

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of General Sessions

Scott Sprouse, Circuit Court Judge

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Case No. 2015-002459

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STATE OF SOUTH CAROLINA,

Respondent,

v.

DEBRA LYNNE SHERIDAN,

Appellant.

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FINAL BRIEF OF APPELLANT

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SC Court of Appeals

Willie J. Peters, Esq.  
Darren S. Haley, Esq.  
The Haley Law Firm, LLC  
1007 Pendleton Street  
Greenville, SC 29601  
(864) 235-6638 (ph)  
(864) 370-1201 (fax)  
Attorneys for Appellant

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## STATEMENT OF THE ISSUES ON APPEAL

- (1) Did the trial court err in denying Appellant's motion to dismiss the charges, because the warrantless search conducted by the Anderson County Sheriff's Department was invalid?
- (2) Did the trial court err in not finding that the Respondent's wellness check was improper, because it amounted to an unconstitutional invasion of privacy, and the Respondent lacked the required reasonable suspicion?
- (3) Did the trial court err in finding that the Agreement was valid?
- (4) If the Court determines that the Agreement is valid, did the trial court err in finding that the warrantless search and arrest were valid, even though Appellant was arrested before the deadline to comply with the Agreement?
- (5) Did the trial court err in admitting State's Exhibits 18 through 27?
- (6) Did the trial court err by denying Appellant's motion for directed verdict regarding the rabies tag violation?
- (7) Did the trial court abuse its discretion by sentencing that Appellant could no longer operate an animal shelter?

## STATEMENT OF THE CASE

This is an appeal from Anderson County General Sessions. Prior to the case that gave rise to this appeal, Appellant operated a successful animal shelter in Anderson County, South Carolina, which she had been running since 2004. R. p. 222, lines 1-3. Appellant's animal shelter was one of the largest in South Carolina, and she has rescued and placed over five thousand animals during the time that she was operating her shelter. R. p. 222, lines 4-9. Due to the fact that she never turned away an animal, Appellant often cared for severely ill and abused animals.

In 2014, Appellant was charged with Ill Treatment of Animals in Anderson County, South Carolina. On or about January 14, 2015, Assistant Solicitor, Thomas W. Dunaway, IV, signed a document titled "Agreement," (hereinafter, "Agreement") which was witnessed by The Honorable Nancy W. Devine, Anderson County Chief Magistrate Judge. State's Exhibit 33. Appellant did not sign the Agreement. R. p. 13, lines 22-25; R. p. 14, lines 1-7. The Agreement states, in pertinent part, "[b]y agreement of the all parties dated January 13, 2015 it is hereby agreed as follows:...That Debra Lynne Sheridan shall have until June 15, 2016 to obtain legal permits to construct a 75' feet by 75' feet warehouse structure with concrete floors and proper drainage to operate an animal rescue organization with routine and random welfare checks to be conducted by the Anderson County Sheriff's Office or any other law enforcement agency with jurisdiction to ensure compliance with any and all state and County Ordinances that relate to the care and treatment of animals." State's Exhibit 33.

On or about March 18, 2015, several deputies from the Anderson County Sheriff's Department arrived at Appellant's house, claiming to be acting under the authority of a court ordered wellness check, outlined in the Agreement. R. p. 19, lines 24-25; R. p. 20, line 1. The deputies had neither a search warrant, nor an arrest warrant. Appellant was arrested, and charged

with sixty counts of ill treatment of animals; fifty-four counts of no proof of rabies for failing to have proper rabies identification tags attached to fifty-four animals; and possession of methamphetamine. Approximately sixty of Appellant's animals were seized. R. p. 20, lines 9-10.

