

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
Carmen T. Mullen, Circuit Court
Judge

CASE NO. 2017-001017

LYNNE VAN HOUSE, APPELLANT

V.

COLLETON COUNTY, RESPONDENT

VOLUME NO. 1

RECORD ON APPEAL

Lynne Van House
19897 Augusta Hwy
Round O, SC 29474
843-835-8038
Appellant, acting pro se

Sean P. Thornton, Esquire
PO Box 157
Walterboro, SC 29488
843-466-6779
Attorney for Respondent

RECEIVED
MAR 21 2018
SC Court of Appeals

INDEX

TYPE OF FORM:

BEGINNING ON PAGE:

FLASH DRIVE OF ALL MAGISTRATE HEARINGS (AUDIO).....	A
INDEX.....	1
ORDERS AND ROSTERS.....	2
JUDGEMENT.....	33
TRANSCRIPT.....	39
MOTIONS AND PLEADINGS.....	61
CHARGES/INDICTMENTS.....	91
APPELLANT'S REPLY TO MAGISTRATE'S RETURN.....	121
MAGISTRATE'S RETURN.....	175
EXHIBITS:	
CITATIONS OF CASE LAW.....	193
STATUTES, CODES, AND ORDINANCES.....	301
OTHER EXHIBITS: PICTURES, FORMS, ARTICLES.....	327

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

CASE NO.: 2016-CP-15-01413

RE: Status of Magistrate's Return

ORDER

In Re: Seizure of 68 Dogs and 5 Cats
of Lucille Lynn VanHouse, Case No.
0669

2016 NOV 16 PM 2:56
COLLETON COUNTY
COMMON PLEAS

This Court received a letter from Magistrate Judge Elbert Duffie on 28 October 2016 requesting an extension for time to file a return in the case of In Re: Seizure of 68 Dogs and 5 Cats of Lucille Lynn VanHouse, Case No. 0669. This case required more than 10 hours of testimony and hearings over the course of several days. Judge Duffie's ruling was appealed to the South Carolina Circuit Court on 22 September, 2016

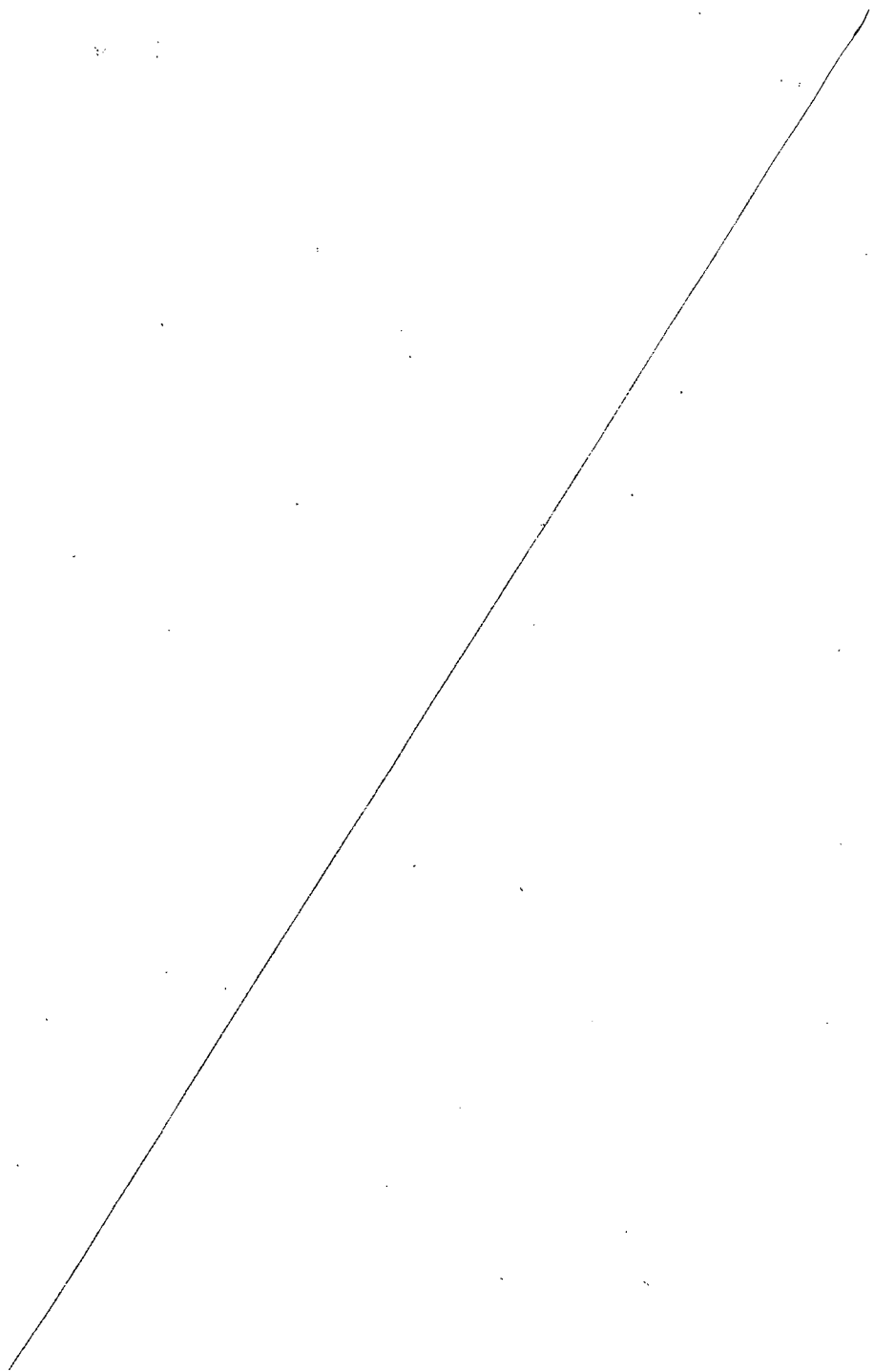
THEREFORE, for good cause shown, the court grants this extension for the filing of a return until November 15, 2016. Judge Duffie must notify all parties to the underlying case.

IT IS SO ORDERED.


The Honorable Perry M. Buckner, III
Chief Administrative Judge
Fourteenth Judicial Circuit

October 31, 2016

Walterboro, South Carolina



COLLETON COUNTY MAGISTRATE COURT

40 Klein Street/ P. O. Box 1732
Walterboro, SC 29488
Telephone (843) 549-1122 Fax (843) 549-9010

Judge Kenneth A. Campbell, Jr., Chief Magistrate
Judge J. Reaves McLeod
Judge Elbert O. Duffie, III

Judge Keisha D. Gadsden
Judge Sophia T. Henderson
Pamala A. White, Court Administrator

October 25, 2016

Honorable Perry M. Buckner
Judge, 14th Judicial Circuit
P.O. Box 620
Walterboro, SC 29488

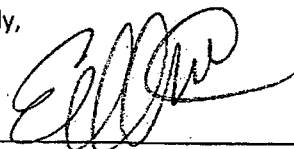
RE: Status of Magistrate's Return, Case No. :

Dear Judge Buckner:

I am writing regarding the Magistrate case of In Re: Seizure of 68 Dogs and 5 Cats of Lucille Lynn VanHouse, Case No. 0669. I received notice on September 22, 2016 that my ruling has been appealed to the Circuit Court and I was instructed to file a return. Since that time I have been working to prepare the return but I am not yet finished and I believe I will need more time. I am sending this letter to update the Court as to the reason for the lengthy time to complete the return. This matter was tried before me in several hearings over 7 days with more than 10 hours of testimony and argument. There are more than 30 trial exhibits and legal motions/memoranda submitted by the parties. It is taking me some time to go back through all of this to create a suitable return for the Court. I hope to have the return completed by November 15 barring any unforeseen circumstance, like another hurricane! I thank the Court for your patience and would ask for consideration to allow me the extension to November 15th.

2
A23

Sincerely,



Elbert O. Duffie, III
Magistrate Judge, Colleton County

cc: Honorable Patricia Grant, Clerk of Court
Lynn Lucille VanHouse
E.W. Bennett, Jr., Attorney for Colleton County

*I brought
Return And file
to Common Plea
on 11-10-16
and gave it to
Polly MSPAM*

2016 NOV 16 PM 2:56

COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN RE:)

Seizure of 68 Dogs and 5 Cats)

Lynne Lucille Vanhouse)

19897 Augusta Highway)

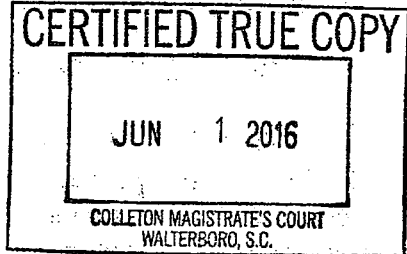
Round O, SC 29474-4179,)

Respondent)

0669

IN THE MAGISTRATES' COURT

ORDER GRANTING
CUSTODY TO COLLETON COUNTY



PRESENT:

Reginald J, McNeil, Director, Colleton County Animal and Environmental Control

Benjamin C.P. Sapp, attorney for Respondent

Dr. Lori Campbell

Dr. Mary Campbell

Michelle Reed, Valiant Animal Rescue and Relief

Sheila Ellis, Port Royal Veterinary Hospital

Nancy Foard, Hilton Head Humane Association

Anthony Montgomery, Beaufort County Animal Shelter

Frannie Gerthofer, Hilton head Humane Association

Jodie Taylor, Colleton County Sheriff's Office

Respondent was not present.

This matter came to be heard before me on May 31, 2016 on petition of Colleton County pursuant to County Code Section 6.04.050(F)(5) filed May 23, 2016 for an Order determining Respondent's fitness to care for the subject animals and custody of the animals.

On May 16, 2016 and May 18, 2016 two search warrants were issued pursuant to County Code Section 6.04.050(F)(2) for the Respondent's residence. After executing the search warrants the Colleton County Animal Control Officer took possession of 68 dogs and 5 cats pursuant to County Code Section 6.04.050(F)(2).

At the beginning of the hearing on May 31, 2016, attorney Sapp notified the Court that the Respondent waived her presence. He further stated the Respondent consented to Colleton County retaining custody of the dogs and cats but requested that he be given the opportunity to discuss with his client whether she wished to file a motion to have to Court consider returning custody of some of the animals to her.

Reginald McNeil, speaking on behalf of Colleton County, did not object to the Respondent's request, however, he raised the issue of the Court ordering the Respondent to

reimburse the County for the costs associated with the care of the animals. He also informed the Court that Magistrate level charges were pending against the Respondent related to the animals and the trial was set for June 21, 2016.

Based on the statements and consent of the parties the Court orders as follows:

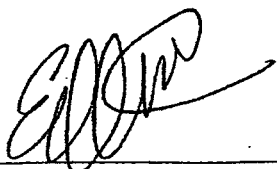
IT IS HEREBY ORDERED that custody of the 68 dogs and 5 cats shall be granted to Colleton County pursuant to County Code Section 6.04.050(F)(6) subject to the right of the Respondent to file a motion on or before June 15, 2016 for return of some of the animals to Respondent, provided that if said motion is not filed by June 15, 2016 Colleton County shall be entitled to permanent custody of the animals and shall have authority pursuant to County Code Section 6.04.050(F)(6) to place the animals for adoption or destroy them.

IT IS FURTHER ORDERED that pursuant to County Code Section 6.04.050(F)(7) Colleton County shall have the authority at any time to euthanize any one or more of the animals for humane purposes if the animal is critically injured or ill without further order of the Court.

IT IS FURTHER ORDERED the Court shall not rule on Colleton County's claim for reimbursement from the Respondent of the costs of care for the animals on the grounds such claim is better addressed in the form of a request for restitution in the criminal case or in a separate civil action.

IT IS SO ORDERED.

June 1, 2016
Walterboro, SC



Elbert O. Duffie III
Presiding Magistrate Judge

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-vs-)

LYNNE LUCILLE VANHOUSE,)

Defendant,)

IN THE SUMMARY COURT

CASE NO: 0669/Ordinance/Animal care and control

ORDER RELIEVING COUNSEL

This matter is before the Court on motion of Benjamin C.P. Sapp, Attorney for the Defendant, Lynne Lucille Vanhouse, for an Order relieving him as counsel for the Defendant.

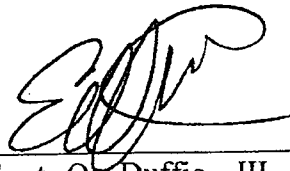
NOW, THEREFORE, based upon the consent of all parties concerned, it is hereby

ORDERED that Benjamin C.P. Sapp is hereby relieved as counsel of record for the Defendant.

AND IT IS SO ORDERED.

11th day of July, 2016

Walterboro, South Carolina



Elbert O. Duffie, III, Magistrate for the
Fourteenth Judicial Circuit

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JUL 6 2016

COLLETON MAGISTRATE'S COURT
WALTERBORO, S.C. 29488

SAPP LAW FIRM
Attorney and Counselor at Law

125 South Jefferies Blvd.
Post Office Box 258
Walterboro, SC 29488

Telephone (843) 549-5923
Fax (843) 549-3269
E-mail bsapp@lowcountry.com

Benjamin C. P. Sapp

July 14, 2016

A. Cranwell Boensch
1933-2014

Lynne Lucille VanHouse
19897 Augusta Highway
Round O, South Carolina 29474

Re: State of South Carolina vs. Lynne Lucille Vanhouse
Our File: 16-188

Lynne
Dear Ms. ~~VanHouse~~:

There is enclosed herewith a filed copy of the Order Relieving Counsel regarding the above captioned matter.

With kind regards,

Sincerely,



Benjamin C. P. Sapp

BCPS:las

Enclosures: As stated above.

Please reference our file number in all correspondence.

SAPP LAW FIRM
Attorney and Counselor at Law

125 South Jefferies Blvd.
Post Office Box 258
Walterboro, SC 29488

Telephone (843) 549-5923
Fax (843) 549-3269
E-mail bsapp@lowcountry.com

Benjamin C. P. Sapp

June 8, 2016

A. Cranwell Boensch
1933-2014

Lynne Lucille Vanhouse
19897 Augusta Highway
Round O, South Carolina 29474

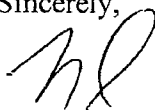
Re: State of South Carolina vs. Lynne Vanhouse

Dear Lynne:

There is enclosed herewith a filed copy of the Order Granting Custody to Colleton County which was signed by Judge Duffie on June 1, 2016. This Order grants custody of the 68 dogs and 5 cats to the county subject to you having the right to file a motion on or before June 15, 2016 for return of some of the animals. However, you have waived the right to file such motion in exchange for the county waiving restitution related to the veterinarian care of the animals. Please contact me immediately if you have any questions or concerns about this Order.

With kind regards,

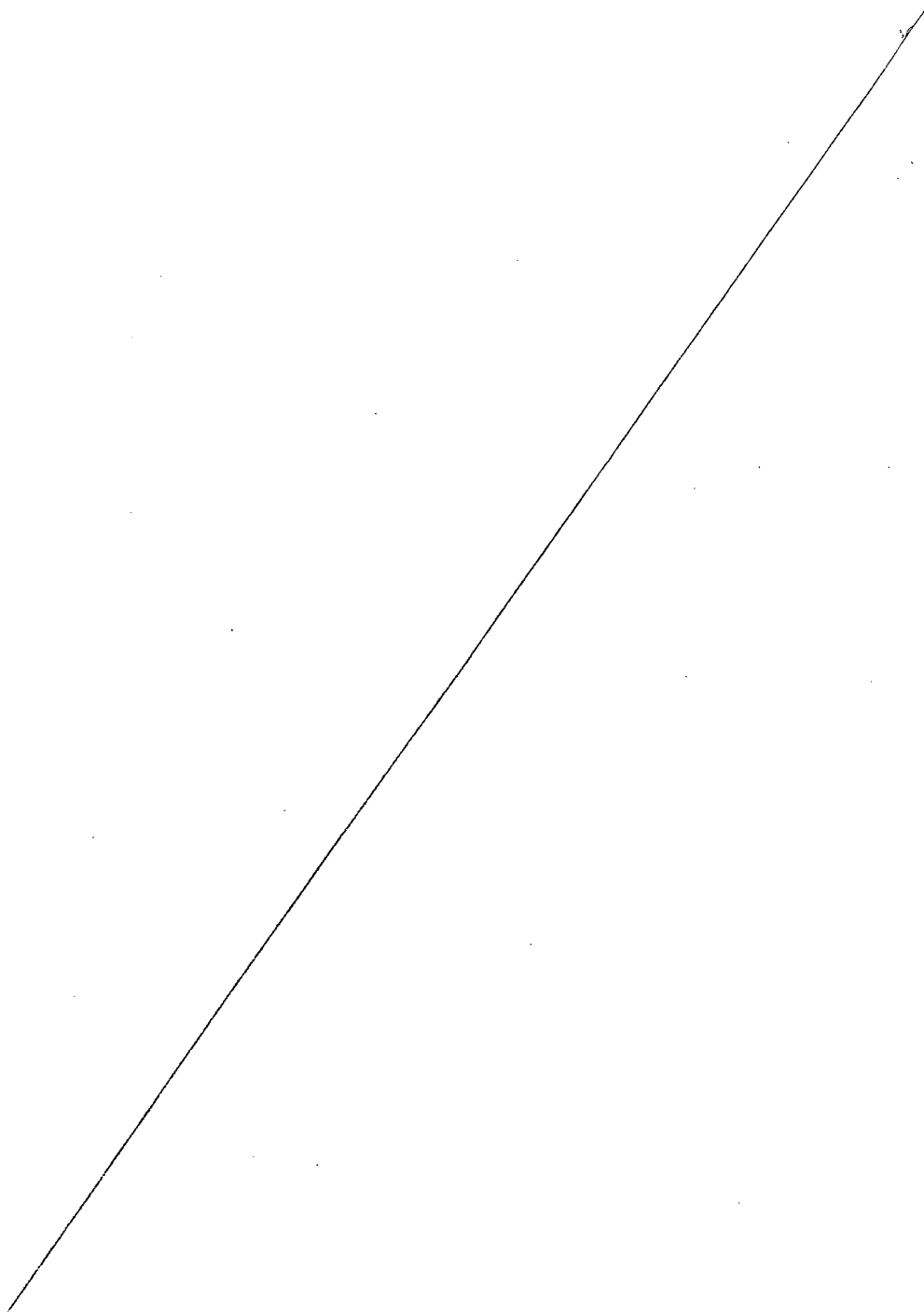
Sincerely,



Benjamin C.P. Sapp

BCPS:las

Enclosures: As stated above



STATE OF SOUTH CAROLINA)

0669

COUNTY OF COLLETON)

IN THE MAGISTRATES' COURT

IN RE:)

Seizure of 68 Dogs and 5 Cats)

ORDER CONTINUING

AND RE-SCHEDULING

RESPONDENT'S MOTION HEARING

Lynne Lucille Vanhouse)

19897 Augusta Highway)

Round O, SC 29474-4179,)

Respondent)

This matter came to be heard before me on June 21, 2016 on motion of Respondent filed June 14, 2016 for reconsideration of the Court's Order dated June 1, 2016 and for return of the animals. At the beginning of the motion hearing, Respondent's attorney Ben Sapp moved the Court to be relieved as counsel on the grounds of differences of opinion between him and his client. The Respondent concurred with the grounds and consented to termination of Attorney Sapp's representation. The Court granted the motion and Mr. Sapp was excused from the hearing with consent of the Respondent. The Court then gave the Respondent the opportunity to postpone the hearing so that she may consider retaining new legal counsel. The Respondent declined and advised the Court she preferred to go forward with the hearing and would represent herself.

