8:27 AM
To: Garst, Stephanie
Subject: [Image File] steph, KMBT222, #128

FROM:
Image data has been attached to
the E-Mail.

--
From Home PC

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, March 15, 2013 9:25 AM
To: Van Willis
Cc: murray40@centurylink.net; Joe Lee; bethh@hargray.com; tpayne@portroyal.org
Subject: Re: EW: State v. Mare Baracco

Who enforces the decision -- Town or County?

On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----

From: Grüber, Joshua [mailto:jgruber@bcgov.net]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----

Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst
Court Administrator
Beaufort Magistrate Courts
843-255-5641

-----Original Message-----

From: magbftkon@bcgov.net [mailto:magbftkon@bcgov.net]
Sent: Friday, March 15, 2013 8:27 AM
To: Garst, Stephanie
Subject: [Image File] steph,KMBT222, #128

FROM:
Image data has been attached to
the E-Mail.

Van Willis

From: T. Alan Beach <abeach@portroyal.org>
Sent: Friday, March 15, 2013 9:49 AM
To: 'Van Willis'; tklein@portroyal.org
Cc: murray40@centurylink.net; 'Joe Lee'; bethh@hargray.com; tpayne@portroyal.org
Subject: RE: FW: State v. Mare Baracco

Yes we do.

From: Van Willis [mailto:vwillis@portroyal.org]
Sent: Friday, March 15, 2013 9:28 AM
To: tklein@portroyal.org
Cc: murray40@centurylink.net; 'Joe Lee'; bethh@hargray.com; tpayne@portroyal.org; 'T. Alan Beach'
Subject: RE: FW: State v. Mare Baracco

I think we both have an obligation to ensure compliance.

From: Tom Klein [mailto:tklein@portroyal.org]
Sent: Friday, March 15, 2013 9:25 AM
To: Van Willis
Cc: murray40@centurylink.net; Joe Lee; bethh@hargray.com; tpayne@portroyal.org
Subject: Re: FW: State v. Mare Baracco

Who enforces the decision - Town or County?
On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----
From: Gruber, Joshua [mailto:jgruber@bcgov.net]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----
Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst

LAW OFFICES

MOSS, KUHN & FLEMING, P.A.

JAMES H. MOSS

H. FRED KUHN, JR.

CORY H. FLEMING*

KIMBERLY L. SMITH

EVE M. FLEMING

*ALSO MEMBER OF GA BAR

1501 North Street P.O. Drawer 507 - Beaufort, South Carolina 29901-0507

TELEPHONE 843-524-3373

FAX 843-524-1302

April 10, 2013

Joshua A. Gruber
Staff Attorney
Beaufort County Legal Department
P O Box 1228
Beaufort, South Carolina 29901

Beaufort County Sheriff's Office
Attn: Officer Brittany Chaplin
P O Box 1758
Beaufort, South Carolina 29901

Beaufort Magistrate Court
P O Box 2207
Beaufort, South Carolina 29901

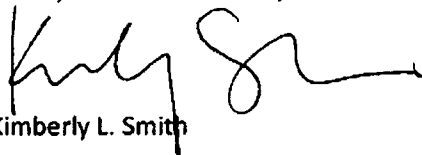
RE: Mare Baracco v. State of South Carolina
2013CP0700918

Dear Mr. Gruber, BCSO, and Beaufort Magistrate Court:

Please find enclosed for service upon you the Civil Action Cover Sheet and Notice of Appeal with attached Order in the above referenced matter.

Sincerely,

MOSS, KUHN & FLEMING, P.A.



Kimberly L. Smith

KLS/tk

Enclosure: as stated

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARE BARACCO

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Kimberly L. Smith

Address: P O Drawer 507
Beaufort, SC 29901

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 07

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2013 APR 10 PM 4:18

SC Bar #: 70464
Telephone #: 843-524-3373
Fax #: 843-524-1302
Other: 843-909-0172
E-mail: ksmith@mossandkuhn.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-____- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☒ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: April 10, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

THE STATE OF SOUTH CAROLINA
In the Beaufort County Court of Common Pleas

APPEAL FROM THE BEAUFORT MAGISTRATE COURT

The Honorable Richard A. Brooks

Case No.: 2012CV0710401536

2013 APR 10 PM 4:18
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE.....Respondent,

v.

MARE BARACCO.....Appellant.

NOTICE OF APPEAL

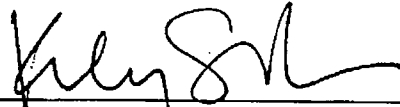
Appellant appeals the Order of the Court dated March 13, 2013, and served on the Appellant via email on March 15, 2013. This matter came before the lower Court for hearing on March 12, 2013, pursuant to an "Official Notice" issued to the Appellant by the Beaufort County Sherriff's Office dated July 9, 2012. The notice was issued pursuant to Section 14-35 of the Beaufort County Ordinance. The purpose of the hearing was to make a determination as to whether the Appellant's dog was a "dangerous animal" under Section 14-35 of the ordinance.

The Appellant asserts that the underlying Court erred as a matter of law in determining that the Respondent met the burden of proof. Specifically, the Court erred as matter of law in affirming the administrative decision made by a supervisor who did not have any personal and/or direct knowledge of the event. The decision to deem the Appellant's dog dangerous was made by Officer Jody Hiers with the Beaufort County

Sherriff's Office. Officer Hiers did not personally investigate the case nor did he talk to all of the parties involved. Mr. Hiers did not submit any type of report supporting the dangerous animal assessment. According to the testimony of Officer Chaplin, after meeting the Appellants following the incident, she did not believe the dog to be a dangerous animal under the statute and it was in fact her supervisor, Officer Hiers, who told her to issue the dangerous animal notice a few days later. Officer Hiers did not testify in court nor was any evidence presented by the State as to Officer Hiers' findings thereby supporting the determination. It is believed that Officer Hiers only made this determination after being contacted by the owners of the deceased dog, Zoey, and had no other basis for his deeming the Appellant's dog a dangerous animal.