On November 19, 2016 and November 20, 2016, a jury trial was held before the Honorable Scott Sprouse. On November 20, 2016, the jury found Appellant guilty of fifty-four counts of rabies control violation; guilty of possession of methamphetamine; and not guilty on all counts of ill treatment of animals. R. p. 348, lines 2-20. Regarding the possession of methamphetamine charge, the trial court sentenced Appellant to confinement Department of Corrections for three (3) years, suspended on the service of three days with probation for five years, and one hundred (100) hours of public service. Special conditions of probation were substance abuse counseling, random drug and alcohol testing and prohibition of Appellant from operating a rescue shelter, or any shelter, for animals. R. p. 355, lines 18-25; R. p. 356, line 1. Regarding the rabies control violations, the trial court sentenced Appellant to six hundred and twenty (620) days confinement to the Department of Corrections, suspended on service of three (3) days, probation for five (5) years, and the same special conditions as the methamphetamine charge. R. p. 356, lines 2-10. The sentences were to run concurrently. R. p. 356, line 11. On or about November 24, 2015, Appellant, through counsel, filed a timely appeal of the conviction for the rabies control violation convictions, and the possession of methamphetamine conviction.

## ARGUMENT

### **I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS, BECAUSE THE WARRANTLESS SEARCH CONDUCTED BY THE ANDERSON COUNTY SHERIFF'S DEPARTMENT WAS INVALID.**

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. “Evidence seized in violation of the Fourth Amendment must be excluded from trial. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737, 740 (2005). Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures.” Id. Nonetheless, a warrantless search may nonetheless be proper under the Fourth Amendment if it falls within one of the well-established exceptions to the warrant requirement. State v. Moore, 377 S.C. 299, 308–09, 659 S.E.2d 256, 261 (Ct.App.2008). “These exceptions include ...: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) the plain view doctrine; (6) consent; and (7) abandonment.” State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012). Furthermore, if police officers are following their standard procedures, they may inventory impounded property without obtaining a warrant. See Colorado v. Bertine, 479 U.S. 367, 372–73, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person ... the United States Supreme Court held ... that evidence seized during an unlawful search could not constitute proof against the victim of the search. Wong Sun v. United States, 371 U.S. 471, 484, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Furthermore, the exclusionary prohibition extends to the indirect as the direct products of such invasions. Id. at 484. “The ‘fruit of the poisonous

tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." *Id.* at 488. "Anonymous tips...are generally less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, for example, the correct forecast of a subject's "not easily predicted" movements." *Florida v. J.L.*, 529 U.S. 266, 269, 120 S.Ct. 1375, 1378, 146 L.Ed.2d 254 (2000). At trial, Appellant's attorney moved to dismiss all charges due to the lack of a search warrant. R. p. 11, lines 13-25. The trial judge denied said motion. R. p. 16, lines 21-25; R. p. 17, lines 1-4.

As previously stated, several Anderson County deputies arrived at Appellant's house on March 18, 2015. R. p. 11, lines 21-24; R. p. 53, lines 8-18. When the deputies arrived, they told Appellant that they were operating under a "court ordered wellness check." R. p. 11, lines 17-18; R. p. 51, lines 22-24. The deputies had neither a search warrant, nor an arrest warrant. The deputies searched Appellant's residence, confiscated her animals, and arrested her without a warrant. By the time the deputies arrived, news helicopters were already circling the area, and filming the incident. R. p. 50, lines 11-18.

There are no applicable exceptions to validate Respondent's warrantless search. The deputies were not operating under a search incident to a lawful arrest, because the deputies lacked probable cause or reasonable suspicion to perform a lawful arrest. Allegedly, the deputies decided to go to Appellant's residence after they received "a couple of anonymous tips." R. p. 12, lines 16-18. However, the Respondent offered no evidence showing the reliability of the alleged anonymous tips. Since the officers relied on the anonymous tips, and nothing more, they lacked reasonable suspicion to conduct the warrantless search. As the deputies performed the warrantless search at Appellant's home, and Appellant never attempted to flee, the exceptions for

hot pursuit, stop and frisk, and automobiles do not apply. Appellant never consented to the warrantless search. Indeed, Appellant never had the opportunity to consent to the search, because the deputies immediately informed Appellant that they were operating pursuant to a court ordered wellness check, giving her the reasonable belief that she did not have the power to consent to the search. Moreover, as the search was performed at Appellant's residence, the exceptions for abandonment, and automobiles exception are not applicable.