Shortly after the Respondent began her legal argument related to the search warrants, the Court paused her argument to inquire as to the status of criminal charges against the Respondent. Director McNeil and Deputy Taylor informed the Court the Respondent's Magistrate level charges were being nolle prossed, however, the General Sessions charges still remained. The Court then inquired as to whether the Respondent had legal representation on the charges. The Respondent stated she was declined a public defender because she made an error in reciting her financials to the bond judge. She advised the Court she was informed earlier in the day from the Chief Clerk in the Magistrate Office to re-apply for the public defender with the Clerk of Court's Office. At that time the Court again addressed with the Respondent the opportunity to postpone the hearing to allow for her to retain legal counsel. The Court also advised the Respondent of her Constitutional rights related to the criminal charges and the fact that any statements she made could be used against her in the criminal proceedings. The Respondent stated she understood her rights but wished to go forward with the motion hearing anyhow.

After this discussion concluded, Respondent noticed that her son was having a serious medical issue in the courtroom, which the Court and all present also observed. The hearing went off the record and EMS was called to care for Respondent's son. The Court placed the hearing back on the record to state the hearing was being postponed to allow for the Respondent to go with her son to the hospital and to allow the Respondent to re-apply for the public defender for her criminal charges before continuing with the motion hearing. At that time the Court informed the Respondent that she needed to re-apply for the public defender with the Clerk of Court's Office or seek retaining new legal counsel prior to the re-convening of the motion hearing, to which the Plaintiff agreed. The Court then adjourned the motion hearing with consent of both parties.


11

Based on the statements and consent of the parties to the continuance, the Court orders as follows:

IT IS HEREBY ORDERED that the Respondent's motion hearing shall be and is continued beyond the June 21, 2016 hearing date and is re-scheduled for JULY 12, 2016 AT 2:00 P.M. The Magistrate's Office will mail a new hearing notice to the parties.

IT IS HEREBY ORDERED that care and custody of the 68 dogs and 5 cats shall be retained with Colleton County until such time as the Respondent's motion is decided by the Court.

IT IS FURTHER ORDERED that Colleton County shall not sell, transfer, or place up for adoption the 68 dogs and 5 cats while the motion is pending but pursuant to County Code Section 6.04.050(F)(7) Colleton County shall have the authority at any time to euthanize any one or more of the animals for humane purposes if the animal is critically injured or ill without further order of the Court.

IT IS SO ORDERED.

June 22, 2016
Walterboro, SC



Elbert O. Duffie III
Presiding Magistrate Judge

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(Proposed)

**In Re: Animals seized and dispursed
by Colleton County**

**Lynne Van House, Petitioner
Round O, SC**

**Colleton County, Respondant
Walterboro, SC**

**ORDER DISMISSING PRIOR
SETTLEMENT AGREEMENT
DISBURSING DOGS TO
COUNTY AND REINFORCING
MOTION TO RECONSIDER
ORDER ISSUED BY THIS
COURT ON 6/1/2016 AND
MOTION TO RETURN THE
ANIMALS PREVIOUSLY
SEIZED OR RESTITUTION
FOR SAME**

This case involving alleged animal care and rabies violations most recently came before this Court on July 27, 2016; when the recently appointed Counsel for the County, E.W. Bennett, Jr. introduced a Motion on the record to address the contested validity of actions of Ben Sapp, the Petitioner's former attorney. Petitioner questioned whether she was bound by Mr. Sapp's actions in surrendering all her animals to the County immediately after his informing the Court that time was requested by the Petitioner to introduce a Motion to get them back. At that time, the Court ordered that the surrender was to be temporary until the 15th of June, at which time, if the Petitioner did not introduce a Motion to have them returned, the animals would be permanently surrendered to the County. Petitioner also requested an Order rescinding and vacating and setting aside the search warrants previously issued in this case by Magistrate Elbert O. Duffie, III on 5/16/2016 and on 5/18/2016 by Magistrate Kenneth A. Campbell, Jr. for various improper details such as wrong address, incomplete listing of searched for items, incomplete and incorrect lists of items seized, and illegal acts to obtain information having been perpetrated, among others. This Motion was filed on June 14, 2016 within the time allowed by the Court ruling to petition the Court to get the animals back, and the Petitioner acting as her own Counsel, Pro se after Mr. Sapp and the Petitioner disagreed on his actions in surrendering her animals without her knowledge; the Petitioner gave her entire Defense under oath in this Courtroom over a series of appearances, and introduced and read into the record, and had listed as Exhibits many items to prove her defense claims. After this Defense had been given and the next phase of the Hearing was introduced, Mr. Bennett became the County's Counsel. After one day of testimony from Animal Control Director Reginald McNeil, Colleton County Sheriff's Deputy Jodi Taylor and Dr. Mary Campbell; with some cross-examination by the Petitioner still representing herself; the Hearing was adjourned until the following week.

When the Hearing was reconvened on July 27, 2016, Mr. Bennett immediately introduced on the record his Motion to have Mr. Sapp's actions in surrendering the animals without his client's knowledge to be declared valid. Mr. Bennett introduced 4 case citations to attempt to prove his point, the Petitioner read them and Objected to them. At that time, Judge Duffie ordered Mr. Bennett to prepare a first draft of his suggested Motion, and submit it by e-mail to both himself and the Petitioner so they could "tweak" it. This was not done. It would appear that Mr. Bennett waited until one minute before Judge Duffie's allowed deadline to send this Motion—and instead sent an Order possibly actually originating

from the Court—dismissing all of the Petitioner's Motions and Enforcing all of the Respondent's Motions, as yet unsigned. Based on all the prior pleadings and motions and petitions and notices and affidavits and documents and exhibits and attachments as previously filed and entered by the parties herein and search warrants and orders accepted as evidence by this Court and further based on the record of this case up to the beginning of the Respondent's case which was begun July 20, 2016 and furthered on July 27, 2016; this Court sets forth Findings of Fact in this case alleged by the County to involve animal care and rabies violations.

THIS ORDER IS A DIRECT OBJECTION AND RESPONSE TO THAT ORDER

1) The Emergency hearing to decide custody of the animals was held on May 31, 2016 and Plaintiff was advised by her then attorney Ben Sapp that there would be lots of press and cameras there, and he would handle it for her without her presence. After this hearing, This Court ordered Colleton County to continue to retain temporary custody of the animals being held as evidence until June 15 awaiting a Motion to get Plaintiff's animals back. Since Mr. Sapp refused repeatedly to file a Motion to try to get Plaintiff's animals back as requested by Plaintiff; Plaintiff herself filed a Motion to get her animals back on June 14, 2016. This Court then Ordered Colleton County to continue to retain the animals seized as evidence until the hearing on Plaintiff's Motion. Plaintiff's defense began June 21, and continued for several sessions until all of the defense evidence had been entered and became a matter of record, and the defense rested. Plaintiff was extremely concerned about her breeding animals remaining intact in the event that she would be getting them back, so Judge Duffie ordered the County to continue to retain them all as evidence until the rest of Plaintiff's Motions were ruled on. On June 22, 2016 Plaintiff was advised to turn herself in to the Sheriff's Department at the jail because 10 counts of Animal Cruelty had been filed against her in General Sessions Court, and these charges were felonies. Plaintiff was handcuffed, frisked, perp-walked, mug shots taken, and jailed for several hours until a Judge could rule on a PR bond—which was set for \$50,000. Shortly thereafter, Colleton County Attorney Sean Thornton wrote This Court advising Judge Duffie that many of the animals had already been placed or destroyed, and that only 22 remained. Plaintiff's former Attorney Ben Sapp had taken it on himself to bypass the Court's Order to retain the dogs until the June 22 hearing—and had contacted Officers McNeil and Taylor and Richland Animal Shelter Director Tallulah Trice by phone and e-mail asserting that Plaintiff had surrendered all the animals to the County as of June 1—without notifying either this Court or the Plaintiff. In fact, no one was notified of this dispersal until the next Hearing on July 18, 2016.

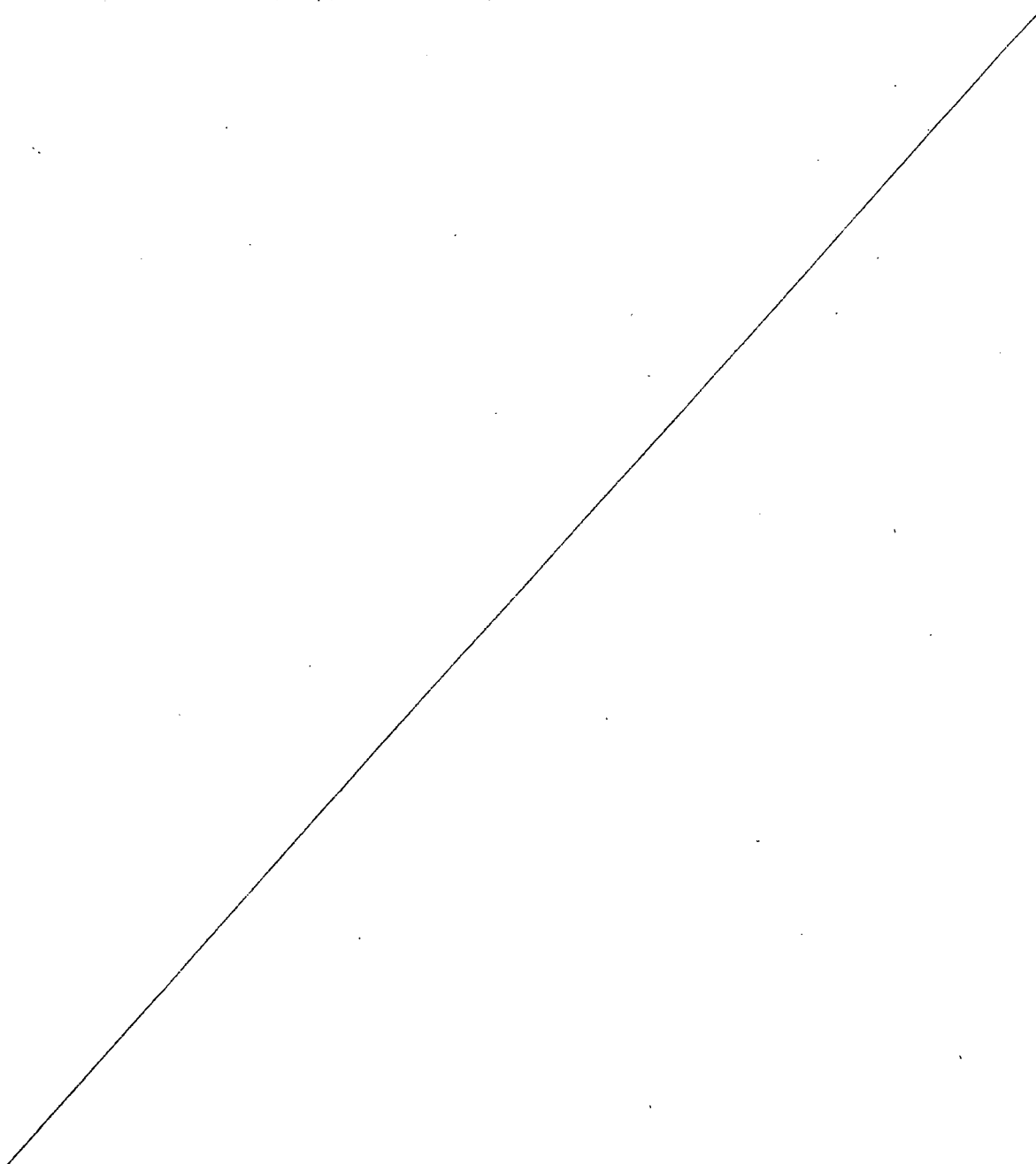
2) Mr. Bennett had been retained as Counsel by the County by then, and proceeded to inform the the Plaintiff and Judge Duffie that he had been advised that all of the dogs had actually already been disposed of. The issue of whether Mr. Sapp had acted as Plaintiff's agent in the process of surrendering her animals came up for discussion because of Plaintiff's objection to the action, and was argued in the Court on 7/20/2016. The written Motion by Mr. Bennett was requested by Judge Duffie at that time.

Based on the aforesaid Findings of Fact, and all prior Orders issued and entered, and all relevant statutes and cases and ordinances both previously filed and contained herein, the Court makes the

following conclusions as a matter of law:

1) Neither Plaintiff nor the Court has yet heard all the arguments of the County on the record, nor has Plaintiff had the opportunity to hear who accused her, of exactly what she is accused, nor has she had the opportunity to question all of the County's witnesses nor avail herself of most of the evidence collected. In order to allow Plaintiff the chance to do so, this hearing needs to go on through due process of law; or alternatively at the Court's discretion, all Motions by Plaintiff must be enforced, and suitable restitution shall be arranged for Plaintiff's personal property that was seized and destroyed for her use.

2) In the matter of whether Mr. Sapp was acting as Plaintiff's legal agent when he surrendered Plaintiff's animals, Plaintiff respectfully submits the following for consideration of her stance on the matter, in that he personally presumed Plaintiff guilty of misdemeanors, but chose to continue to act as Defense Counsel while acting instead in the interests of the County...and in addition, broader explanation of the citations already in the possession of this Court, and requests the Court find that Mr. Sapp acted outside his narrowly defined limits as her Special Counsel.



OBJECTIONS SPECIFIC TO MR. BENNETT'S CASE LAW CITATIONS

1) Arnold VS Yarborough, 316S.E. 2d 416, 281 SC 570 (SC App Ct. 1984)
Poore v. Poore, 105 S.C. 206, 89 S.E. 569 (1916). Cf. Wilson v. N.E. Isaacson of Georgia, Inc., 139 Ga. App. 582, 229 S.E. (2d) 29 (1976) (absent fraud, agreement by an attorney to dismiss pending case held binding on client even though client did not know of agreement); Lennon v. Aeck Associates, Inc., 157 Ga. App. 294, 277 S.E. (2d) 289 (1981) (agreement to settle by exchange of letters between attorneys held binding where court relied on Georgia statute containing provisions comparable to South Carolina Circuit Court Rule 14).

This is not a case "directly to point" because:

A) Defendant was the victim of fraud inasmuch as her former Attorney Mr. Sapp did swear to the Court that Defendant wanted to try to retrieve her dogs on May 31, 2016—and then claimed to the County by secret e-mail on June 1, 2016 and subsequent, that she did not; without notifying either the Court nor the Defendant of his actions.

B) There is no question that Yarborough was being represented in his best interests; but Defendant's former attorney was not acting for her since he immediately refuted privately what was Court ordered in accordance with the Defendant's wishes.

C) There is no legality to the claim that exchange of letters between attorneys should stand in this case, since Defendant was acting on her own behalf—and received no such notification either from the representatives of the County at the time, nor their subsequent Attorney, Mr. Bennett.

2) ALSO ARNOLD vs YARBOROUGH: In EX PARTE JONES, 47 S.C. 393, 25 S.E. 285 (1896), Jones sought relief from a judgment in foreclosure on the ground his attorney was mistaken as to the amount of liens upon the property and the price the property would bring. Our Supreme Court held there is a vast distinction between the acts of an attorney within his general authority in a matter not in court and his acts during the conduct and progress of a suit in court. There, the court stated:

... the employment of an attorney in a particular suit implies his client's assent that he may do everything which the court may approve in the progress of the cause. Upon this distinction in a large measure rest the certainty, verity, and finality of every judgment of a court. Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud. Id. at 397, 25 S.E. at 286.

*This is not applicable to Defendant's case because:

A) There is, indeed, "a vast distinction between the acts of an attorney within his general authority in a matter not in court and his acts during the conduct and progress of a suit in court". While

IN Court, Mr. Sapp asked for time for the Defendant to consider a Motion to retain her dogs—but OUTSIDE the Court, immediately refuted that request by his own actions, and contrary to the Defendant's wishes. The other point, of course, is the last statement: "in the absence, of course, of fraud". Defendant suggests that Mr. Sapp's actions clearly show this.

3) MANUFACTURER'S HANOVER VS MILLS, 281 S.C. 374, 315 S.E. 2d 377 (S.C. Sup Ct. 1984... (Actually Lord Jeff Knitting Co Inc vs Mills) FROM THE OPINION

A) "Some courts hold that an attorney has no authority to enter into a consent judgment in favor of the opposite party without the client's knowledge or consent. See 7 Am. Jur.2d *Attorneys at Law* § 158, n. 69 at 218 (1980); 7A C.J.S. *Attorney Client* § 200, n. 63 at 333 (1980). Other courts hold that an attorney has, merely by reason of his employment, the implied or apparent authority to confess judgment in the other party's favor if he acts in good faith and without fraud or collusion. See 7 Am. Jur.2d *Attorneys at Law* § 158, n. 68 at 218 (1980); 7A C.J.S. *Attorney Client* § 200, n. 56 at 331 (1980). The latter rule appears to be the rule in South Carolina where there is an action pending and the attorney is of record.

**Again: This is not applicable to this case because:

A1) "If he acts in good faith without fraud or collusion" See 7 Am. Jur.2d *Attorneys at Law* § 158, n. 69 at 218 (1980); 7A C.J.S. *Attorney Client* § 200, n. 63 at 333 (1980).

**which did NOT happen in Defendant's case.

A2) "and some courts feel that an attorney has no authority to enter into a consent judgement in favor of the opposite party without the client's knowledge or consent " See 7 Am. Jur.2d *Attorneys at Law* § 158, n. 69 at 218 (1980); 7A C.J.S. *Attorney Client* § 200, n. 63 at 333 (1980).

**Not only did Defendant have no knowledge of, nor consent to the action, but was not told until well after the fact by default. In addition, the action taken by Mr. Sapp was the opposite of what the attorney agreed to perform for the Defendant, and against Court order.

3) SHELTON VS BESSANT, 439 S. E. 2d 833, 312 S.C. 183 (S.C. Sup Ct. 1993)

"In South Carolina, an attorney may settle litigation on behalf of his client, and absent fraud or mistake, such a settlement is binding on the client. e.g., *Poore v. Poore*, 105 S.C. 206, 89 S.E. 569 (1916); *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416 (Ct.App.1984). "

****This citation has no relevance to Defendant's case because:**

A) " In L.F.S., the malpractice claim was premised on allegations that the attorney had exceeded his authority in settling the client's case. Despite knowledge of this problem, the client ratified its attorney-agent's acts by accepting the benefits of the settlement. " **FROM THE OPINION**

****Not only did the Defendant receive No benefits from this action by Mr. Sapp—but in fact his action paved the way for the Defendant to be arrested and charged in General Sessions Court, since the County now had apparent ownership of the Defendant's animals stemming directly from his action.**

4) **CROWLEY VS HARVEY AND BATTEY, PA 488 S.E. 2d 334, 327 S.C.68 (S.C. Sup Ct. 1997)** "This case involves an entirely different claim, going to the adequacy of the attorneys' advice to their client. We hold that where, as here, the settlement itself cannot be attacked and the issue is not one of agency but of negligence, the fact the client has accepted the benefits of the settlement and judicially sought to enforce its terms are not bars to maintenance of a malpractice claim. " **FROM THE OPINION**

NOTE: This is the 4th of the circling and convoluted citations that Mr. Bennett has offered this Court—and each one addresses the other 3 as primary Legal Authority.