Further, the Court erred in finding that the testimony "established the key, salient, undisputed facts: that on July 4, 2012, Defendant's dog, Bodi, escaped from his enclosure and attacked Zoe, a neighbor's dog...." In fact, there was clearly a question of fact as to exactly where the incident occurred as illustrated by the testimony of the Appellant and the other witnesses. In addition, the Appellant testified in Court that she had been found Not Guilty of an Animal at Large charge, resulting from this same incident, in a Jury Trial in the Town of Port Royal, presumably because her dog was not running at large on the public sidewalks and was in fact, in the Appellant's yard when the incident occurred.

Signature Page to Follow



Kimberly L. Smith
Attorney for Appellant
MOSS KUHN & FLEMING, P.A.
Post Office Drawer 507
Beaufort, South Carolina 29901
843-524-3373

Opposing Counsel of Record:

Joshua A. Gruber
Staff Attorney
Beaufort County Legal Department
Post Office Box 1228
Beaufort, South Carolina 29901

Officer Brittany Chaplin
Beaufort County Animal Control Office
Post Office Box 1758
Beaufort, South Carolina 29901

CERTIFICATE OF MAILING

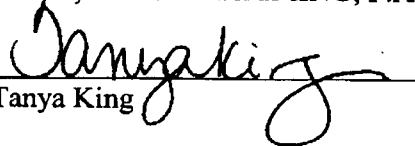
The undersigned, Tanya King, Legal Assistant at MOSS, KUHN & FLEMING, P.A., states that a true and accurate copy of the attached Civil Action Cover Sheet, **Notice of Appeal with attached Order** were placed in an envelope with first class postage thereon prepaid through regular USPS Mail, and mailed to the following:

Joshua A. Gruber
Staff Attorney
Beaufort County Legal Department
P O Box 1228
Beaufort, South Carolina 29901

Beaufort County Sheriff's Office
Attn: Officer Brittany Chaplin
P O Box 1758
Beaufort, South Carolina 29901

Beaufort Magistrate Court
P O Box 2207
Beaufort, South Carolina 29901

MOSS, KUHN & FLEMING, P.A.


Tanya King

Beaufort, South Carolina
April 10, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY

CASE NO.: 2013-CP-07-00918

THE STATE,

Respondent,

v.

MARE BARACCO,

Appellant.

NOTICE OF INTENT TO APPEAL

Mare Baracco appeals the order of the Honorable Marvin H. Dukes, III, dated October 16, 2013, which affirmed the ruling of the Magistrate's Court. Appellant received written notice of the order on October 16, 2013.

November 12, 2013.



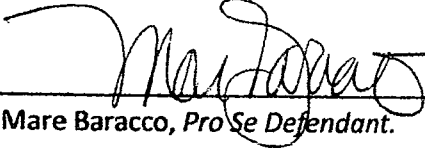
Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935

Other Counsel of Record:
Joshua Gruber
Beaufort County Attorney
Post Office Box 1228
Beaufort, South Carolina 29901-1228
(843) 255-2059
Attorney for Respondent.

Certificate of Filing and Service

I certify that on this date, I filed the original of the foregoing Notice of Intent to Appeal with the Clerk of Court, South Carolina Supreme Court; that I filed a copy of the same with the Clerk of Court for Beaufort County; and that I served a copy of the same upon counsel of record by hand-delivery.

November 12, 2013.


Mare Baracco, *Pro Se Defendant*.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 18 2014

APPEAL FROM BEAUFORT COUNTY SC Court of Appeals
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY

CASE NO.: 2013-CP-07-00918

2014 APR 16 PM 12:11
CLERK OF COURT
BEAUFORT COUNTY, S.C.

THE STATE,

Respondent,

v.

MARE BARACCO,

Appellant.

AMENDED NOTICE OF INTENT TO APPEAL

Mare Baracco appeals the orders of the Honorable Marvin H. Dukes, III, dated October 16, 2013, and subsequent order March 20, 2014. Appellant received written notice of the subsequent order on March 20, 2014.

April 16, 2013.



Mare Baracco, *Pro Se*

1006 Madrid Avenue

Port Royal, South Carolina 29935

Other Counsel of Record:

Allison Coppage

Joshua Gruber

Beaufort County Attorneys

Post Office Box 1228

Beaufort, South Carolina 29901-1228

(843) 255-2059

Attorney for Respondent.

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

DEC 18 2015

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Marvin H. Dukes, III

Appellate Number 2014-000636

Beaufort County, South Carolina.....Respondent

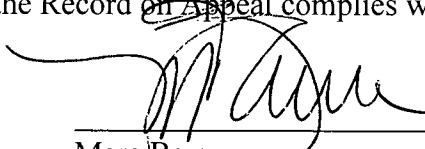
v.

Mare Baracco,.....Appellant

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal complies with SCACR Rule 210(c).

December 15, 2015



Mare Baracco
Pro Se Appellant
1006 Madrid Avenue
Port Royal, SC 29935

(843) 592-1062

Opposing Attorney of Record:

Mary Bass Lohr
Howell, Gibson & Hughes, P.A.
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Beaufort, SC 29901

(843) 522-2400