“Under the ‘plain view’ exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence.” State v. Beckham, 334 S.C. 302, 317, 513 S.E.2d 606 (S.C., 1999). Consistent with federal law prior to 1990, South Carolina case law regarding the plain view exception requires: (1) the initial intrusion which afforded the authorities the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating nature of the evidence was immediately apparent to the seizing authorities. Id. at 317, 613. As previously stated, Respondent conducted the search without a warrant. Furthermore, Respondent neither had probable cause nor reasonable suspicion to enter Appellant's residence. Since no warrant was obtained, and there is no applicable exception, the search was invalid, and in violation of the Fourth Amendment against unreasonable searches and seizures. But for the illegal, warrantless search by the deputies, the evidence used to charge Appellant would not have come to light. Consequently, all evidence obtained from said search is fruit of a poisonous tree, and is invalid. Therefore, the trial court erred in denying Appellant's motion to dismiss the charges, because the deputies' warrantless search was invalid.

**II. THE RESPONDENT'S WARRANTLESS SEARCH WAS IMPROPER, BECAUSE IT AMOUNTED TO AN UNCONSTITUTIONAL INVASION OF PRIVACY, AND THE RESPONDENT LACKED THE REQUIRED REASONABLE SUSPICION.**

The South Carolina Constitution provides citizens an express right to privacy. S.C. Const. art. I, § 10. "South Carolina and five other states have their right to privacy provision included in the section prohibiting unreasonable search and seizures," which in turn "creates a distinct privacy right that applies both within and outside the search and seizure context." State v. Forrester, 541 S.E.2d 837, 343 S.C. 637, 644 (S.C., 2001). Consequently, the South Carolina Supreme Court concluded that "[t]he South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." Id. at 645, 541 S.E.2d at 841. "Our state constitution's provision protecting unreasonable invasions of privacy necessarily requires some analysis of the privacy interests involved when a warrantless seizure is made on private property." State v. Weaver, 649 S.E.2d 479, 485, 374 S.C. 313 (S.C., 2007). Because the privacy interests in one's home are the most sacrosanct, we believe there must be some threshold evidentiary basis for law enforcement to approach a private residence. Otherwise, we foresee the potential for abuse if law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant. State v. Counts, 413 S.C. 153, 776 S.E.2d 59, 69 (S.C., 2015). A "welfare check" is not a criminal investigative technique. Id. As its name implies, a "welfare check" is conducted by law enforcement based upon concern for a person's welfare not to inquire about illegal activity at the residence. Id.

In the present matter, Anderson County deputies drove onto Appellant's property, and entered her home without a warrant. As previously stated, the deputies' only purported authority

for this act was that they were acting under the authority of a court ordered wellness check. R. p. 51, lines 22-25. Despite lacking a warrant, or Appellant's consent, the deputies entered Appellant's home, and searched her residence, and her person. This was an overt, and extreme abuse of power. As the location of the warrantless search was Appellant's residence, Appellant's expectation of privacy was exceedingly high. As stated above, the South Carolina Constitution affords a higher level of privacy than the Fourth Amendment of the United States Constitution. The deputies grossly misused a mechanism that was intended to be a means to check on the health and well-being of people. Instead, the deputies chose go against this well-established purpose to conduct a criminal investigation under the guise of a wellness check.

The only alleged reason provided for the deputies to perform the wellness check was that the deputies received an anonymous call. The United States Supreme Court has held that reasonable suspicion based solely on a call made from an unknown location by an unknown caller lacked sufficient indicia of reliability to make an investigatory stop. Florida v. J.L., 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000). "Anonymous tips...are generally less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, for example, the correct forecast of a subject's "not easily predicted" movements." Id. at 269.