****Again: Defendant received no benefit from the settlement made by Mr. Sapp—but indeed, got severe and life changing negative consequences instead.**

5) **MOTLEY VS WILLIAMS, 647 S.E. 2d 244, 374 S.C. 107 (S.C. App Ct 2007)**

From the document of proceedings: **THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals Ronald C. Harris, Appellant,

Penn Warranty Corporation and West Main
Automotive, Respondents.

Appeal From Richland County
Thomas Russo, Circuit Court Judge

Unpublished Opinion No. 2007-UP-546

Submitted November 1, 2007 – Filed December 11, 2007

AFFIRMED

6) KIRKLAND VS MOSELEY, 109 S.C. 477, 96 S.E. 608 (S.C. Sup Ct. 1918)

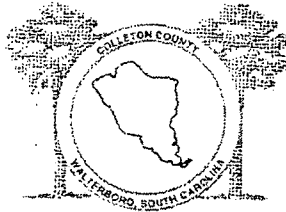
** Mr. Bennett's footnote on this citation, "Any communications failure or mistake on the part of an attorney is directly attributable to his client" has no relationship to the actual case.

FROM THE OPINION: "It now definitely appears that when Mrs. Bacon devised the lands in issue to Toney's she conveyed to them a title in fee simple. *Boyce v. Moseley, supra*. And had the Toney's before the decision of that cause stood their ground and asserted that title in them from Mrs. Bacon against Boyce and his coplaintiffs and against Moseley, too, they would have won the valuable stake which was at issue — some 500 acres of land worth some \$25,000."

A) In Defendant's case, she was given no hint that Mr. Sapp was going to turn her dogs over to the County—and could not have objected to his action nor asserted her title to them since she was never given to understand that he took the action against the Court's order prior to the actual action

7) Assertion by Mr. Bennett that Mr. Sapp was Defendant's "retained Legal Counsel" ignores the fact that Mr. Sapp was hired by the Defendant to be a Special Counsel—for the sole purpose of returning her animals to her. Mr. Bennett's order goes on to say that the "various e-mails from and to each other on 6/3/2016 and 6/6/2016 is a binding Settlement Agreement". This absolutely NEVER HAPPENED. Defendant was never contacted at any time by e-mail or any other communication medium by any of the principals on these dates in regard to surrendering the animals to the County, and did not sign any type or form of agreement to do so at any time, therefore, there was no legal agreement.

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

COLLETON COUNTY

February 23, 2017

TO: PRO SE PARTIES
RE: MOTION ROSTER

PLEASE BE ADVISED THAT YOUR CASE HAS BEEN ADDED TO THE MOTION DOCKET SCHEDULED FOR MARCH 17, 2017 AT 10:00AM IN THE COLLETON COUNTY COUNCIL CHAMBERS 109 BENSON ST, WALTERBORO, SC 29488. PLEASE PROVIDE THE CLERK'S OFFICE WITH AN E-MAIL WHERE WE MAY CONTACT YOU IF YOUR HEARING HAS BEEN POSTPONED, CANCELLED. SEND E-MAIL ADDRESSES TO LWEISS@COLLETONCOUNTY.ORG.

PLEASE CALL THE CLERK'S OFFICE AT (843)549-5791 AFTER 2:00 PM ON THURSDAY TUESDAY MARCH 16, 2017 TO CHECK THE STATUS OF YOUR HEARING.

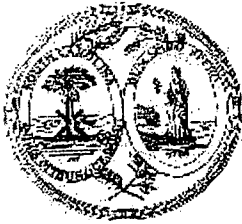
SINCERELY,
THE COMMON PLEAS DEPARTMENT

PLEASE MAKE SURE TO CALL ON THURSDAY AFTER 2:00. THE LOCATION OF YOUR HEARING MAY CHANGE, HOWEVER, WE WILL NOT KNOW FOR SURE UNTIL THAT TIME.

NOTICE OF MOTION SCHEDULING

STATE OF
SOUTH CAROLINA

February 23, 2017



Motion "MOTAPP - Motion/Appeal" for Case: 2016CP1501413 - Lynne Vanhouse VS Colleton County has been added to the following Motions Roster:

97 - March Motions

This hearing of this motion has been scheduled for 3/17/2017 at 10:00 AM.

***** Important *** PLEASE SEE ROSTER NEWS FOR DATE, TIME, AND LOCATION**

The Motions Roster is now available at sccourts.org. Please see Roster News for instructions.

PLEASE DO NOT CALL THE CLERKS OFFICE WITH UPDATES. ALL UPDATES SHOULD BE MADE IN WRITING. SEE ROSTER NEWS FOR CONTACT INFORMATION AND THE JUDGE'S INSTRUCTIONS.

Mail Notice To:

Lynne Vanhouse
19897 Augusta Hwy

Round O, SC 29474

Court Info:

Common Pleas
P O Box 620
101 Hampton Street
Walterboro, SC 29488-9488

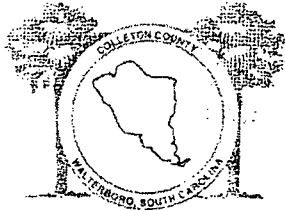
If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)549-5791

Respectfully,

Patricia C Grant
Clerk of Court

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

COLLETON COUNTY

January 20, 2017

****** IMPORTANT DATE CHANGE******

PLEASE BE ADVISED THE FIRST NOTICE HAD AN INCORRECT HEARING DATE. ALL HEARINGS WILL BE HELD WEDNESDAY FEBRUARY 8, 2017

TO: PRO SE PARTIES
RE: MOTION ROSTER

PLEASE BE ADVISED THAT YOUR CASE HAS BEEN ADDED TO THE MOTION DOCKET SCHEDULED FOR FEBRUARY 8, 2017 AT 10:00AM IN THE COLLETON COUNTY COURTHOUSE 101 HAMPTON ST, WALTERBORO, SC 29488. PLEASE PROVIDE THE CLERK'S OFFICE WITH AN E-MAIL WHERE WE MAY CONTACT YOU IF YOUR HEARING HAS BEEN POSTPONED, CANCELLED. SEND E-MAIL ADDRESSES TO LWEISS@COLLETONCOUNTY.ORG.

PLEASE CALL THE CLERK'S OFFICE AT (843)549-5791 AFTER 2:00 PM ON THURSDAY TUESDAY FEBRUARY 7, 2017 TO CHECK THE STATUS OF YOUR HEARING.

SINCERELY,
THE COMMON PLEAS DEPARTMENT

January 19, 2017



Motion "MOFREE - Motion/for Reversal of All Orders" for Case: 2016CP1501413 - Lynne Vanhouse VS Colleton County has been added to the following Motions Roster:

96 - February Motions

This hearing of this motion has been scheduled for 2/8/2017 at 10:00 AM.

IMPORTANT DATE CHANGE!!!
PLEASE NOTE COLLETON MOTIONS WILL BE HELD ON WEDNESDAY
FEBRUARY 8, 2017 NOT MONDAY. PLEASE CHECK THE ROSTER AS THE
NUMBERING HAS CHANGED! I APOLOGIZE FOR ANY CONFUSION.

The Motions Roster is now available at sccourts.org. Please see Roster News for instructions.

PLEASE DO NOT CALL THE CLERKS OFFICE WITH UPDATES. ALL UPDATES
SHOULD BE MADE IN WRITING. SEE ROSTER NEWS FOR CONTACT
INFORMATION AND THE JUDGE'S INSTRUCTIONS.

Mail Notice To
Lynne Vanhouse 19897 Augusta Hwy Round O, SC 29474

Court Info
Common Pleas P O Box 620 101 Hampton Street Walterboro, SC 29488-9488

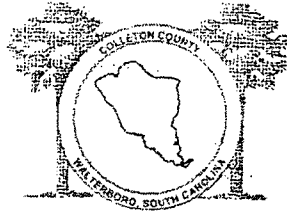
If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843) 549-5791

Respectfully,

Patricia C Grant
Clerk of Court

PATRICIA C. GRANT
CLERK OF COURT



VICKI H. SYFRETT
DEPUTY CLERK

COLLETON COUNTY

November 16, 2016

TO: PRO SE PARTIES
RE: MOTION ROSTER

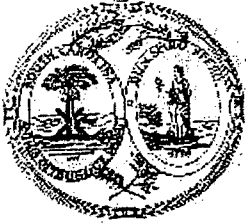
PLEASE BE ADVISED THAT YOUR CASE HAS BEEN ADDED TO THE MOTION DOCKET SCHEDULED FOR NOVEMBER 28, 2016 AT 10:00AM IN THE COLLETON COUNTY COURTHOUSE 101 HAMPTON ST, WALTERBORO, SC 29488. PLEASE PROVIDE THE CLERK'S OFFICE WITH AN E-MAIL WHERE WE MAY CONTACT YOU IF YOUR HEARING HAS BEEN POSTPONED, CANCELLED.

PLEASE CALL THE CLERK'S OFFICE AT (843)549-5791 AFTER 2:00 PM ON WEDNESDAY NOVEMBER 23, 2016 TO CHECK THE STATUS OF YOUR HEARING.

SINCERELY,
THE COMMON PLEAS DEPARTMENT

NOTICE OF MOTION SCHEDULING

November 16, 2016



Motion "MOTAPP - Motion/Appeal" for Case: 2016CP1501413 - Lynne Vanhouse VS Colleton County has been added to the following Motions Roster:

92 - November 28, Motions

This hearing of this motion has been scheduled for 11/28/2016 at 10:00 AM.

The Motions Roster is now available at sccourts.org. Please see Roster News for instructions.

PLEASE DO NOT CALL THE CLERKS OFFICE WITH UPDATES. ALL UPDATES SHOULD BE MADE IN WRITING. SEE ROSTER NEWS FOR CONTACT INFORMATION AND THE JUDGE'S INSTRUCTIONS.

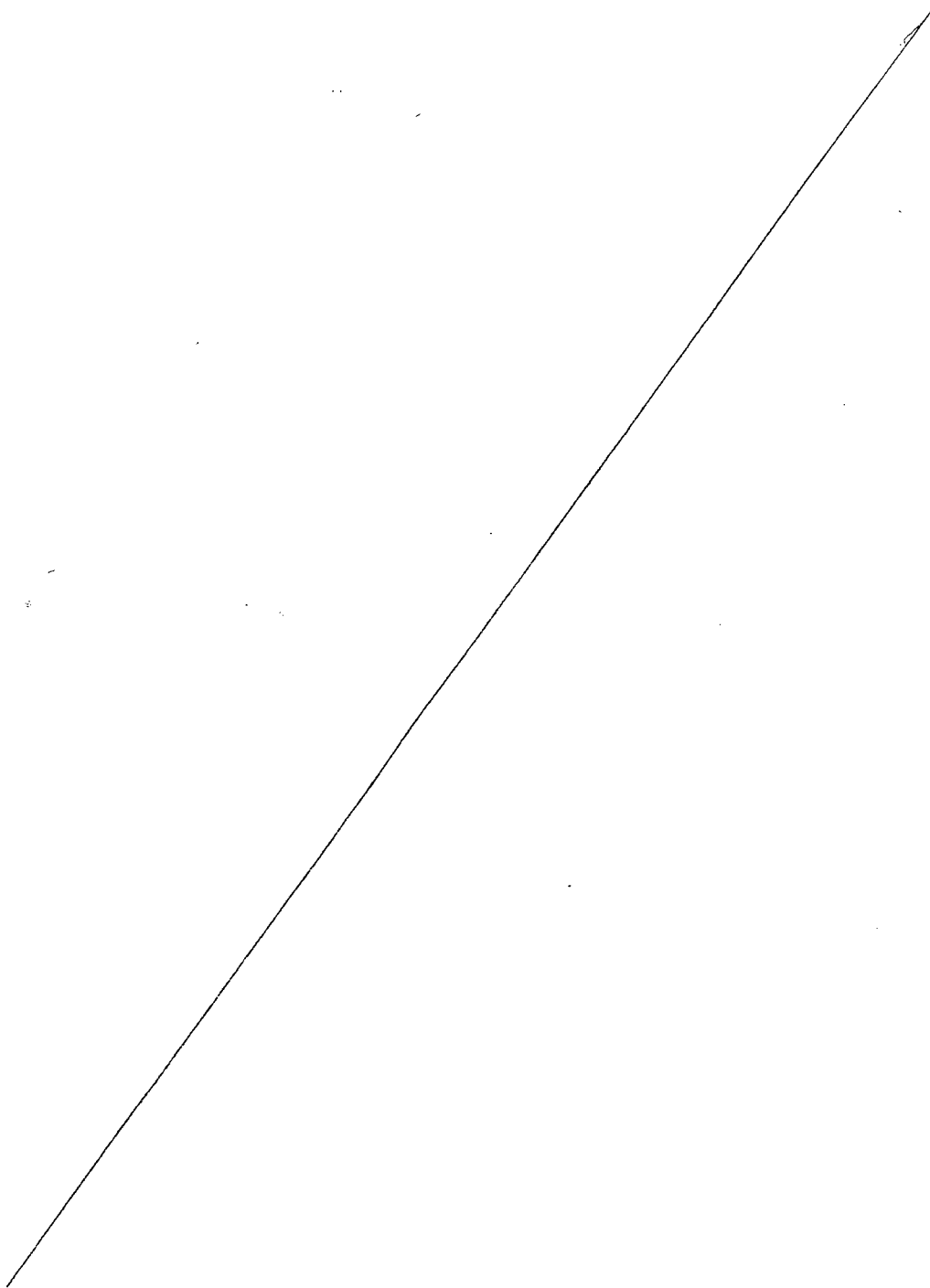
Mail Notice To:	Court Info:
Lynne Vanhouse 19897 Augusta Hwy Round O, SC 29474	Common Pleas P O Box 620 101 Hampton Street Walterboro, SC 29488-9488

If you have any questions regarding the scheduling of this motion, please contact the courts at:

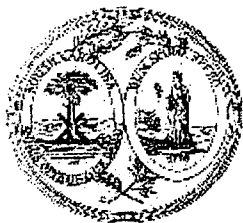
(843) 549-5791

Respectfully,

Patricia C Grant
Clerk of Court



January 19, 2017



Motion "MOTAPP - Motion/Appeal" for Case: 2016CP1501413 - Lynne Vanhouse VS Colleton County has been added to the following Motions Roster:

96 - February Motions

This hearing of this motion has been scheduled for 2/8/2017 at 10:00 AM.

IMPORTANT DATE CHANGE!!!

PLEASE NOTE COLLETON MOTIONS WILL BE HELD ON WEDNESDAY FEBRUARY 8, 2017 NOT MONDAY. PLEASE CHECK THE ROSTER AS THE NUMBERING HAS CHANGED! I APOLOGIZE FOR ANY CONFUSION.

The Motions Roster is now available at sccourts.org. Please see Roster News for instructions.

PLEASE DO NOT CALL THE CLERKS OFFICE WITH UPDATES. ALL UPDATES SHOULD BE MADE IN WRITING. SEE ROSTER NEWS FOR CONTACT INFORMATION AND THE JUDGE'S INSTRUCTIONS.

Mail Notice To:
Lynne Vanhouse 19897 Augusta Hwy Round O, SC 29474

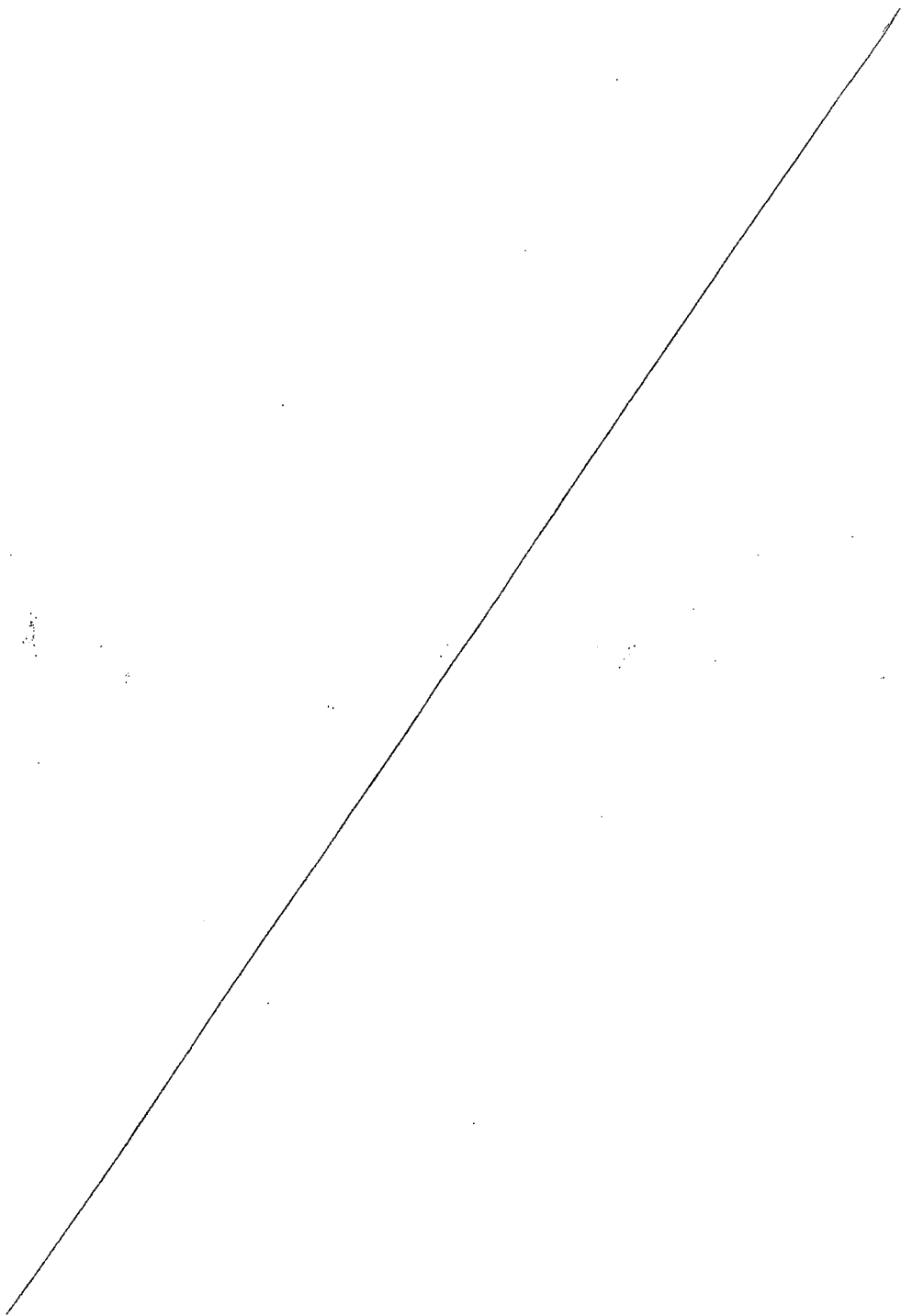
Court Info:
Common Pleas P O Box 620 101 Hampton Street Walterboro, SC 29488-9488

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)549-5791

Respectfully,

Patricia C Grant
Clerk of Court



NOTICE OF MOTION SCHEDULING

February 23, 2017



Motion "MOFREE - Motion/for Reversal of All Orders" for Case: 2016CP1501413 - Lynne Vanhouse VS Colleton County has been added to the following Motions Roster:

97 - March Motions

This hearing of this motion has been scheduled for 3/17/2017 at 10:00 AM.

***** Important *** PLEASE SEE ROSTER NEWS FOR DATE, TIME, AND LOCATION**

The Motions Roster is now available at sccourts.org. Please see Roster News for instructions.

PLEASE DO NOT CALL THE CLERKS OFFICE WITH UPDATES. ALL UPDATES SHOULD BE MADE IN WRITING. SEE ROSTER NEWS FOR CONTACT INFORMATION AND THE JUDGE'S INSTRUCTIONS.

Mail Notice To:

Lynne Vanhouse
19897 Augusta Hwy

Round O, SC 29474

Court Info:

Common Pleas
P O Box 620
101 Hampton Street
Walterboro, SC 29488-9488

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)549-5791

Respectfully,

Patricia C Grant
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Lynne Lucille Vanhouse
19897 Augusta Hwy
Round O, SC 29474-4129

SUMMARY COURT SUMMONS

STATE	VS.	Lynne Lucille Vanhouse
CASE #(S)		Seizure of Animals Hearing
CHARGE		Ordinance / Animal Care and Control

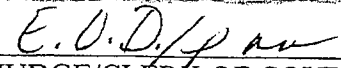
Please be advised that a **Seizure Hearing** has been scheduled to be heard on **Tuesday, May 31, 2016 at 2:00 PM** in the above referenced case.

You are hereby summoned to appear on the above date in the

Colleton County Magistrate
40 Klein Street
P O Box 1732
Walterboro, SC

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

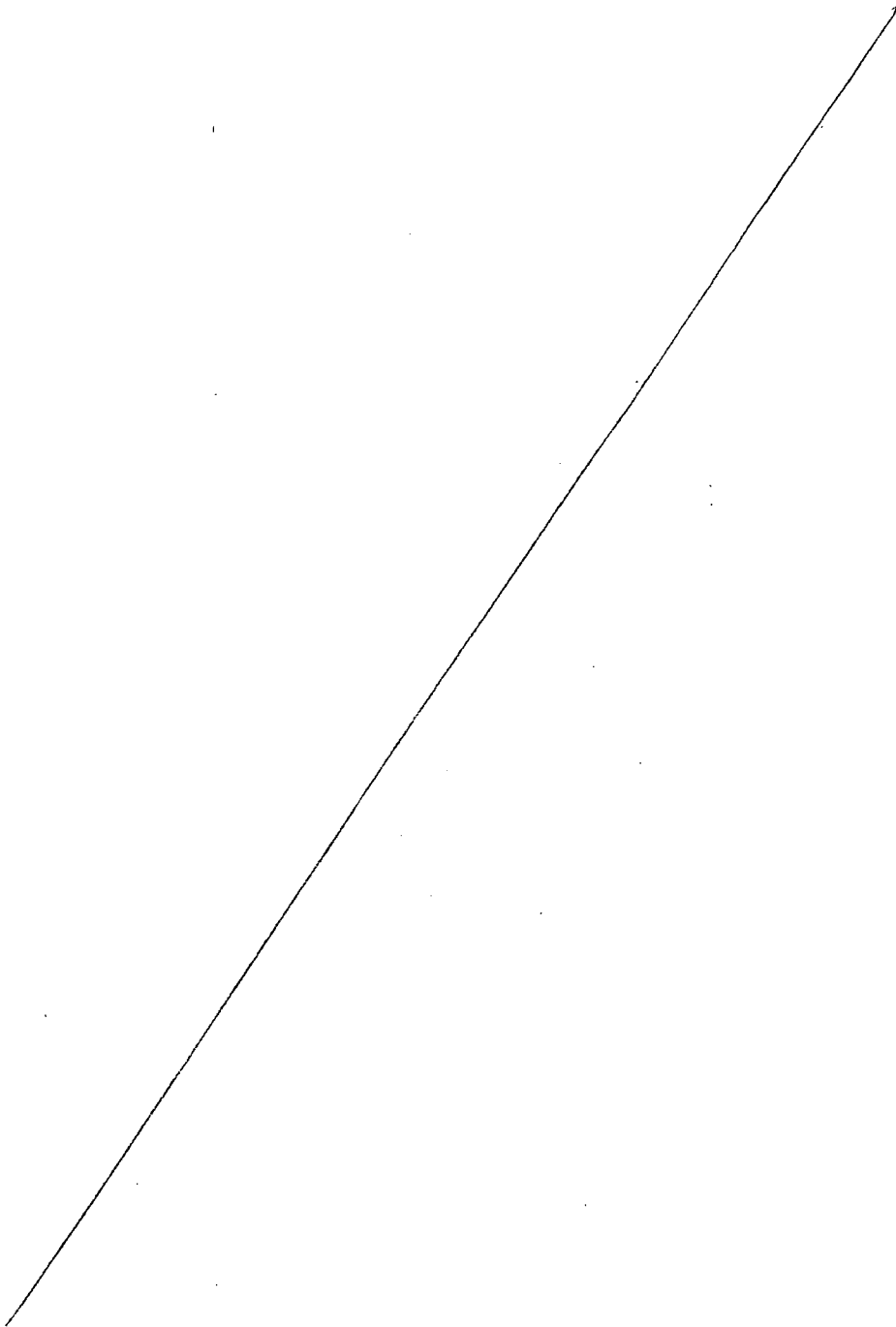
IT IS THE RESPONSIBILITY OF THE PARTIES ON RECORD FOR THIS CASE TO NOTIFY ANY WITNESSES AND TO BRING ADDITIONAL EVIDENCE FOR THE COURT TO CONSIDER.



JUDGE/CLERK OF COURT

Colleton County Magistrate
40 Klein Street
P O Box 1732
Walterboro, SC 29488
Phone: (843) 549-1140
Fax: (843) 549-9010

May 23, 2016





Colleton Common Pleas

Case Caption: Lynne Vanhouse VS Colleton County

Case Number: 2016CP1501413

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2017-03-22 10:33:46 page 6 of 6

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
 (Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

[A large handwritten 'X' is drawn across the center of the page.]

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP- 15-01413

Lynne Vanhouse

Colleton County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Paige Chamberlain Ornduff

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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **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: Upon appeal from Magistrate's Court, Plaintiff's appeal is respectfully denied and the Magistrate's findings are hereby affirmed as no error of law exists. Additionally, Plaintiff's Motion for Reversal of All Orders is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Colleton
3
4 Case No.: 2016CP1501413
5 Lynne Van House,
6 Appellant,
7 vs.
8 Colleton County,
9 Respondent.

10

11

12 MAGISTRATE'S APPEAL HEARING TRANSCRIPT

13

14

15 March 17, 2017

16 Walterboro, South Carolina

17

18

19 BEFORE:

20 The Honorable Carmen Mullen

21

22

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APPEARANCES

REPRESENTING APPELLANT:

Lynne Van House, Pro Se

19897 August Highway

Round), SC 29474

843-835-8038

REPRESENTING RESPONDENT:

Sean Thornton, Esquire

Assistant Solicitor, 14th Circuit

PO Box 157

Walterboro, SC 29488

1 PROCEEDINGS

2 THE COURT: Okay. We have one last appeal, y'all.
3 The only thing that I have in front of me is a letter
4 from Judge Duffy stating that he needed more time.

5 MR. THORNTON: There is a 21-page Magistrate's
6 return, Your Honor, and a 42-page response from Ms. Van
7 House.

8 THE COURT: Then we are going to take a few
9 minutes. Everyone stand by, I need a moment to read
10 those. And while I am a quick read, I need to read
11 those.

12 (Brief recess.)

13 THE COURT: So, this is an appeal of Magistrate
14 Duffy's order enforcing the prior settlement agreement;
15 is that correct?

16 MR. THORNTON: Yes, Your Honor.

17 THE COURT: Okay, all right. Okay, yes, ma'am,
18 this is your motion.

19 MS. VAN HOUSE: Okay. Well, first of all, I'm
20 still -- I ask if I might be able to give you my
21 reasoning for having the motion for reversal of the
22 orders go first?

23 THE COURT: Sure, okay.

24 MS. VAN HOUSE: The -- it is relatively short,
25 this one. I sort of feel like David confronting

20:37:23 1 Goliath here (ck). Judge Duffy never served me his
2 answer at all even though I am the appellant in this
3 case. South Carolina Code Title 1882 states,
4 Respondent shall serve one copy of his brief on all
5 parties to the appeal and file with the clerk of the
6 appellate court one copy of the brief with proof of
7 service.

8 THE COURT: Judge Duffy is not the Respondent. He
9 just files a return. The Respondent would be the
10 opposing party.

11 MS. VAN HOUSE: Well, he didn't do it either.
12 Nobody ever gave me an answer.

13 THE COURT: Okay.

14 MS. VAN HOUSE: Although I did call and ask the
15 clerk when I could expect a copy of the answer because
16 I hadn't received anything. I had gotten a letter
17 indicating that Judge Duffy had requested an extension
18 of time. I never got anything else.

19 THE COURT: Okay.

20 MS. VAN HOUSE: I didn't get any indication that
21 the extension had been actually allowed. The only
22 thing I got when I called was an indication that I
23 could probably get a copy of his answer at the hearing
24 if I attended. That was all that was said.

25 THE COURT: Okay.

20:37:23 1

MS. VAN HOUSE: And lastly, the answer --

2

Ms. White actually broke out a sticky note and stuck it

3

on the front that said that I brought return and filed

4

to common plea on 11-10-16 and gave it to Polly;

5

however, the date stamp says November 16th. And Judge

6

Buckner gave magistrate court until the 15th to file

7

it. So, it is actually a day late.

8

Between all of it, it just simply was a -- it

9

would have left me, when I came in for the hearing,

10

with absolutely no ability to answer him in any way. I

11

didn't know what he said. I had never heard what he

12

said. I hadn't gotten a copy of it. I didn't know if

13

it had ever been filed. I didn't know anything.

14

I just showed up. And if it hadn't been for the

15

fact that Judge Buckner had a funeral that afternoon I

16

would have been really up a creek, because I didn't

17

know. And it was my appeal.

18

THE COURT: Okay. Just so we are clear, Ms. Van

19

House, I just want you to know that the Court is not

20

required to provide a copy of the Court's return or the

21

Magistrate's return. they are just supposed to give you

22

notice that one has been filed.

23

MS. VAN HOUSE: Okay, he didn't do that either.

24

That is my point. They gave me nothing. I showed up

25

here with nothing.

20:37:23 1 The other question would be -- well, I ask for the
2 reversal of his orders because, obviously, if I had had
3 to try to make my case on that day I would have had
4 absolutely no idea what he said. However, I asked for
5 the reversal simply because, again, according to the --
6 let me see.

7 THE COURT: Let me ask you, did you have a copy of
8 the Court's order in the case?

9 MS. VAN HOUSE: The Court's order from the
10 magistrate court?

11 THE COURT: Yes.

12 MS. VAN HOUSE: The original order that I appealed
13 you mean?

14 THE COURT: Yes.

15 MS. VAN HOUSE: Yes, I do.

16 THE COURT: Okay. I just wanted to make sure that
17 you had a copy of it. I just wanted to make sure.
18 Okay. Ms. Van House, I just need to know what error of
19 law the Magistrate made. Not procedurally, but what
20 error of law in his findings of fact or where he
21 misinterpreted the law or misapplied the law in some
22 way.

23 MS. VAN HOUSE: Basically, if I can have just a
24 second. I thought I had it in order.

25 What happened was, after all of my ten hours of

20:37:23 1 testimony defending my right to have never been invaded
2 in the first place, Judge Duffy asked Mr. Bennett to
3 write out an order, and the order was supposed to
4 indicate that my original attorney --

5 THE COURT: Mr. Sapp.

6 MS. VAN HOUSE: -- who I fired. Yes.

7 THE COURT: Okay, Mr. Sapp.

8 MS. VAN HOUSE: That he had been hired as a
9 general attorney, not as a -- not as a special
10 attorney. Mr. Bennett wrote out the order indicating
11 four South Carolina Supreme Court laws which were
12 circularly reasoned. In other words, for each one the
13 other three were listed as additional responses. And
14 all four of them kind of got wound in there. And
15 actually none of them had anything specific to do with
16 whether Mr. Sapp was a general or a special attorney.

17 In addition, one of those was even listed as not
18 being able to be used as a citation. But I went
19 ahead -- I asked Judge Duffy if I could write an
20 alternate opinion for his consideration. And I did. I
21 refuted all the ones that Mr. Bennett wrote out.

22 THE COURT: Okay.

23 MS. VAN HOUSE: I had 11 citations to the contrary
24 indicating that Mr. Sapp was indeed hired as a special
25 attorney to get my dogs back. That was the only reason

20:37:23 1 he was hired. And I was all prepared to go in there.
2 I gave it to Judge Duffy on a Friday. Come Monday I
3 was supposed to be going in to, I thought, to find out
4 what was happening and what he had done over the
5 weekend, apparently, was totally disregard the
6 ~~reputation~~ ^{resistation} of everything that I had written out and he
7 just simply signed the order as Mr. Bennett had written
8 it and didn't give me the option to ask why or
9 anything. He just signed it. And he says, You are
10 done. And --

11 THE COURT: Let me ask you. How many days -- how
12 many days of testimony did Judge Duffy take? The way
13 that it reads --

14 MS. VAN HOUSE: Six or seven. I don't know.

15 THE COURT: That is what it looks like to me too.
16 It looks like this was continuing, and then you would
17 kind of go off. I saw the first time you were in court
18 your son fell ill and something had happened.

19 MS. VAN HOUSE: Right.

20 THE COURT: So, they had to take a break because
21 EMS came and of course you had to attend to your son.
22 So, this seems to be over long periods where he was
23 listening to a lot of testimony.

24 Well, let me do this.  Mr. Thornton Interrupted:
25 So, I think that I understand what you are saying is that you both

20:37:23 1 continued further at her request to allow more time for
2 her to respond because Judge Buckner was going to limit
3 everyone to 15 minutes.

Mr. Thornton Interrupted -

4 And in between those times I offered to give her,
5 for free, that I would go photocopy my copy of the
6 return, which she declined. So, she has been given and
7 I believe she has gotten at least some of the return.

8 I noticed in her forty -- and I apologize to the
9 Court, it is 47 pages, not 42, that she talks about she
10 was missing Pages 5 through 8. I offered to give her,
11 for free, a copy of the one I had and she indicated
12 that she did not wish to have it from me.

13 As to what we are here about, for the appeal
14 itself, Judge, I still haven't heard an error of law.
15 As Your Honor knows, it's very routine for a Judge to
16 ask for orders from both parties and pick either one or
17 the other, or a combination of two, or neither and do
18 one completely -- just completely within the Judge's
19 discretion.

20 As you can see from the return, and even from some
21 of the materials submitted by the defendant in this
22 case, Judge Duffy went, frankly, well over and above
23 what normally would occur in magistrate's court to
24 allow her the opportunity to be heard. It was
25 continued several times. She was allowed, as she

20:37:23 1 submitted proposed orders and Judge Duffy just signed
2 Mr. Bennett's order and not your order, and he signed
3 it just as it was presented; correct? I mean, is that

4 --> *End of Mr. Thornton's Interruption* >

5 MS. VAN HOUSE: Basically, I felt that he hadn't
6 taken my citations or anything into consideration more
7 than anything.

8 THE COURT: Okay. He didn't consider the law that
9 you presented to him; is that what you are saying?

10 MS. VAN HOUSE: Pardon?

11 THE COURT: He didn't consider the law that you
12 had presented to him?

13 MS. VAN HOUSE: Precisely.

14 THE COURT: Okay. All right, I am going to go
15 ahead, and Mr. Thornton, if you will respond at this
16 time.

17 MR. THORNTON: Yes, Your Honor. Your Honor, I
18 will be brief. As to the first issue, I don't think
19 that it is a proper motion. As Your Honor has already
20 correctly pointed out, we are not -- the Court is not
21 required to give her a copy. For the record I would
22 point out to the court that her complaint centers
23 around, if she was made to go forward in front of Judge
24 Buckner before at her -- and we didn't get to it at
25 that time. And then at a subsequent time it was

20:37:23 1 indicated, six or seven days. I'm not positive about
2 that, but I know that it was on several occasions, the
3 testimony took several hours, she introduced several
4 exhibits, I think that it was close to 30. Some of
5 them, only the last few, I think, were objected to by
6 Mr. Bennett who was in my stead representing the County.

7 THE COURT: Right.

8 MR. THORNTON: The long and the short of it is,
9 Judge, she was given an opportunity to be heard, she
10 had an attorney, Mr. Sapp, who she never argued
11 represented her. He entered into with the County,
12 which the County relied on to their detriment and
13 waived a bunch of fees and dismissed magistrate level
14 cases and, you know, adopted the dogs out. And we
15 relied on it.

16 And he was still representing her, because the
17 emails and agreement was done June 3rd. He wasn't
18 fired until, I want to say, July 12th. But I know that
19 he -- that she didn't send an email or a letter to the
20 Court saying that she had an issue with it until the
21 14th. So, it may have been the 21st of June, I
22 apologize, but well after everything had already been
23 agreed to and done.

24 So, even taking our motion to enforce the
25 judgment, Judge Duffy still allowed her to go ahead and

20:37:23 1 get in everything about all of the other matters that
2 she wanted to. He took it all and he made his
3 decision. So, there is no, that I have seen or seen
4 argued, an error of law that he made in this.

5 And the only other thing, Judge, that I will tell
6 you, and I probably should have done this at the outset
7 and I apologize. There are still general session's
8 cases pending dealing with this issue. She's been
9 very -- you know, assured me that she wants to go
10 forward and, you know, but I just wanted the Court to
11 know that.

12 THE COURT: Okay.

13 MR. THORNTON: Obviously I would not plan on using
14 anything that she says here against her, but I just
15 wanted to tell the Court that. And the only other
16 thing, Judge, is I was a little bit confused, frankly,
17 she helped me understand why this is coming up. In
18 other words, by the time all of this got heard the dogs
19 had been adopted out. The dogs are gone.

20 Some had to be destroyed. Some were adopted out.
21 I would point you to Dr. Laurie Campbell's testimony,
22 Pages 18 through 20, as to what the conditions were.

23 THE COURT: I saw it.

24 MR. THORNTON: Obviously it is not stipulated to;
25 she disputes that. But that was the testimony at the

20:37:23 1 magistrate's court. I was a little bit confused as to
2 why she was appealing, because there are no dogs to get
3 back. And she assisted me and let me know that her
4 hope was if she got this ruling, for whatever reason,
5 reversed, that that would then clear her to sue the
6 County for several hundred thousand dollars for the
7 value of these dogs' bloodlines.

8 The problem I see with it, Judge, is at the very
9 core of this, it appears she, based on what she says,
10 she has a problem with Mr. Sapp, her attorney. She
11 ought to take that up with Mr. Sapp. We relied on it
12 because he represented her at the time. So, and I
13 apologize. I probably went longer than I should have.
14 Thank you, Your Honor.

15 THE COURT: That is all right. Okay.

16 MS. VAN HOUSE: May I reply, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. VAN HOUSE: First of all, Mr. Sapp volunteered
19 his services, but actually I wound up paying him
20 anyway. The Tuesday morning after the dogs were
21 already seized, my whole point was the simple fact that
22 the County had absolutely no right to invade my privacy
23 or commit criminal trespass or any of the rest of the
24 things that they did to garner enough information to
25 decide to try to get a search warrant.