Despite the fact that the only reason Respondent provided for going out to Appellant's home was that Respondent received an anonymous tip, Respondent failed to provide any evidence of the reliability of the anonymous informant. No evidence was given to suggest that the alleged anonymous informant was even remotely reliable. Thus, there was no threshold evidentiary basis for the deputies to approach and enter Appellant's residence. As stated above, the South Carolina Supreme Court wanted to guard against law enforcement abuse carried out by

unreasonable warrantless searches. In light of the high level of privacy that the South Carolina Constitution affords to its residents, the Respondent's actions in this present case fall short of the prerequisites to perform a valid search. Since the Respondent lacked the required reasonable suspicion to conduct a warrantless search at Appellant's residence, the Respondent's search amounted to an invasion of Appellant's privacy afforded by the United States and South Carolina constitutions.

### **III. THE TRIAL COURT ERRED IN FINDING THAT THE AGREEMENT WAS VALID.**

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Hughes v. Edwards, 265 S.C. 529, 535, 220 S.E.2d 231, 234 (1975). To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled. Cash v. Maddox, 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975); Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588, 589 (1948). "The 'meeting of minds' required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known." Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). "The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and subsequent acts are relevant to show whether a contract was intended." Wright v. Trask, 329 S.C. 170, 178, 495 S.E.2d 222, 226 (Ct.App.1997). In order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and "the writings must establish the essential terms of the contract without resort to parol evidence." Cash v. Maddox, 265 S.C. 480,

484, 220 S.E.2d 121, 122 (1975) (citing Barr v. Lyle, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975)).

In 2014, Appellant was charged with ill treatment of animals in Anderson County Summary Court, as shown in Warrant Numbers: 2014A0410100120, and 2014A0410100121. On or about January 14, 2015, a hearing was held in the Anderson County Summary Court. The recording of the hearing has since malfunctioned, and is currently unavailable. R. p. 15, lines 20-24. Subsequently, the Agreement was signed by the assistant solicitor, and the presiding magistrate judge. State's Exhibit 33. The Agreement provides that terms provided therein were agreed-upon by "all parties." Under this purported agreement, Appellant was required to do the following: (1) "relinquish all rights to any and all animals now in the custody of the Anderson County P.A.W.S. (Pets Are Worth Saving) effective January 14, 2015"; (2) within ten days from January 14, 2015, "to have a person who is licensed by the South Carolina Labor, Licensing and Regulation Board in the area of Perpetual Care to take the remains of a Pomeranian taken from the property of [Appellant] on February 5, 2014 and properly bury or cremate the same"; (3) Appellant "shall have until June 15, 2016 to obtain legal permits to construct a 75 feet by 75 feet warehouse structure with concrete floors and proper drainage to operate an animal rescue organization with routine and random welfare checks to be conducted by the Anderson County Sheriff's Office or any other law enforcement agency with jurisdiction to ensure compliance with any and all State and County Ordinances that relate to the care and treatment of animals." State's Exhibit 33. The Agreement further provides that, upon the satisfaction of these conditions, then the Solicitor will dismiss the charges. State's Exhibit 33. The signature portion of this document shows that it was signed by Assistant Solicitor, Thomas W. Dunaway, IV, and Anderson County Chief Magistrate Judge, Nancy W. Devine. State's Exhibit 33. Despite the

fact that the Agreement states that it was agreed-upon by all parties, Appellant never signed the Agreement. Furthermore, Appellant never agreed to the Agreement's terms, and played no role in the drafting of the Agreement.

As previously stated, the deputies that arrested Appellant stated that they were operating according to a "court ordered wellness check," which is provided in the Agreement. While this document does provide that officers may perform wellness checks, the document ultimately fails as an enforceable contract, because there was no meeting of the minds, and Appellant never signed the document, or agreed to its terms. It is a fundamental doctrine of contract law that all parties to an agreement are on one accord, and there is a meeting of the minds shared by all parties. The Agreement provides that the terms of the document were agreed-upon by all parties. However, Appellant's signature does not appear on the Agreement. Only the Solicitor, and Magistrate's signatures are present on the document.