20:37:24 1 It is astounding to me that even up to this point,
2 although I have done three motions for discovery, they
3 have never given me anything, including the name of the
4 original so-called complainant. I don't know who this
5 person is. I don't know what they thought -- what they
6 thought allowed them to commit criminal trespass and
7 invade my privacy and walk in among my animals and make
8 their own decision as to what they thought the
9 condition of the animals were, which prompted
10 Mr. McNeal to then commit all of those same, criminal
11 trespass and invasions of privacy and march down the
12 middle of my thousand-foot-long property and count dogs
13 without my being there.

14 They had already, according to the -- what my
15 statement was in magistrate court, they had already
16 surveilled me for a couple of weeks in advance before
17 he made the date to come in and swoop in and take
18 pictures and do all of this stuff and then confront me.

19 I knew that they were surveilling me. I have been
20 a hunter and a trapper all of my life. I just couldn't
21 get anybody to stop and ask them why. But once they
22 had determined that I normally left a little bit before
23 2 to go and medicate my son, they waited. and quite
24 literally when I got outside my gate and shut it behind
25 me and went to turn, one of the vehicles that had been

20:37:24 1 surveilling me literally skidded into the ditch to
2 stop, apparently to determine which way I was going to
3 turn out of my driveway. I got picked up from Sidney's
4 Road and put in behind and followed all the way to my
5 son's apartment.

6 And the vehicle slowed down and sat in the street
7 and watched me until I got out with the medicine and so
8 forth, locked my car and started towards his apartment
9 in order to apparently make sure that I was going to be
10 there for a couple of hours like I normally was, and
11 then slowly drove on past.

12 When I left his apartment I turned on to Sidney's
13 Road at the forks and what appeared to be the same
14 vehicle that had followed me in swooped right in behind
15 me, followed me all the way out to almost ^{Gruber's} ~~Groover's~~
16 Crossroads and then hurried around me, and cut in real
17 close, went through the stop light and swooped down the
18 road. And, of course, when I got to the stop sign I
19 turned and looked and the whole sky was lit up with
20 blue lights.

21 They had me blocked. I turned into the ditch and
22 I got out and walked over. The problem I have with
23 this was, first of all, very clearly they planned to
24 invade my privacy and determined very carefully when I
25 wasn't going to be there, because they were, obviously,

20:37:24. 1 pretty sure that if they asked I would say no.

2 Mr. McNeal at one point under oath --

3 MR. THORNTON: Your Honor, I would object. Only
4 because I think that we are beyond the scope of what we
5 are here for.

6 THE COURT: Okay, I understand. Go ahead. You
7 can continue, ma'am.

8 MS. VAN HOUSE: Okay. Going back to Mr. Sapp in
9 that case. Mr. Sapp was hired on a Tuesday after my
10 dogs were gone already; after they had been seized.
11 The order that Judge Duffy signed told me I couldn't
12 have any -- any way of getting any restitution or
13 anything because he had given them away at what was
14 supposed to have been my volition. However, the fact
15 of the matter is that at least five different people,
16 including I might add, Mr. Thornton, had my phone
17 number and email address. And I was the one who had
18 the most to lose out of all of this.

19 And even though Judge Duffy's order said that they
20 were all to be held until the July hearing, and that is
21 what Mr. Sapp claimed he had gotten for me, was a
22 continuance. He didn't. What he did, the order was
23 written May 31st and Mr. Sapp surrendered all of my
24 dogs to the County on June 1st. He didn't tell me he
25 had.

20:37:24

1 THE COURT: The problem Ms. Van House, is that it
2 sounds like, again, your disagreement is with your
3 attorney, Mr. Sapp, and his actions on your behalf.
4 The problem is that I don't see an error of law that
5 has been made. I mean, I'm here to determine whether
6 or not there's an error of law made by the Magistrate
7 in his determination. And he found that there was a
8 settlement agreement. I understand that you say that
9 your lawyer entered into this settlement agreement and
10 you don't agree to it, but the Court found in his
11 factual findings that there was an enforceable
12 settlement agreement.

13 I mean, you obviously can have the ability and the
14 right to file any kind of case or problem against
15 Mr. Sapp, if you would like. But that doesn't mean
16 that the Court, Judge Duffy, made an error of law.
17 That is where my concern is. And that is really the
18 only thing that I'm properly allowed to look at, is
19 whether or not the lower court made an error of law in
20 rendering their decision. That is the full power that
21 I have.

22 MS. VAN HOUSE: Okay. Again, my point was, Judge
23 Duffy also signed the original search warrant. He
24 signed it on what was supposed to have been a, quote,
25 ~~Emergency~~ ^{Emergency} manager basis. And this was done under the auspices of

20:37:24 1 an illegal, unwarranted search of my property that they
2 did on Friday.

3 THE COURT: Okay.

4 MS. VAN HOUSE: And it was signed on Monday on a
5 so-called ~~manager~~ ^{Emergency} basis; however, I asked Mr. McNeal in
6 some depth about who had complained, about what he
7 found the condition of the dogs to be and so on. And
8 even though I made it really clear that I didn't feel
9 that he had any right whatsoever to be at my property
10 in the first place. He said that he couldn't find
11 anything wrong. And yet, four days later, there's a
12 so-called ~~manager~~ ^{Emergency} search warrant.

13 I might also mention that the search warrants,
14 neither one of them were served at my correct address.
15 Or I should say, correct address for the dogs. I have
16 two separate addresses. One for what Coastal Co-op
17 calls dog ~~pins~~ ^{Pens}, and one for my trailer.

18 The dogs were seized, all but one puppy that I was
19 bottle feeding in the house. all of the dogs were
20 seized from the dog ~~pin~~ ^{pen} address and that wasn't the one
21 on either search warrant. I have a mailbox right out
22 front that has all four of my --

23 THE COURT: Addresses?

24 MS. VAN HOUSE: -- addresses on it. And he never
25 questioned it. And he stood at the truck and looked at

20:37:24 1 the mailbox and never, apparently, wondered why I would
2 have four addresses on my mailbox.

3 THE COURT: Ms. Van House, let me do this. I
4 think that I understand your issue. You are
5 challenging the original search warrant and how they
6 originally trespassed. Let me review the search
7 warrants and have a look at them. In your original
8 hearing with Judge Duffy, did you challenge whether
9 there was probable cause for the search warrants?

10 MS. VAN HOUSE: Absolutely.

11 MR. THORNTON: No, ma'am, that is actually not
12 true. She personally may have. Her attorney came in
13 and waived probable cause to enter into the agreement,
14 which is what was done on the civil end, and is
15 enforced. So, she has absolutely, personally, done
16 that. But that is well after everything occurred.

17 THE COURT: Okay.

18 MS. VAN HOUSE: And the only reason that that
19 original hearing took place without my attendance, I
20 sat in Mr. Sapp's office with my little box of
21 information and he said, Oh, that is nothing. I just
22 don't want you to have to put up with all of these
23 screaming women and all of this stuff. All of the T.V.
24 cameras. You stay here and I'll go down and handle it
25 for you. And I said, Do you understand that I want my

20:37:24 1 dogs back? They had no right to take them in the first
2 place. He said, Absolutely, I understand that. And I
3 handed him a three or four-page document stating that
4 this was my, how did I phrase it, I think that it was
5 my -- my reasoning for keeping my dogs or something of
6 that nature.

7 But anyway, I said that I want you to present this
8 to Judge Duffy and he said, I will. Well, he didn't.
9 He walked down there and did the precise opposite. And
10 I didn't even know what he said until I got the thumb
11 drive and listened to what he said. But it was ~~the~~^{my}
12 intention to go down there. And he kept saying, No,
13 no, no, it's not necessary, I don't want to put you
14 through this. And I sat in his office the whole time,
15 unwillingly, because he obviously knew that he wasn't
16 going to do what I asked him to do.

17 THE COURT: All right. Again, it seems to me that
18 your biggest complaint is against Mr. Sapp and his
19 entering into a settlement agreement on his behalf.

20 MS. VAN HOUSE: No, no, my original complaint is
21 against the illegal search warrant in the first place.

22 THE COURT: Again. I understand. All I can do is
23 look at errors of the law made and see whether Judge
24 Duffy, Magistrate Duffy, did anything inappropriate
25 under the law enforcement. I'll take it under

20:37:24 1 advisement. I want to look at the search warrant,
2 although she waived it through her attorney. Let me
3 look, again, through everything so -- because I was
4 just able to get your and Magistrate Duffy's, his
5 return and your reply. Let me go through the entire
6 thing and then I'll issue an order. Thank you. I
7 appreciate it.

8 (Whereupon, the hearing concluded.)
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(Transcript of
Common Pleas
Hearing)

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20:37:24

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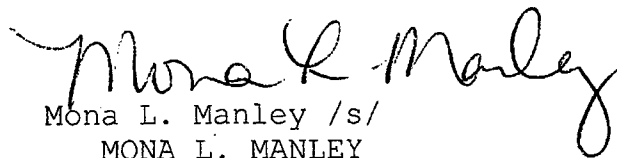
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of August, 2017.



Mona L. Manley /s/

MONA L. MANLEY

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@scccourts.org

FROM: Lynne Van House
19897 Augusta Hwy.
Round O, SC 29474

December 23, 2016

TO: Honorable Perry M. Buckner
Judge, 14th Judicial Circuit
P.O. Box 620
Walterboro, SC 29488

EXTENSION REQUEST
— NO NOTIFICATION

RE: Status of Plaintiff's Reply to Answer
Case # 2016-CP-15-1413

Dear Judge Buckner;

I am writing regarding the Appeal I've made to the Magistrate's Order In Re: Seizure of 68 dogs and 5 cats from myself, Lynne Van House—Case # 0669. I received a copy of the request for an extension for the submission of his Answer to my Appeal to your Court, Case # notated above.

I received nothing else from Judge Duffie—but had to assume that the extension was granted, although I never received any notification of this from his office.

I next received a notice of a Hearing date in your Court for November 28, 2016. I arrived timely at the Hearing, but had never received a copy of Judge Duffie's Answer from his office, so I had no idea what he had said.

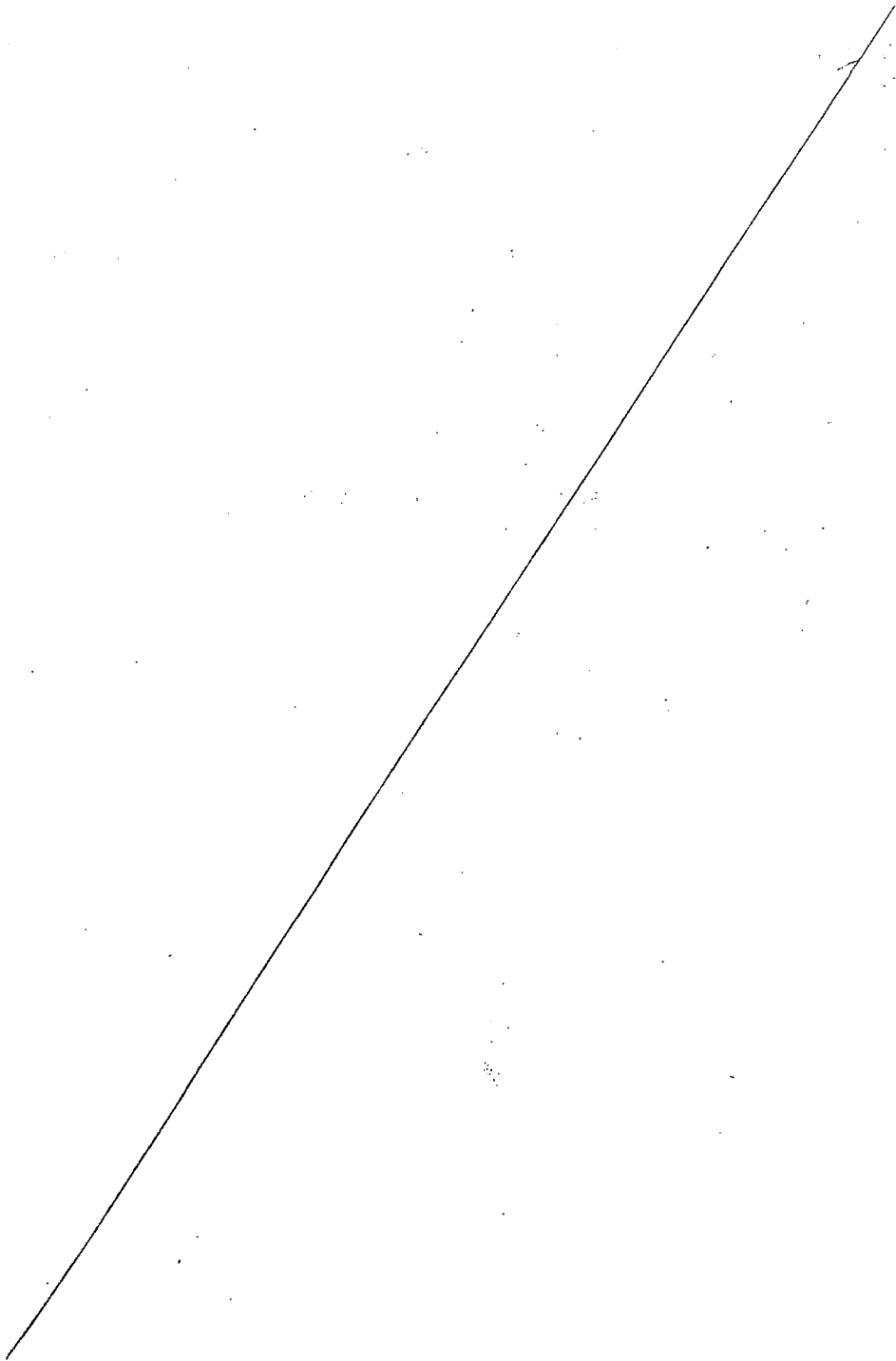
Because of your required attendance at the funeral that day, my Hearing was cancelled and is due to be re-scheduled because of time constraints on that day.

I went to your Clerk's office that day and filed a Motion to Reverse Judge Duffie's Orders because of failure to serve his Answer on me. However, in the possible event that you do not Order that Motion to Reverse—I felt that I needed to Reply to his Answer as well.

I therefore went to your Clerk's office on December 8, 2016 and requested and paid for the only copy of Judge Duffie's Answer I have ever seen. I have been working on my Reply ever since, but as it is certainly just as time-consuming and complicated as his Answer, I would ask for an extension of time to file my Reply to January 15, inasmuch as the various holidays and office closures intervene as well. I thank the Court for your patience and would ask for your consideration to allow me this extension of time to January 15.

Sincerely,

Lynne Van House,
Plaintiff



Inasmuch as It appears that I may be forced to defend myself in Common Pleas Court based on my Appeals of the Magistrate Court Orders, and since I have yet to see virtually ANY of the County's evidence against me: I do hereby make demand for the consolidation and release to me of the following information held by the County and/or it's representatives in this matter:

- 1) ALL pictures, videos, audio recordings, written communications of all sorts and kinds, and comments in any form by any and all employees or volunteers of any and all of the organizations involved with the investigation, seizing, processing, and/or disposal of all personal property in any form removed from my real property on any date during the buildup, "raids", and followup entries onto my real property.
- 2) ALL transcripts and/or audio or video recordings of all interviews, interrogations, and conversations during the several contacts of myself and various members of the County forces, first on Friday afternoon at my gate after my return from town—especially including Officers Taylor, Spears, and McNeil—but also those of all Officers present during my confrontation with Sheriff Strickland on Monday afternoon at the rear part of my real property for which I received no identification.
- 3) ALL conclusive evidence received, written, and/or recorded from examination of any or all of the animals and/or other personal property examined by any/all connections of any/all of the Animal Shelters from several Counties that are involved with this case—particularly including final disposal and final comments on all the animals seized AND any actually born and/or reared in the interim AND those offspring aborted during that time by the spaying of their mother--individually by number assigned by the County—with dates of the disposal and condition of the property at that time.
- 4) The full name of the original complainant in this case, in fulfillment of my Constitutional right to "face" my accuser; along with the actual

date of the original complaint. This information must be obtained by access to whatever digital "footprint" that was left from the complaint—regardless of it's nature—and made available to me.

5) All other materials that may have an impact on my defense OR that may be used against me.

This discovery demand is made with the reasonable expectation that since an initial Court Pre-hearing in General Sessions Court is scheduled for September 13, 2016—Defendant will be afforded sufficient time to read over and assess this information before that Hearing appearance or any appearance in Common Pleas Court.

In addition, be it known by all parties involved that Defendant is requesting a Jury trial, and pleading Not Guilty to all charges; whether or not she will be represented by Counsel at that time.

Lynne Van House

9-19-16

Lynne Van House

Date:

19897 Augusta Hwy
Round O, SC 29474
843-835-8038

370-379
DISCOVERY

Inasmuch as It appears that I will be forced to defend myself in General Sessions Court against criminal charges, and since I have yet to see virtually ANY of the County's evidence against me: I do hereby make demands for the consolidation and release to me of the following information held by the County in this matter:

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1) ALL pictures, videos, audio recordings, written communications of all sorts, and comments in any form by any and all employees or volunteers of any and all of the organizations involved with the investigation, seizing, processing, and/or disposal of all personal property in any form removed from my real property on any date during this buildup, "raid", and followup entries of my real property.

2) ALL transcripts and recordings of all interviews, interrogations, and conversations during the several contacts of myself and various members of the County forces—especially including Officers Taylor, Spears, and McNeil—but also those of all Officers present during my confrontation with Sheriff Strickland at the rear part of my real property for which I received no identification.

3) ALL conclusive evidence received, written, and/or recorded from examination of any or all of the animals and/or other personal property examined by any/all connections of any/all of the Animal Shelters from several Counties that are involved with this case—particularly including final disposal and final comments on all the animals seized and any actually born and/or reared in the interim and those offspring aborted during that time--individually by number assigned by the County—with dates of the disposal and condition of the property at that time.

This Discovery Demand is made on August 3, 2016—with the reasonable expectation that since initial Court appearance is scheduled for August 19, 2016—Defendant will be afforded sufficient time to read over and assess this information before the Court appearance. In addition, be it known by all parties involved that Defendant is requesting a Jury trial,

and pleading Not Guilty to all charges; whether or not she will be represented by Counsel at that time.

Lynne Van House

Lynne L. Van House, Defendant,

August 3, 2016

* I also require the full name of the original Complainant in this case, in fulfillment of my Constitutional right to "face" my accuser; and the actual date of such complaint. This information to be obtained by access to whatever digital "footprint" required to obtain it and make it available to me.

WTH

TO: Judge Bert Duffie
Magistrate Court
Walterboro, SC 29488

FROM: Lynne Van House
843-835-8038

<6/14/16>

(Taken as
Motion FOR
Hearing)

Your Honor,

I sent Ben Sapp down in my stead to converse with you about the way my Constitutional Rights were totally devastated during the 3 "search and seizures" in which I lost 55 years of my life's work with my particular bloodlines. This was the day of the "seizure hearing", and he advised me to stay away and let him handle it—because of the media furor. I have also discovered that they have come back and further tossed my property since then several times, including going back in my dwelling at least twice.

Mr. Sapp assured me that he had went over the 7.5 page chronological statement of what happened during those searches; but when I was told that you declared it a LEGAL search, I almost couldn't believe it. I immediately asked Mr. Sapp to try to keep particular ones of my property (17 of them) from being turned over to allow me to retain most of my old genetically sound bloodlines, as well as to appeal your decision—based on my Constitutional rights having been violated—but he told me they were ALL "already gone", without my agreement, or even my actual understanding of what he'd done. He also assured me that doing this would "keep me out of jail"—but of course, it didn't—and I was arrested and served with 10 criminal warrants the NEXT day.

So, I continued to insist on appealing until he sent me a letter which I received Friday in which he stated that he had turned them all over to the Colleton Animal Control people the day of the hearing—to avoid the huge Vet bills that had accrued in Hilton Head...he said he felt it was in my best interest. I was devastated. 55 years of my life was gone in just a few hours—without warning, hearing, or offer to work with me, ALL ILLEGALLY, for many reasons including that I've been Grandfathered as a kennel there for 23 years. I understand that this letter is very unconventional—but I doubt that Mr. Sapp is actually representing me anymore... I suspect that I am actually representing myself at this point, because I had requested that Mr. Sapp call and speak with a person whom I know that is a Constitutional expert in relation to human rights, and animal rights. He is not an attorney, but has taught and lectured all over the country about the Constitution and the many Supreme Court decisions regarding seizing livestock/personal property for resale by animal shelters.

Mr. Sapp called him Friday AM—Mr. Cozad told him about a citizen's 1st Amendment rights regarding animals being "personal property"—supported by MANY Supreme Court decisions. A person's personal property is available for use by the owner—be it a cow, chickens, dogs, cars, tools, or whatever. Anyone's moral objection to how you use your personal property is not a basis for keeping the owner from using his property in any way he sees fit. In addition, one may not steal a person's personal property for resale to someone else—which is what was done to me by Animal Control.

At that point, Mr. Sapp told Mr. Cozad that he had NO intention of "fighting the Constitutional aspects" of my case. Mr. Cozad then asked Mr. Sapp if he had not, in fact, taken an oath to protect and defend the Constitution—and Mr. Sapp cut him short and hung up on him.

I have attached the 7.5 page chronological statement of how the several searches went down—and my 1st, 4th, 6th, 8th, 14th, and 15th Amendment rights were most certainly ALL badly violated. In addition, there is a great deal of evidence that Article 18, sections 241 and 242 of the US Code were also utilized to affect this seizing of my personal property for resale, and of course, I was Grandfathered as a kennel—and the new codes do not apply.

I would beg you to reconsider your decision that this seizure was legal—based on the Constitutional Amendments I have noted—and on any statements or answers I'll be glad to give you in any meeting you might choose to set up. I have a number of pics also—which show a different view of the "conditions" they are basing their seizures on. I contend It was unjust and illegal for anyone to even go on my place at all, and a special hearing and reversing your decision would at least wipe the slate cleaner, and maybe retrieve some of the other things they took (which were never listed anywhere)—even though I've certainly lost my bloodlines and life's work by now. What can I do now, and how will you help me?

1) On Friday, 5/13/2016 Animal Control Director Reginald McNeil arranged a coordinated response to investigate a complaint of "malnourished and diseased" animals that a complainant had discovered after trespassing onto the Plaintiff's clearly marked and posted private property. Mr. McNeil waited until the Plaintiff had left to medicate her son in Walterboro, then walked around the Plaintiff's gate, past 4 posted signs, and proceeded with 3 other officers to continue to walk into the Plaintiff's posted property past another dozen signs to the Plaintiff's main kenneling area. He and/or his officers then took pictures, counted animals, and generally invaded Plaintiff's entire 9 acre property. Plaintiff was accosted at the gate upon her return, and threatened, intimidated, and coerced in an effort to validate this initial unwarranted search to garner information to obtain a search warrant by inviting them on to the property. Plaintiff refused repeatedly, asked if they had found anything wrong with the animals, which was answered by no, and asked for the name of the complainant, and was told that it was known, but would not be given except in Court—and eventually the Officers left, with the indication that they would be back Monday.

2) Monday afternoon at about 2 PM—Plaintiff walked out of her trailer prepared to drive into Walterboro to her son again, and noticed an officer walking down her driveway toward the back of her property. When asked what she was doing there, Plaintiff was informed that she needed to "join them" with a wave to the back of the property. Even though Plaintiff was told that she could not go "down there", Plaintiff fell into step with the officer, and walked back down the driveway to the main kenneling area. Colleton County Sheriff Andy Strickland was standing among Plaintiff's whelping pens backed by 3 Sheriff's Deputies, including officers Spears and Taylor. Plaintiff was immediately screamed at while being spat on, subjected to vulgar F-bombs and various obscenities and taking the Lord's name in vain because Plaintiff quietly stated that she was not unlocking the gate without a warrant, and that the Officers were illegally on her property. The officers placed their hands on the butts of their guns, and Sheriff Strickland then further screamed vulgarities at her as to what she would do because "I am the law!". Plaintiff suddenly realized that she was in extreme danger, 800' from a public road—and surrounded by only the Sheriff and his deputies. Completely terrorized, and in fear of her life—Plaintiff then agreed to go open the gate since the "warrant was on it's way". She unlocked the gate, had to drive her vehicle into the woods alongside her driveway because vehicles blocked her gate. The vehicles numbered about 8 by then. Plaintiff went into her trailer.

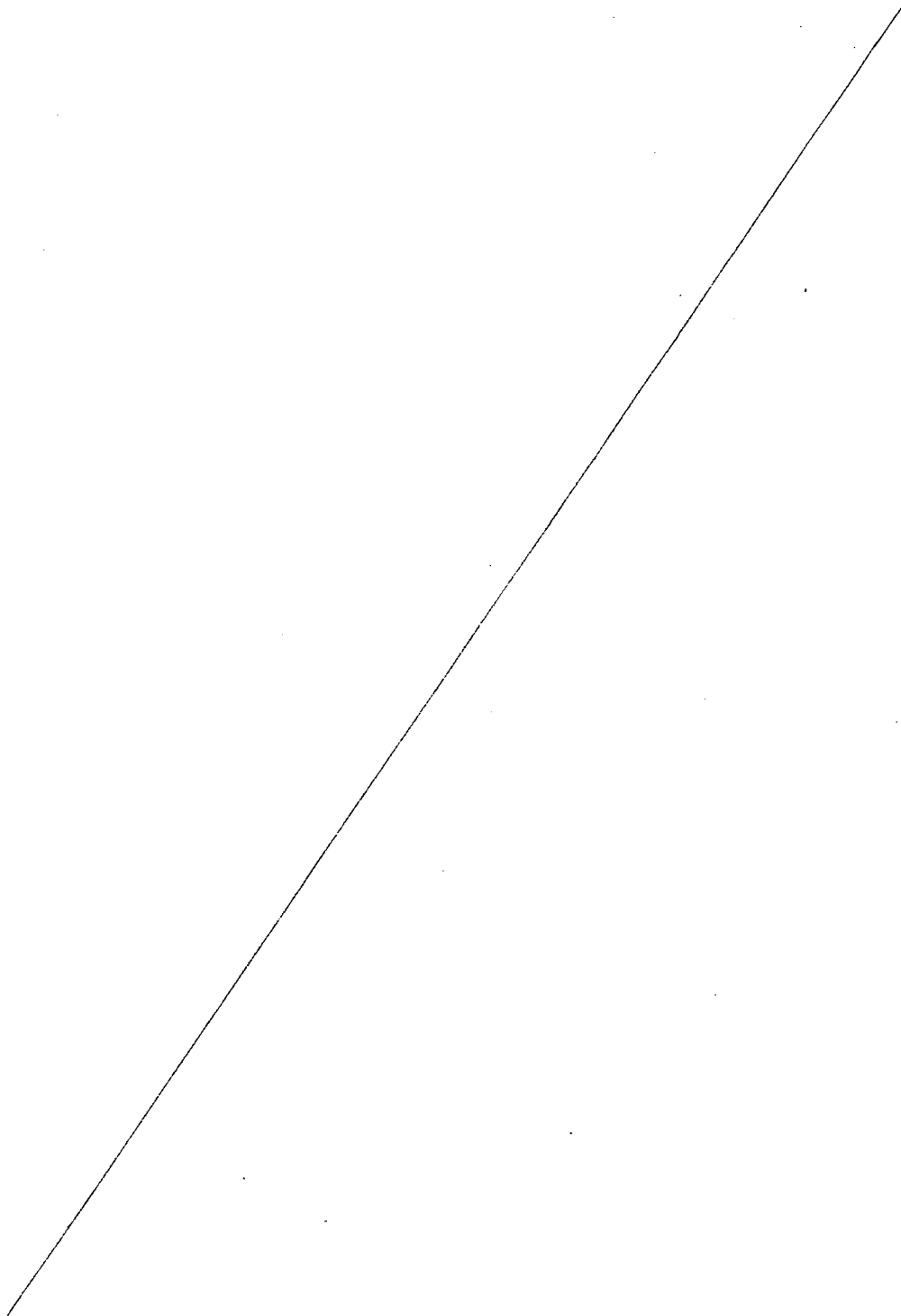
3) Plaintiff came back out at about 4 PM to try again to go medicate her son, and was confronted by 2 deputies who showed her the warrant. Plaintiff questioned the wording since it stated only a number of dogs to be seized, because they "weren't

being taken care of" and asked what they were allowed to look at or seize—and was told that they would go over and into every building on the property, and seize whatever they thought they might "need". Plaintiff was allowed to leave to go into town, and when she returned; the seizure operation was in full swing. Plaintiff was not allowed to go near any of the animals to comfort them or even identify them—and they screamed and cried, urinated and defecated on themselves, and bit in fear. Plaintiff's animals were breeding livestock, and were not, nor ever intended to be, pets. They were used to produce pets—and had never seen anybody but their owner, the Plaintiff. As Plaintiff sat on her back porch and watched and cried, officers laughed, danced, gleefully yelled about what beautiful dogs they had "found" and generally acted thrilled to be taking them. At one point Plaintiff observed two officers picking up one of her own carrying crates—and was told that the officers had "run out of resources" and were using the Plaintiff's as well. Six of Plaintiff's crates were taken and used, only one was returned.

4) At about 8 PM that Monday night, Plaintiff was given the "surrender sheets" of the animals seized. They were incomprehensible—having incorrect colors, wrong breeds, no gender listed or the wrong gender, and missing some of them as well. Plaintiff is still not certain which dog was given which number, with such sloppy identification. The other personal property seized, including the six crates, a

kennel-type heating pad, medications, and a box of jarred baby meat—was not listed.

5) On Wednesday May 18, 2016—they were back blocking Plaintiff's gate when she tried to drive out to medicate her son. This time there was included a couple of other vehicles which Plaintiff was informed were driven by "forensic veterinarians". The warrant this time claimed the right to go through all Plaintiff's buildings again, including her trailer, and to seize "animal bones and carcasses" which they had discovered in a burial pit near Plaintiff's main kenneling area during the prior search. Plaintiff was advised that this could take many hours and was told to go to her son's apartment in Walterboro and stay there. Plaintiff was advised by Officer Taylor that she would leave the seizure list on the seat of Plaintiff's truck, which was done.



Judge Duffie;

*Requested "Motion of
Discovery"*

I'm sure that this is entirely unconventional again—but I'm frantic that my rights are being trampled again, and I don't know how to attempt to fix it! I've tried to follow Court procedure; but having to fall into this later, after most of the things that I feel were important had already NOT been done by Mr. Sapp—put me at an extreme disadvantage.

Ever since Mr. Bennett got pulled in on this, I have been swimming in a sea of "you should have done this (whatever that happened to be at the time) at the time it was allowed—not now—now is too late"

Regardless of what your final Order will be, and who it will seem to vindicate here—the fact remains that MY rights to know of what I was accused, to know and confront the person who originally accused me, and to see all the evidence that the County has—both for and against me—have never come to light.

I was attempting to alleviate this by getting a mistrial—so that in a new trial—I could actually ask for these things at the "right" time—but of course, that didn't come about, because the ORIGINAL problem didn't appear to have been sufficient to call one. The original problem is that the raid should never have occurred in the FIRST place. That kind of jack boot, brown shirt, gestapo shock tactics, with the clear collusion of several large organizations, should never have been possible to arrange at all; should hold no possibility of occurring at all in this country—and certainly not in the county that I've called my home for 23 years. BUT IT DID.

I've had a good number of local people come up to me, and reassure me that they KNOW in their hearts that I'd never treat my dogs badly—even if they were kept differently than an untried shelter director thinks I should have kept them. Most of these had bought a puppy from me in the past. They personally KNOW how I felt about my dogs and the bloodlines I was maintaining.

I have, literally—never even seen but about a dozen of ALL the pictures that were ostensibly taken on my property—and cannot even disagree with any of the "evidence" because I don't know what it is. I CAN say that of the dozen pictures I was shown during my "interview" with Ms. Taylor—at least two of them were purely staged, having moved a dog from where she was to a pen that had been vacated for repairs—then taking the picture to incriminate or humiliate me as to the conditions, and picturing an obviously abandoned pen to appear to show conditions. I have also been talked to by a neighbor, who claims there was an actual slide show of many of those pictures I've never seen presented at a recent hunt club meeting, and attended by many hunters in the area—including a local Vet. In all cases, this neighbor said he could have justified the so-called "deplorable" surroundings in that they did the things that were required for the health and well-being of my stock—even if they weren't pretty, neat, or "sanitary".

Dogs will take every opportunity to roll in dead things, eat feces, dig in the dirt, and chase squirrels—because they are dogs, not the "children" that these animal shelter workers would choose to believe them to be. The animals were dry, had feed and water, warm in cold weather and cool in hot weather, and had a dark quiet place to retreat to if they needed to. The "proof of the pudding is in the eating" falls into play here—I had several 13 year old dogs there (90 years old in a human) and several small breed mommas who had pups—either delivered or aborted—that had 2,3,or 4 more pups than that breed normally have; healthy ones. That alone should have shown that I really DID have healthier

than normal dogs. When they were terrified, muzzled with ropes, given food they couldn't utilize, water that they didn't like, handled by strangers, with unnecessary shots and unneeded tests--and pills shoved down their throats--and then left for a couple of days in terror and stress before being "evaluated"--of course they would appear to be under the weather!

I have pictures, on the other hand, that show happy, fat, contented dogs in their natural surroundings as few as two days before they were seized. I did show Your Honor a couple of those during the questioning about the nylon rope muzzling of my Tricolor Sheltie.

It would seem, in short, that about half of the county has seen all this negative evidence, and virtually no one has seen my positive evidence except those opposing me during my defense presentation--and they would certainly not publicize any of it.

I would beg you to give me the direction I need to take to get copies of all of the county's evidence, in the spirit of assisting me as I do this pro se. Do I need to send you a motion for Discovery? I will do so today if you say the word, I have one prepared if you do.

Lynne Van House

STATE OF SOUTH CAROLINA

RECEIVED

JUL 25 2016

Colleton County
Sheriff's Office

MOTION TO RECONSIDER
DATED JUNE 1, 2016 AND
A MOTION FOR RETURN OF
SOME OF THE ANIMALS

VS

Lynne Lucille Vanhouse

Defendant

Case Number(s)/Charge(s): 0669 / Ordinance / Animal care and control

Permanent Address: Lynne Lucille Vanhouse, 19897 Augusta Hwy
Round O, SC 29474-4129

To: Reginald McNeil, Director, Colleton County Animal and Environment Control,
Dr. Lori Campbell, Dr. Mary Campbell, Michelle Reed, Valiant Animal Rescue
and Relief, Shelia Ellis, Port Royal Veterinary Hospital, Nancy Foard, Hilton Head Humane Association,
Anthony Montgomery, Beaufort County Animal Shelter, Frannie Gerthofer, Hilton Head Humane
Association, Jodi Taylor, Colleton County Sheriff Office: **(ALL PARTIES MUST BE PRESENT)**

Attorney of Record:

DL#: 007466355

DL State: SC

Hearing: July 27, 2016

Time: 9:00 A.M.

Presiding Judge: Elbert O. Duffie, III

Officer Name/Agency: Reginald McNeil / Colleton Animal and Environmental Officer

I make a Motion based on the following: PLEASE SEE ATTACHED

I understand that if I change addresses, it is MY responsibility to notify the Court in WRITING at:

Colleton County Magistrate

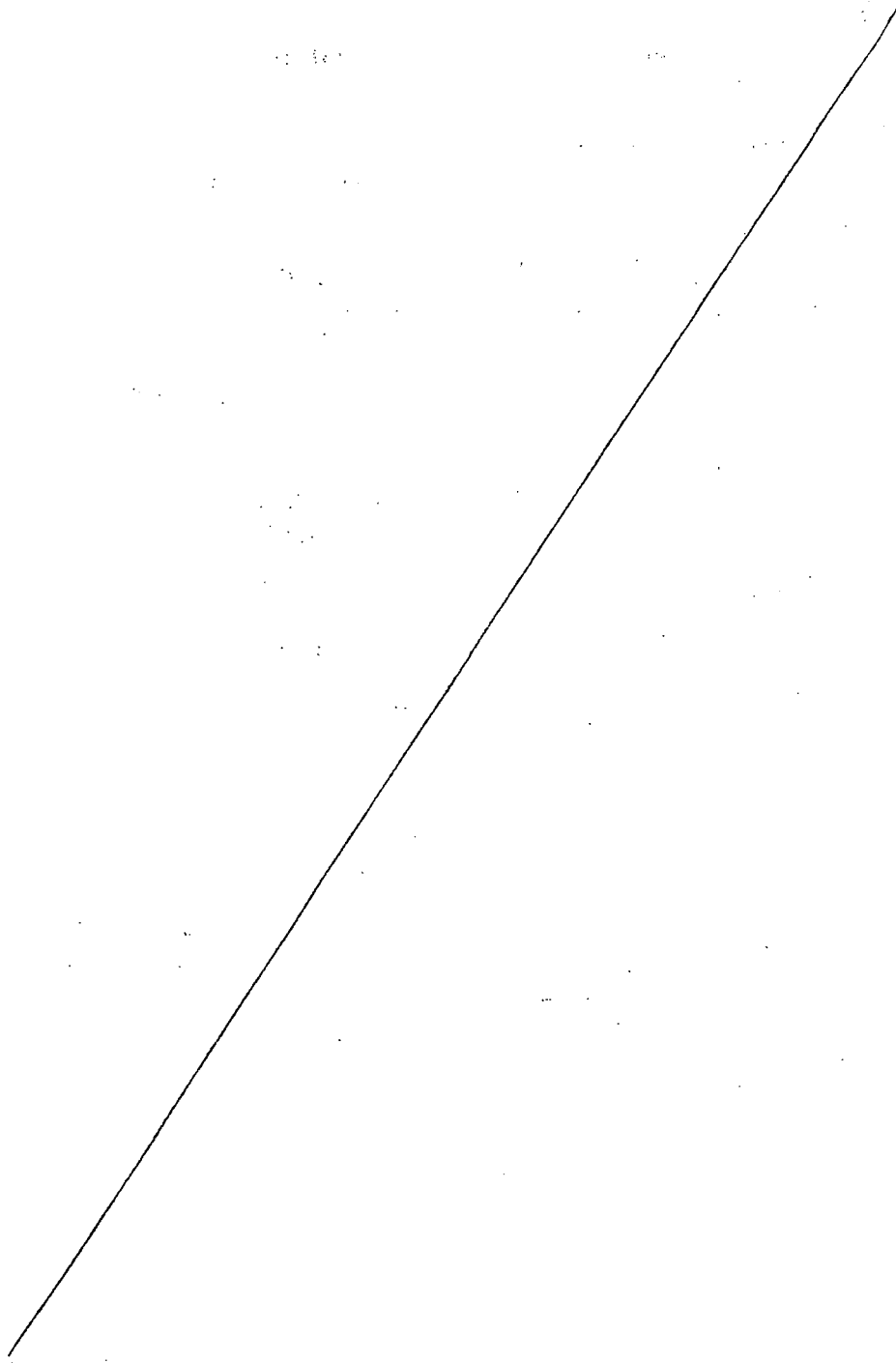
40 Klein Street

P O Box 1732

Walterboro, SC 29488

Date of Motion Hearing: Wednesday, July 27, 2016 Time: 9:00 A.M. Courtroom:
Colleton County Magistrate Court, 40 Klein Street, Walterboro, SC 29488