**IV. IF THE COURT DETERMINES THAT THE AGREEMENT IS VALID, THEN THE TRIAL COURT ERRED IN NOT FINDING THAT RESPONDENT BREACHED THE AGREEMENT, BECAUSE THE WARRANTLESS SEARCH AND ARREST OCCURRED BEFORE APPELLANT'S DEADLINE TO COMPLY WITH THE AGREEMENT.**

If this Court determines that the Agreement is valid, then the Respondent breached the Agreement by arresting Appellant prior to her deadline to perform under the Agreement's terms. "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." Park Regency, LLC v. R & D Dev. of the Carolinas, LLC, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012); accord Heins v. Heins, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001) (stating the court must interpret contractual language in its natural and ordinary sense). Furthermore, a party who signed a contract is deemed to have read

and understood “the effect” of the contract. Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011). In order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and “the writings must establish the essential terms of the contract without resort to parol evidence.” Cash v. Maddox, 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975) (citing Barr v. Lyle, 263 S.C. 426, 430, 211 S.E.2d 232, 234 (1975)). A breach of contract is defined as a “[v]iolation of a contractual obligation by failing to perform one’s own promise, by repudiating it, or by interfering with another party’s performance.” Black’s Law Dictionary 213 (Deluxe 9th ed. 2009).

As previously stated, the Agreement states, in pertinent part, Appellant “shall have until June 15, 2016 to obtain legal permits to construct a 75 feet by 75 feet warehouse structure with concrete floors and proper drainage to operate an animal rescue organization with routine and random welfare checks to be conducted by the Anderson County Sheriff’s Office or any other law enforcement agency with jurisdiction to ensure compliance with any and all State and County Ordinances that relate to the care and treatment of animals.” The Agreement further states, “[i]f Debra Lynne Sheridan satisfies these conditions then the Solicitor will dismiss the pending charges against the Defendant on June 15, 2016.” State’s Exhibit 33. The Agreement is signed by Solicitor, Thomas W. Dunaway, IV, and witnessed by Anderson County Chief Magistrate Judge, Nancy W. Devine. The Agreement is dated January 14, 2015. State’s Exhibit 33. Therefore, Appellant was given approximately eighteen (18) months to fully comply with the Agreement. Approximately two (2) months after the signing of the Agreement, Anderson County deputies came to Appellant’s home, and placed her under arrest. R. p. 12, lines 16-18. If officers observed what they believed to be a violation of the Agreement, they should have pursued other means than arrest, because Appellant still had a great amount of time left to fully

comply with the Agreement. Instead, the officers, disregarded the terms of the Agreement, and arrested Appellant approximately sixteen (16) months prior to her deadline to erect the structures mandated by the Agreement. The purpose of the Agreement was to give Appellant adequate time to erect structures that would help her animal shelter thrive. When the officers arrested Appellant sixteen months prior to the deadline, the officers not only went against the language of the Agreement, but they also went against its very purpose. On or about June 23, 2015, a hearing was held in Magistrate's court to determine whether or not Appellant was in violation of the Agreement when she was arrested. The presiding magistrate judge held that Appellant was not in violation of the Agreement. R. p. 12, lines 21-25; R. p. 13, lines 1-3.

The deputies chose to arrest Appellant well before the expiration of Appellant's deadline to perform. Had the deputies not arrested Appellant, then Appellant would have been able to construct the required building, and fully comply with the Agreement. Since Appellant still had sixteen (16) months to erect the required structure and perform under the Agreement, Respondent breached the Agreement with Appellant by arresting her prior to her deadline to act.

**V. THE TRIAL COURT ERRED BY ADMITTING STATE'S EXHIBITS 18 THROUGH 27.**

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCRE. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by

considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. “Unfair prejudice within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (S.C., 1988).