Officer Present: Yes / No Defendant Present: Yes / No Judge's Ruling: Granted / Denied
Comments:



Your Honor;

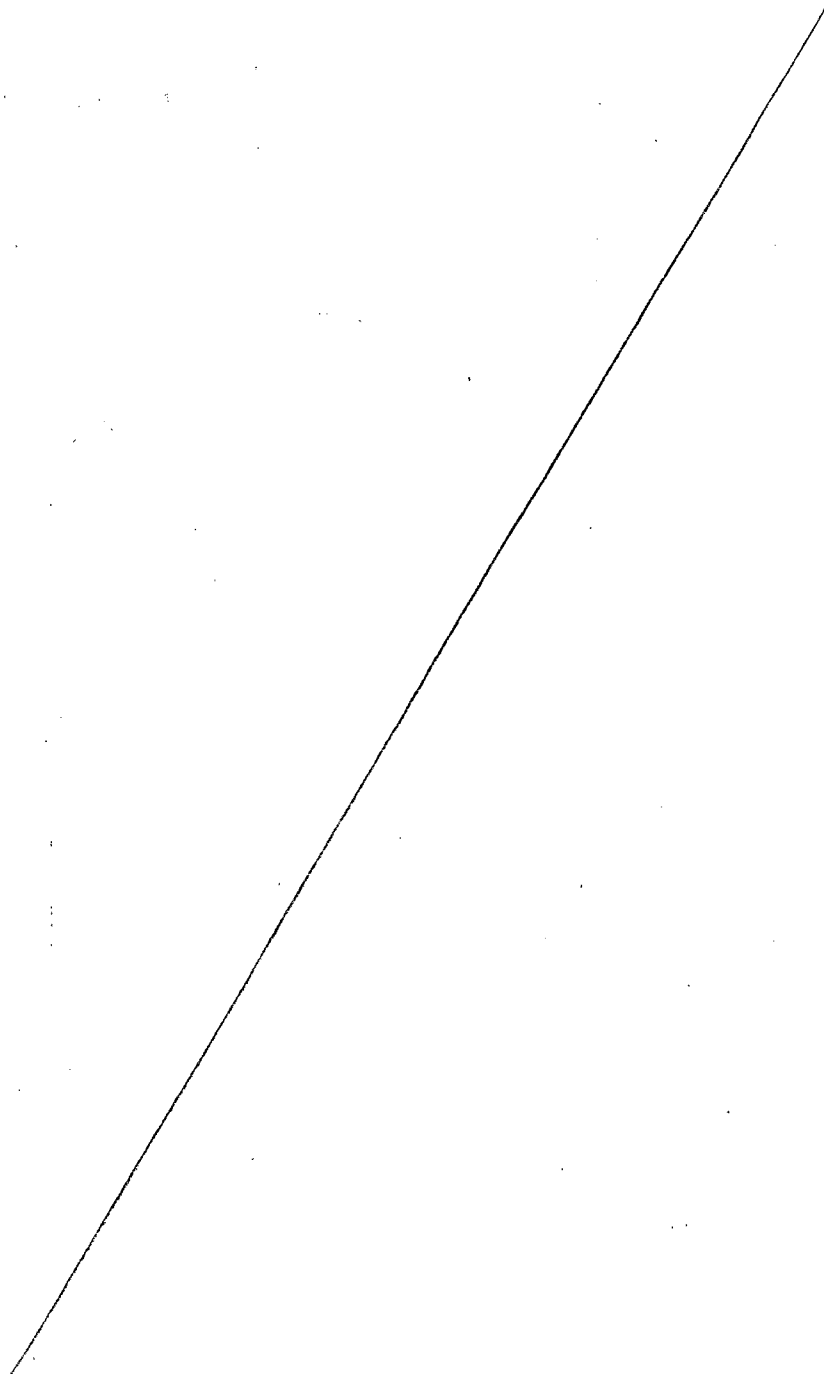
I'd like to make a Motion at this time:

I'd like to make a Motion that ALL of the evidence that was collected on my real property to be used against me be EXCLUDED by this Court for presentation in this case-under the Exclusionary Clause of my 4th Amendment rights.

I also ask the Court at this time to RESCIND your Honor's signature on the Search Warrant, as the evidence seized illegally in the unwarranted search was the sole basis for the specific search and seizure list; and if you had known that the evidence had been gained illegally—you would surely not have signed it.

- 1) The evidence was seized while committing illegal acts. Particularly Criminal Trespass, and possibly US Code of Laws sections #241 and 242 involving collusion under color of law. These acts of unwarranted search and seizure onto my Grandfathered, posted, and gated property are well documented on the Media, in my evidence for my defense, and by testimony in this courtroom that sustained no objection from the opposition. NONE of my personal property can be seen from ANYWHERE outside of the bounds of it, yet they even had a count of my dogs that was quite accurate.
- 2) In addition, the evidence seized to be used against me was seized from an address NOT listed on either of the Search Warrants; nor did either Warrant list many of the specific items that were seized, or were to be seized.

Mag. Ct.
Verbal Motion
6-21-16



Colleton County, SC

VS

Lynne Van House

#

COLLETON MAGISTRATE'S COURT
WALTERBORO, S.C. 29488

JUG 15 2016

RECEIVED

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Now comes the above-named Defendant, Lynne Van House acting on her own behalf, who hereby moves to suppress all evidence seized as a result of the warrantless and unreasonable searches of her 8.93 acres of real property known as 19897 Augusta Hwy and 19893 Augusta Hwy, Round O, SC 29474. The initial search was instigated as a result of a prior criminal act by an informer, and furthered by a number of criminal acts thereafter, based on improperly affirmed Search Warrants obtained with the evidence of the warrantless and illegal search—violating a number of the Defendant's guaranteed Constitutional rights.

FACTUAL BACKGROUND

At some time prior to May 13, 2016—a complainant made a statement to Animal Control Director McNeil that they had been “walking in the woods” and came upon “diseased and malnourished dogs”. Although Defendant's property has been Grandfathered as a kennel for 23 years, and none of her personal property including her animals can be seen from any point of the perimeter of her property nor from the air, and despite the fact that the entire property has been heavily posted against all trespassers for the past 23 years as well; Mr. McNeil apparently took it upon himself to accept the credentials of the complainant as an expert in animal condition and health and in the legality of their search—and decided to “take his own walk in the woods” claiming that he didn't need a warrant—per a press release (attached) to the media just after his seizure of animals/personal property. Officers of the Sheriff's Dept. made sure Defendant would be gone by tracking Defendant's movements just before Mr. McNeil made his intrusion. Mr. McNeil stated that he walked in and followed barking back toward the rear of Defendant's property. There are 4 posted signs at Defendant's gate (picture attached), and at least a dozen more in plain view as he and 3 other officers proceeded down her driveway toward her primary kenneling area approximately 800 feet from the main road. Closely surrounding her main kenneling area, there are at least a dozen more “posted” signs viewable from any direction. After counting Defendant's dogs and taking numerous pictures and videos—Mr. McNeil and his associates went back to the road, blocked Defendant's gate, and waited, with blue lights flashing, until she returned from medicating her son in Walterboro.

Mr. McNeil, Officer Spears, and two female officers proceeded to intimidate, coerce,

and threaten the Defendant to consent to allow them to come back onto her property—and she categorically refused. Defendant asked at that time if they found any of the animals to be in danger, or without food, water, or shade—and they said no. They then handed her 10 citations for “Rabies” and “Animal care” and said they’d be “back Monday”.

On Monday afternoon, they again entered Defendant's property without her willingness or consent, and again walked back down her driveway about 800 feet to her dogs without her initial knowledge, and the Officer caught walking back there claimed that the Search Warrant was “on it's way”. Defendant followed them to the back of her property and told them to leave again—at which time Defendant was screamed at, spat on, subjected to vulgarities and obscenities, and threatened by law enforcement officers (with hands poised on the butts of their guns) so severely that she literally felt in fear of my life. Defendant has developed partly paralyzed vocal chords, had a series of mini strokes, anxiety attacks, and other health failures since then—Defendant is 100% disabled due to skeletal and neurological problems, and these invasions have ruined her life and health further, and violated her civil rights as well. After the above confrontation with law enforcement, Defendant went back up to her trailer, called her daughter, and then went back out the door. The search warrant had arrived—Defendant was shown it, but questioned what they were allowed to look at..since all it claimed to look for was a nearly accurate number of dogs. She was informed that they were going to look through all the buildings, go into her trailer, take all her dogs, and “go through” anything they chose—since they had the search warrant now. During this raid, Defendant's outbuilding had the door forced and broken at the hinge and frame and her trailer door pried open in order to gain entrance, as both were locked.

She was also told to leave—just after they told her she could not go within 50 feet of her dogs during the “raid”—their words. They got dogs, cats, 6 of her carriers, much medicine, a heating pad, a good deal of jarred baby meat, and several other items of personal property, almost none of which was ever listed anywhere. The “evidence” paperwork she received late that night was incomplete, and her dogs were virtually unidentifiable from the so-called descriptions of same.

Two days later—based on “evidence” apparently collected during this first raid—they presented another “warrant” and again went through all her buildings, her trailer, and dug up her grounds. They again collected “evidence” that was not listed on the warrant, and did further damage to Defendant's personal property and buildings.

SUMMARY OF MY ARGUMENT TO SUPPRESS ALL EVIDENCE

- 1) The original complainant committed Criminal Trespass in order to obtain any opinion of the condition of my animals so as to make the complaint, and was identified by Mr. McNeil as being known by him.
- 2) Animal Control in the persons of Mr. McNeil and his officers committed numerous counts of Criminal Trespass by unlatching Defendant's gate, walking past a great number of "no trespassing" signs on the way into the deep interior of her property to take pictures and count animals which was then used to get warrants signed after the fact of the trespass, with no effort made to verify complainant's expertise to make the accusations made so as to assume reasonable cause to enter, nor any attempt to contact the Defendant prior to the unwarranted search, nor any emergency noted to require entry.
- 3) Defendant's 4th Amendment rights to be secure in her property were violated by their unreasonable and illegal searches and any evidence they collected must be considered "fruit of the poisonous tree" and inadmissible in Court per the Exclusionary rule.
- 4) Neither of the search warrants were specific to what they were looking for; but instead they were used to conduct a general rummaging through all the Defendant's personal affects and personal and real property, and damaged some of it. They then collected what they chose to—and did not properly list, nor apparently intend to ever return, any of it.
- 5) According to South Carolina law, animals are personal property and are owned and can be used only by the possessor; however, after violating my peace and personal space; My 55 years of genetic research, my specialized bloodlines of rare colors and sound breeding stock were not only violated as evidence by immediately spaying and neutering my breeding stock, aborting my pregnant dogs, destroying my supplemental income source, and ruining my reputation in the media—they then proceeded to destroy much of the "evidence" including some of those dogs listed on the warrants before the General Sessions Court.
- 6) I am legally in possession of two addresses that are currant, and two that are retired but are legally mine also. I was never asked about the 4 addresses on my mailbox—and the bulk of my animals/personal property were taken from the address that was NOT LISTED on the warrant. (19893 Augusta Hwy. is listed as "dog pens" on my electric

bill—and has been for years) see examples attached.

7) I was never offered any restitution for my very valuable breeding stock which were illegally taken, but instead was threatened with huge care bills for duplicate vaccinations and unneeded tests (most of the care is donated, granted, or volunteered in the shelters) and criminal charges were brought against me with huge fines and prison threatened as well if I didn't "just stop fighting "

Defendant asserts that the Court, being responsible to rule on only those facts that can be proven, should, after careful consideration of all her facts as here presented, find for the Defendant. With all these arguments in mind, She would plead with the Court to grant her this relief by suppressing and excluding all evidence against her in this case.

Lynne Van House
Lynne Van House, Defendant

Date: 8/15/16

Colleton County, South Carolina



EXHIBIT
AC#20
EXHIBIT #17

The Honorable Elbert O. Duffie, III
Colleton County Magistrate Court
40 Klein Street
Walterboro, SC 29488

Envelope
Dated 6/28

Re: Order related to the Vanhouse matter dated June 22, 2016

Dear Judge Duffie:

In the above referenced order, you required Colleton County to maintain possession of all seized animals pending a hearing in July.

On June 1, 2016, Mr. Reginald McNeil was informed by Ben Sapp that his then client would relinquish all of the animals to the County. On both June 3, 2016, and June 6, 2016, Mr. Sapp (through his office) then reiterated in writing that his client agreed to relinquish all animals to Colleton County. Upon receiving the confirmation, Colleton County turned the animals over to numerous other agencies in multiple counties. It is our understanding that many of the animals have already been adopted out.

It is therefore impossible for the County to comply with your Order as to all of the seized animals. Colleton County currently has 22 dogs that are being held in Ridgeland. The County will maintain custody of those animals pending your July ruling.

I have attached copies of the e-mails between Animal Control and Mr. Sapp's Office.

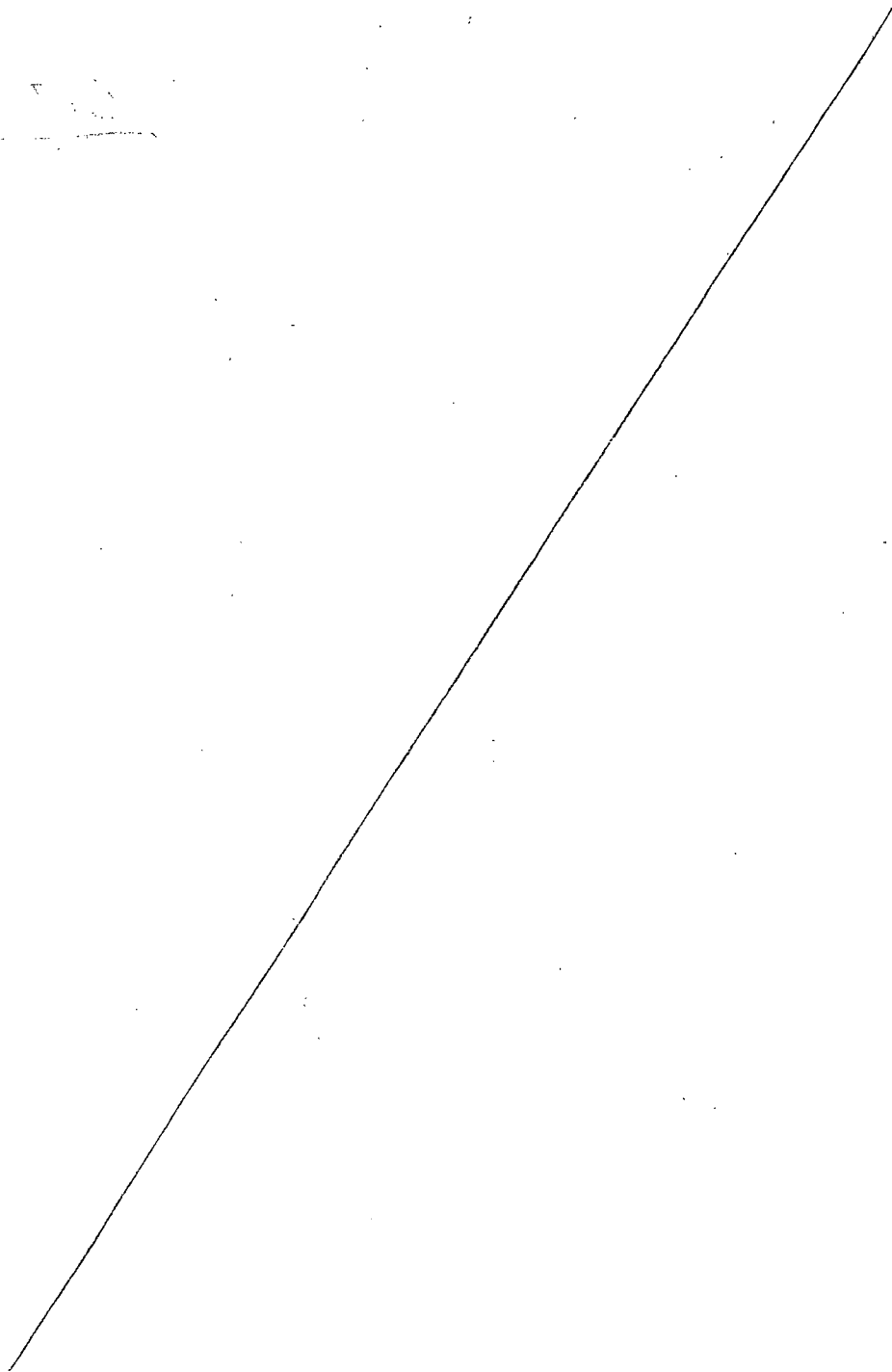
Sincerely,

A handwritten signature in black ink, appearing to read "Sean P. Thornton".

Sean P. Thornton

cc: Ms. Lynne Vanhouse

1000



Pam White

Emails regarding
"Enforcement" Order

From: Bert Duffie
Sent: Tuesday, August 2, 2016 10:09 AM
To: 'Pam White'
Subject: RE: Colleton County vs Lynne Vanhouse

Pam,

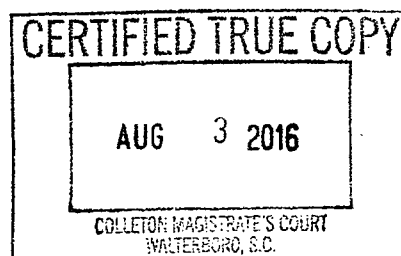
Also, can you reply to the parties that I am extending Mr. Bennett's time to submit the proposed order until next Monday.

Thanks

Bert Duffie

From: Pam White [mailto:pwhite@colletoncounty.org]
Sent: Tuesday, August 02, 2016 9:16 AM
To: 'Diana Bennett' <bop@lowcountry.com>
Cc: 'Bert Duffie'
Subject: RE: Colleton County vs Lynne Vanhouse

I will forward this for you.



From: Diana Bennett [mailto:bop@lowcountry.com]
Sent: Tuesday, August 2, 2016 8:51 AM

Cc: pwhite@colletoncounty.org; mbuchanan@colletoncounty.org; lynne@phoenix-kennel.com
Subject: Colleton County vs Lynne Vanhouse

Good morning Judge Duffie,

Mr. Bennett is respectfully requesting an extension to submit his order to you which is due on Wed., Aug. 3, 2016. Please let me know as soon as possible as we continue to meet several deadlines we have pressing at this point in time.

Respectfully,

Diana Bennett

Eddie and Diana will be out of the office Aug. 31 - Sept. 4, 2016.

Diana C. Bennett, Office Manager
Law Offices of E. W. Bennett, Jr.