State’s Exhibits 18 through 27 are pictures that show the interior of a mobile home located on the Appellant’s property. State’s Exhibits 18-27. At the time of the jury trial, this mobile home had been abandoned for approximately two (2) years. None of the animals in Appellant’s care had access to this mobile home. R. p. 301, lines 10-15.

None of the images displayed in State’s Exhibits 18 through 27 have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the exhibits. The images depict areas of an old, uninhabited building of which Appellant’s animals did not have access. The aforementioned exhibits were in no way related to Appellant’s charges. Therefore, the exhibits are irrelevant, and were improperly admitted.

If, in the alternative, State’s Exhibits 18 through 27 are found to be relevant, then said exhibits should have nevertheless been excluded, because the exhibits’ probative value were substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. See Rule 403, SCRE. There is a high probability that the jury, when presented with State’s Exhibits 18 through 27, was improperly prejudiced and misled. The exhibits were published to the jury, and the counsel for the Respondent led the jury to believe that the images shown in said exhibits displayed the conditions under which Appellant’s animals were living. After counsel for the Appellant objected to these exhibits, Respondent alleged that

Appellant's animals had access to the mobile home, because feces were found in the mobile home. R. p. 32, lines 7-9. However, Respondent failed to provide any evidence that the feces belonged to Appellant's animals, and not wild animals that may have gained access to the mobile home. Furthermore, none of the images shown in the exhibits show any of Appellant's animals in the abandoned mobile home. Therefore, even if State's Exhibits 18 through 27 are found to be relevant, the trial court erred in admitting the exhibits, because their prejudicial effect is substantially outweighed by the probative value.

#### **VI. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT REGARDING THE RABIES TAG VIOLATION.**

The trial court should have granted Appellant's motion for directed verdict regarding the rabies tag violation. "On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). S.C. Code Ann. § 47-5-60 states, in pertinent part:

"A pet owner must have his pet inoculated against rabies at a frequency to provide continuous protection of the pet from rabies using a vaccine approved by the department and licensed by the United States Department of Agriculture. The rabies inoculation for pets must be administered by a licensed veterinarian or someone under a licensed veterinarian's direct supervision, as defined in Section 40-69-20. Evidence of rabies inoculation is a certificate signed by a licensed veterinarian...The licensed veterinarian administering or supervising the administration of the vaccine shall provide one copy of the certificate to the owner of the pet and must retain one copy in his files for not less than three years. With the issuance of the certificate, the licensed veterinarian shall furnish a serially numbered metal license tag bearing the same number and year as the certificate with the name and telephone number of the veterinarian, veterinary hospital, or practice. The metal license tag at all times must be attached to a collar or harness worn by the pet for which the certificate and tag have been issued..." S.C. Code Ann. § 47-5-60 (2016).

Appellant complied with the applicable statute by having her animals inoculated against rabies by Dr. Bob Moorhead, a licensed veterinarian. R. p. 249, lines 17-19; R. p. 307, lines 1-13. Appellant maintained the rabies certificates, and submitted them to the trial court. R. p. 249, lines 20-25; R. p. 250, lines 1-10; Defendant's Exhibits 5, 6. However, Appellant did not maintain the rabies tags on the animals. The reason that Appellant did not place rabies tags on her animals was to ensure their safety. This is the same reason that the Anderson County Animal Shelter does not keep rabies tags on their animals. R. p. 42, lines 2-14. The purpose of the above-referenced statute is to ensure that animals are protected from rabies. Appellant provided undisputed evidence that her animals were inoculated from rabies. See Defendant's Exhibits 5, 6. Furthermore, it was undisputed at trial that it is common practice for animal shelters to not keep rabies tags on animals for safety purposes. Appellant, as a prominent animal rescue owner, should have been afforded the same rights and privileges as the Anderson County Animal Shelter. Instead, Appellant was charged and convicted for a crime of which Anderson County would also be found guilty. As the owner and operator of an animal shelter, Appellant had a duty to ensure the safety of the animals in her care. Appellant was upholding her duty to the animals in her care by not placing the rabies tags on them. Even after viewing the evidence in the light most favorable to the Respondent, the trial court should have granted Appellant's motion for directed verdict, because Appellant complied with all substantive provisions of the statute. The only portion of the statute that Appellant did not meet is a portion no one in a situation similar to Appellant would follow—and for good reason. Therefore, the trial court erred in denying Appellant's motion for directed verdict regarding the rabies charge.

**VII. THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING THAT APPELLANT COULD NO LONGER OPERATE AN ANIMAL SHELTER.**

The Eighth Amendment to the United States Constitution provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. “Although the earliest Eighth Amendment cases focused on the barbarous nature of a punishment, the jurisprudence evolved to encompass challenges to the proportionality of the sentence to the offense.” Gregg v. Georgia, 428 U.S. 153, 170–72, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). When considering whether a sentence is proportional, the Supreme Court has acknowledged that the scope of the Eighth Amendment is not static, but “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” Trop v. Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)).

At sentencing, Appellant was ordered that she could no longer operate an animal shelter. R. p. 355, lines 18-25; R. p. 356, line 1. Appellant received this sentence, despite the fact that the trial judge granted her motion for directed verdict for many of the counts of animal cruelty, and the jury found her not guilty all of the remaining animal cruelty charges. R. p. 216, lines 16-21; R. p. 348, lines 17-20. Therefore, Appellant was not convicted for any charges of animal cruelty. Even though Appellant was found guilty on rabies charge, Respondent’s witnesses testified that the Anderson County animal shelter does not place rabies tags on their dogs. R. p. 42, lines 2-9. Furthermore, testimony revealed that it is standard practice for animal shelters to not use place rabies tags on dogs for safety reasons, because the rabies tags could get caught on a

fence, causing a choking hazard for the animals. R. p. 42, lines 8-14. Thus, Appellant was convicted of an offense of which most, if not all, animal shelters in South Carolina would also be found guilty—including the Anderson County animal shelter. Furthermore, Appellant was able to produce rabies certificates for the dogs. R. p. 249, lines 17-25; R. p. 250, lines 1-10; Defendant's Exhibits 5, 6.

The trial court abused its discretion by imposing this sentence, because the trial judge lacked evidentiary support to impose this sentence upon Appellant. Even though Appellant was found guilty of possession of methamphetamine, Appellant has no criminal record prior to these charges. She was not convicted of any animal cruelty charges, and her conviction under the rabies charge does not show that Appellant is unfit to operate an animal shelter. To the contrary, by not placing rabies tags on the dogs, Appellant was taking necessary, and widely accepted, precautions to ensure that the dogs did not suffer from a choking hazard or other injury. Appellant has been greatly prejudiced by the imposition of this sentence. The sentence amounts to a permanent ban from operating an animal shelter. Running her animal shelter was Appellant's livelihood, and passion. Appellant neither has children nor a spouse. Animals are her life. R. p. 223, lines 15-25. Appellant is fifty-one (51) years old, and her passion has been working with animals for over fifteen (15) years. There is not sufficient evidence to support a sentence prohibiting Appellant from operating an animal shelter. Said sentence is greatly disproportionate to the offenses. Therefore, the trial court abused its discretion in imposing this sentence.

### **CONCLUSION**

For the aforementioned reasons, Appellant requests that this matter be reversed and remanded to the lower court.

Respectfully submitted,



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Willie J. Peters (S.C. Bar No.: 100974)

Darren S. Haley (S.C. Bar No.: 14564)

The Haley Law Firm, LLC

1007 Pendleton Street

Greenville, SC 29601

(864) 235- 6638 (Ph) (864) 370-1201 (Fax)

darren@darrenhaley.com

Attorneys for Appellant

Greenville, South Carolina  
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