P. O. Box 693
148 S. Jefferies Blvd.
Walterboro, SC 29488
(843) 549-9225, phone
(843) 549-8566, fax

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Pam White

From: Pam White <pwhite@colletoncounty.org>
Sent: Tuesday, August 2, 2016 3:58 PM
To: 'lynne@phoenix-kennel.com'
Subject: FW: Colleton County vs Lynne Vanhouse

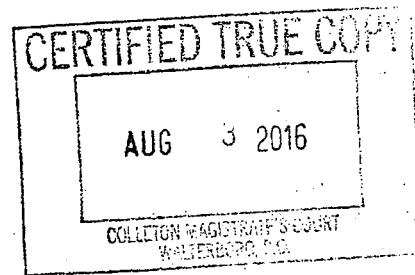
Extension Granted until next Monday, August 8, 2016 by Judge Elbert O. Duffie, III

From: Pam White [mailto:pwhite@colletoncounty.org]
Sent: Tuesday, August 2, 2016 3:43 PM
To: 'Diana Bennett' <bop@lowcountry.com>; 'Reginald Mcneil' <rmcneil@colletoncounty.org>; 'jtaylor@colletoncounty.org' <jtaylor@colletoncounty.org>
Subject: FW: Colleton County vs Lynne Vanhouse

Extension Granted until next Monday, August 8, 2016

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COLLETON COUNTY

CASE NO. 0669

In Re: Seizure of 68 dogs and 5 cats
by Colleton County

16-CP-15-1413

Lynne Van House, Petitioner

Colleton County, Respondent

2016 SEP 21 PM 4:48

JANUARY 2017
COLLETON COUNTY
COMMON PLEAS

NOTICE OF APPEAL TO COMMON PLEAS COURT

LVA
P. 1 of 2

1) In Re: Order denying Petitioner's Motion for a Mistrial; Petitioner requests an Appeal to a higher Court inasmuch as Motion was based on the fact that all the original entries onto Petitioner's real property were based on several Criminal acts as fully documented in her Defense in Magistrate's Court, but none of these facts were addressed in the denial of her Motion, apparently because of Petitioner's removal of her Counsel—who did not present her case timely up to the point of his removal, and her right for all facts in the case to be heard has not been met since the County had barely started their case against her when the Order ruling against her was made. Petitioner would ask that all the facts from both sides be heard, and ruling be made subsequently based on the initial fact that none of this should have transpired in the first place.

2) In Re: Order denying Petitioner's Motion to Exclude Evidence; Petitioner requested that certain evidence from the County be excluded inasmuch as the person presenting it had only collected said evidence after the fact of the animal's occupancy—and could not therefore comment on what conditions were when they were actually there. Petitioner was informed in Court that her right to request exclusion was promulgated on the witness finishing her testimony—but was denied the right to state her argument to exclude it in Court, as, when the Court next convened, Petitioner was told that she had not met the requirements to object to the evidence submitted based on when her former attorney had given her dogs to the County. If this were a valid argument, said evidence should not have been introduced at all.

3) In Re: Order denying Petitioner's Motion to Reconsider return of her dogs; Arguments as stated by the County that Petitioner's attorney of record at the Hearing in this matter had been representing her as a General Attorney were based on a very small number of SC Supreme Court citations that were completely

refuted by Petitioner's many State and US Supreme Court citations to the contrary; which indicated clearly that Petitioner's attorney had been hired as a Special attorney specifically to get her dogs back for her, and had no authority to give her dogs to the County without Petitioner's knowledge or consent, as was done. Petitioner's Supreme Court citations and US Codes of Law citations were apparently not taken into consideration in this ruling—as the completely refuted citations offered by the County were cited as the only ones that the Order was based on. Petitioner suggests that all citations offered should have been considered and notated in any decision of this magnitude, as Petitioner's entire life was crushed by the illegal removal of her personal property from her real property without warning or due process, and subsequent giving away of the seized animals by her then-attorney without any contact with Petitioner by the County for verification—consequently eliminated or greatly reduced Petitioner's supplemental income, credit rating, basic health, retirement income in the future, joy and comfort in her animals, and local and national reputation. Petitioner feels that a new trial so both sides can be fully heard; OR a complete rejection and throwing out of Court of this entire case based on the initial illegal activity of removing her animals/property in the first place without due process of law—thereby violating her 4th Amendment and many other Constitutional Amendment rights, US Supreme Court decisions, US Codes of Law, SC Codes of Law, and local Statutes as thoroughly listed in her Defense in Magistrate's Court—is in order. Despite many requirements in the above laws that personal property be either returned in the same condition as seized, or suitable restitution be given for same; no restitution whatsoever has ever been offered. These were rare-color, small breed purebred animals, her personal property livestock—they were being used to produce high quality pets for sale, and their value to Petitioner both immediately and in on-going years, was lost when they were spayed, neutered, aborted, or killed by the various animal shelters after her former attorney released them to the County. The County and various animal shelters has benefited, Petitioner has lost greatly.

Lynne Van House
Lynne Van House, Petitioner

19897 Augusta Hwy.
Round O, SC 29474
843-835-8038

9-19-16
Date:

STATE OF SOUTH CAROLINA

COLLETON COUNTY

APPEAL FROM MAGISTRATE'S
COURT (16-CP-15-1413)

In Re Seizure of 68 dogs and 5 cats
by Colleton County

Magistrate Court # 0669

Lynne Van House, Petitioner

Colleton County, Respondent

**MOTION FOR REVERSAL OF ALL ORDERS BECAUSE OF FAILURE TO SERVE
ANSWER ON PETITIONER**

2016 NOV 28 PM 11:26
CLERK OF COURT
COLLETON COUNTY
COMMON PLEAS

- 1) Petitioner filed a Notice of Appeal to Common Pleas Court in a timely manner.
- 2) Magistrate Court Judge gave notice and request to have an extension to file the Answer until November 15, 2016 which appears to have been granted.
- 3) Notice was served to Petitioner of a Hearing on the Appeals—but no Answer was ever served on her by any means prior to the Hearing.
- 4) Petitioner requests reversal of Orders because of lack of service of Answer on her in a timely manner.
- 5) Discovery motion filed at the same time as this appeal has been ignored—request compelling to produce as requested.

Lynne Van House
Lynne Van House, Petitioner

Date: 11/28/16

COUNTY OF Colleton140 JUDICIAL CIRCUITCASE NO.: 16-CP-15-1413Lynne Van House

Plaintiff,

vs.

Colleton County, et al.

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. <u>Pro Se</u> Address: <u>1997 Augusta Hwy Roundo SC 21474</u> Phone: <u>843-825-8038</u> E-mail: _____ Other: <u>Lynne@Phoenix-Kenney</u>		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Reversal of orders for lack of service of Answer</u> Estimated Time Needed: <u>10 Min</u> Court Reporter Needed: ☐ YES ☒ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>Lynne Van House</u> Signature of Attorney for ☐ Plaintiff / ☐ Defendant		<u>11/28/16</u> Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions. Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>RM</u> Date Filed: <u>25</u> ☒ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

2016 NOV 28 AM 11:26

COLLETON COUNTY
COMMON PLEAS

Colleton County Magistrate

CASE HISTORY FOR CASE 0669

The State of South Carolina VS Lynne Lucille Vanhouse

FILED DATE: 5/18/2016

CASE TYPE: CR/Criminal

STATUS: Pending

INDICTMENT NUMBER:

ASSIGNED JUDGE: Campbell, Kenneth Arthur Jr.

ARRESTING AGENCY: Colleton Codes Enforcement

CASE PARTIES:

Defendant Vanhouse, Lynne Lucille
19897 Augusta Hwy, Round O, SC 29474-4129

Officer Mcneil, Reginald
33 Poor Farm Road, Walterboro, SC 29488

CASE HISTORY FOR CASE 0669

Vanhouse, Lynne Lucille
19897 Augusta Hwy

Age: 68
DL#: 007466355

DOB: 10/9/1947
SSN: 474-58-1657

Round O, SC 29474-4129

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
15101604 Ordinance / Animal care and control	5/13/2016		

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Ordinance / Animal care and control				
Fine to General Fund	\$207.23	\$207.23	\$0.00	999
Victim Services Asm 38.0013% / 5.783	24.87	24.87	0.00	999
Victim Conviction Surcharge \$100 / \$21	25.00	25.00	0.00	999
Law Enforcement Funding Surcharge \$	25.00	25.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	197.90	197.90	0.00	999
Total:	\$485.00	\$485.00	\$0.00	

DATE	TIME	EVENT DESCRIPTION
5/24/2016	12:00 AM	Filing recorded: Archived Court Summons
6/21/2016	10:00 AM	Court event: Criminal/Traffic Court

Must Be Present at 10:00am and 2:00 pm

Print Date: 06/14/2016
Print Time: 5:17:53PM
Requested By: C15PWHITE

CaseHistory.rpt V6.1

Page 1 of 1

91

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

STATE OF SOUTH CAROLINA

VS

Lynne Lucille Vanhouse

Defendant

IN THE SUMMARY COURT

MOTION TO RECONSIDER
DATED JUNE 1, 2016 AND
A MOTION FOR RETURN OF
SOME OF THE ANIMALS

Case Number(s)/Charge(s): 0669 / Ordinance / Animal care and control

Permanent Address: Lynne Lucille Vanhouse, 19897 Augusta Hwy
Round O, SC 29474-4129

To: Reginald McNeil, Director, Colleton County Animal and Environment Control, Benjamin C.P. Sapp
Attorney for Defendant, Dr. Lori Campbell, Dr. Mary Campbell, Michelle Reed, Valiant Animal Rescue
and Relief, Shelia Ellis, Port Royal Veterinary Hospital, Nancy Foard, Hilton Head Humane Association,
Anthony Montgomery, Beaufort County Animal Shelter, Frannie Gerthofer, Hilton Head Humane
Association, Jodi Taylor, Colleton County Sheriff Office: **(ALL PARTIES MUST BE PRESENT)**

Attorney of Record: Benjamin C.P. Sapp

DL#: 007466355

DL State: SC

Hearing: JUNE 21, 2016

Time: 2:00 PM

Presiding Judge: Elbert O. Duffie, III

Officer Name/Agency: Reginald McNeil / Colleton Animal and Environmental Officer

I make a Motion based on the following: PLEASE SEE ATTACHED

I understand that if I change addresses, it is MY responsibility to notify the Court in WRITING at:

Colleton County Magistrate

40 Klein Street

P O Box 1732

Walterboro, SC 29488

Date of Motion Hearing: TUESDAY, JUNE 21, 2016 Time: 2:00 P.M. Courtroom:
Colleton County Magistrate Court, 40 Klein Street, Walterboro, SC 29488

Officer Present: Yes / No Defendant Present: Yes / No Judge's Ruling: Granted / Denied
Comments:

FOURTEENTH CIRCUIT PUBLIC DEFENDER

Colleton County Office

115 BENSON STREET
WALTERBORO, SOUTH CAROLINA 29488
Tel. (843) 549-1633 Fax (843) 542-9543

August 18, 2016

Lynne Vanhouse
19897 Augusta Highway
Round O, SC 29474

Re: State -vs- Lynne Vanhouse

Charge(s): Animals / Ill treatment of animals in general, torture (10 Counts)

Warrant No(s): 2016A1510100272; 2016A1510100273; 2016A1510100274;
2016A1510100275; 2016A1510100276; 2016A1510100277; 2016A1510100278;
2016A1510100279; 2016A1510100280; 2016A1510100281

Dear Ms. Vanhouse:

This is to advise you that your preliminary hearing has been scheduled in your case. The hearing is scheduled as shown below:

TIME: 9:00 A.M.

DATE: September 13, 2016

MAGISTRATE: Presiding Magistrate

PLACE: 40 Klein Street, Walterboro, SC 29488

The purpose of a preliminary hearing is to give the Magistrate or Municipal Judge an opportunity to hear the State's evidence and to determine whether or not the evidence justifies sending the case before the Grand Jury. Mr. Mathews or Mr. Walker will attend the preliminary hearing and suggests that you also attend.

If you have any questions, please call or come into our office to see us.

Colleton County Public Defender's Office

FOURTEENTH CIRCUIT PUBLIC DEFENDER

Colleton County Office

115 BENSON STREET
WALTERBORO, SOUTH CAROLINA 29488
Tel. (843) 549-1633 Fax (843) 542-9543

September 19, 2016

Lynne Vanhouse
19897 Augusta Highway
Round O, SC 29474

Re: State -vs- Lynne Vanhouse

Charge(s): Animals / Ill treatment of animals in general, torture (10 Counts)

Warrant No(s): 2016A1510100272; 2016A1510100273; 2016A1510100274;

2016A1510100275; 2016A1510100276; 2016A1510100277; 2016A1510100278;

2016A1510100279; 2016A1510100280; 2016A1510100281

Dear Ms. Vanhouse:

This is to advise you that your preliminary hearing has been scheduled in your case. The hearing is scheduled as shown below:

TIME: 2:00 PM

DATE: October 11, 2016

MAGISTRATE: Presiding Magistrate

PLACE: 40 Klein Street

The purpose of a preliminary hearing is to give the Magistrate or Municipal Judge an opportunity to hear the State's evidence and to determine whether or not the evidence justifies sending the case before the Grand Jury. Mr. Mathews or Mr. Walker will attend the preliminary hearing and suggests that you also attend.

If you have any questions, please call or come into our office to see us.

Colleton County Public Defender's Office

FOURTEENTH CIRCUIT PUBLIC DEFENDER
Colleton County Office
115 BENSON STREET
WALTERBORO, SOUTH CAROLINA 29488
Tel. (843) 549-1633 Fax (843) 542-9543

October 17, 2016

Lynne Vanhouse
19897 Augusta Highway
Round O, SC 29474

Re: State -vs- Lynne Vanhouse

~~Charge(s): Animals / Ill treatment of animals in general; torture (10 Counts)~~
Warrant No(s): 2016A1510100272; 2016A1510100273; 2016A1510100274;
2016A1510100275; 2016A1510100276; 2016A1510100277; 2016A1510100278;
2016A1510100279; 2016A1510100280; 2016A1510100281

Dear Ms. Vanhouse:

This is to advise you that your preliminary hearing has been scheduled in your case. The hearing is scheduled as shown below:

TIME: 9:00 A.M.
DATE: October 31, 2016
MAGISTRATE: Presiding Magistrate
PLACE: 40 Klein St., Walterboro, SC 29488

The purpose of a preliminary hearing is to give the Magistrate or Municipal Judge an opportunity to hear the State's evidence and to determine whether or not the evidence justifies sending the case before the Grand Jury. Mr. Mathews or Mr. Walker will attend the preliminary hearing and suggests that you also attend.

If you have any questions, please call or come into our office to see us.

Colleton County Public Defender's Office

Despite these ③ hearing dates -
the 10 indictments were done on
the 1 date during these 2 months
that neither Mr. Mathews nor I were
apparently made aware of : Sept. 21, 2016
95

[illegible]

12-11-17

Mr. Matthews;

On Friday the 8th, you said this was a criminal case, apparently based on the 10 "criminal" warrants issued *18 months ago*, as having been committed on May 16, 2016—when my personal property livestock was seized.

These were issued under SC Statute 47-1-40 (B) which is a felony, and mentions "torture". The actual accusations list things that are not in this statute sub-heading. These accusations were "sworn and affirmed" by Officer Jodi Taylor, however. You have the ten packets of information that I developed, one on each dog listed—with health info and explanations on each by number. In addition, I made up a "vital signs" chart, by breed and the County's number assigned, and entirely from the County's original Vet exams in Hilton Head. NONE of my animals were "not being cared for by the owner." nor did I "knowingly torture, torment, inflict excessive pain by depriving them of food water, or necessary medical treatment." Weights and vital signs were ALL in normal range from THEIR exams. *I have enclosed a copy of these pages in this packet for you.*

The State listed on my "criminal background report" what the accusations were: 47-1-40 (A)--which is a simple misdemeanor X 10 for a FIRST TIME offense. These have never been brought to a "speedy trial" nor have I ever been allowed to "confront" my accuser—the original complainant. I handed you a written Motion of Discovery in our only meeting in your office, and indicated on it that I was not only asking for specific evidence; I also pled not guilty and demanded a Jury Trial. At that time, you said you would be at the Grand Jury hearing—and I could be there (and I said I wanted to be, since I needed to see what "evidence" they provided) but you said on Friday that you had no idea when it had been held. Since I have never received any evidence from the County, and your office personnel refused to show any to me without your permission; (which was not forthcoming) I doubt that any of what was presented was actually of my dogs. *I have entered 3 Motions for Discovery, a Compel to Produce, and a request for "Exculpatory Evidence" NONE of which has elicited a single page of evidence or photo from the County. These were all literally ignored.*

Your letter, received Thursday, Dec. 7 lists Indictments which I have never seen nor ever been made aware of, and I had no idea when this was supposed to have taken place. On the copies I picked up from the Clerk on Monday, the ACTUAL accusation and indictment was for withholding food or water knowingly! I would also point out that these 10 were all long haired—1/2 of my animals were short haired—and if they HAD been tortured or kept from food, water, or shelter—they would have shown this neglect first (during the original unwarranted invasion)—they did NOT. You mentioned several attempts at "second appearances," when I was never made aware of either a first or a second appearance on this matter until Friday, Dec. 8. You also indicated I was supposed to, by law, have had ample time to decide whether I'd accept this offer made on Thursday, but was given only the weekend; even though we both understood I would not accept it. I think you said 90 days—I was given two days—and my appearance was demanding under fear of a warrant for my arrest being issued! I had an important medical appt. for my terminal son with his Neurologist in Mt. Pleasant, which was made 6 months ago.

The original misdemeanors, 9 of them, were written at my gate (after criminal trespass) on May 13, 2016—and "cleared" per Mr. Bennett during my hearing in Magistrate Court under Judge Duffie to defend my right to have never been invaded or trespassed on in the first place, these tickets were the basis for the seizure and disposal of my personal property animals. Once they had my animals in hand—then they swore out the "criminal" warrants, in order to tie my hands, and ruin my reputation in this County and the Country--for good. *I have been pro se since I fired Mr. Sapp, after the initial hearing in Magistrate Court, in which he represented the County, while taking my money to defend me. I obtained a thumb drive of the entire testimony in Magistrate Court, which is how I discovered the sheer duplicity of most of the officers of the court involved in this!*

If YOU see a firm basis for this criminal proceeding—I'd ask you to explain the laws and logic *allowing* it? Otherwise, I'd ask that you make a motion to this court to dismiss these charges, as they were not heard or prosecuted in a reasonable length of time, nor following rules of court procedure.

41-2(b) "Involuntary Dismissal: Non-suit; Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him."

Rule 143 (b) indicates "If a defendant's *motion for directed verdict at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right.* (c) Submission of Case to Jury. *Submission of any charge to the jury shall constitute a denial of any motion for directed verdict previously made by the defendant and not ruled upon.* Notes: This rule is identical to former Rule 19, except this rule makes the standard "a failure of evidence in the record..." A perfunctory motion for directed verdict to preserve appellant's rights is not required and a motion for directed verdict based on previous adverse rulings of the court is not necessary to preserve the objection to those previous rulings. See Rule 137". This makes it pretty clear that both of us were to have been in there on September 21, 2017. (As you could have submitted the evidence from those 10 packets you hold, *AND* I could have told you which things they presented were *not* from my dogs or premises). Also, the rules for submitting the warrants and their actions from that time forward are very clear:

"Action on Warrant. Within *ninety (90) days* after receipt of an arrest warrant from the Clerk of Court, the State shall take action on the warrant by

- (1) preparing an indictment;
- (2) assigning an indictment number;
- (3) presenting the indictment to the Grand Jury; and
- (4) filing the outcome of the presentment with the Clerk of Court within twenty-four (24) hours if the Grand Jury has not returned the indictment directly to the Clerk.

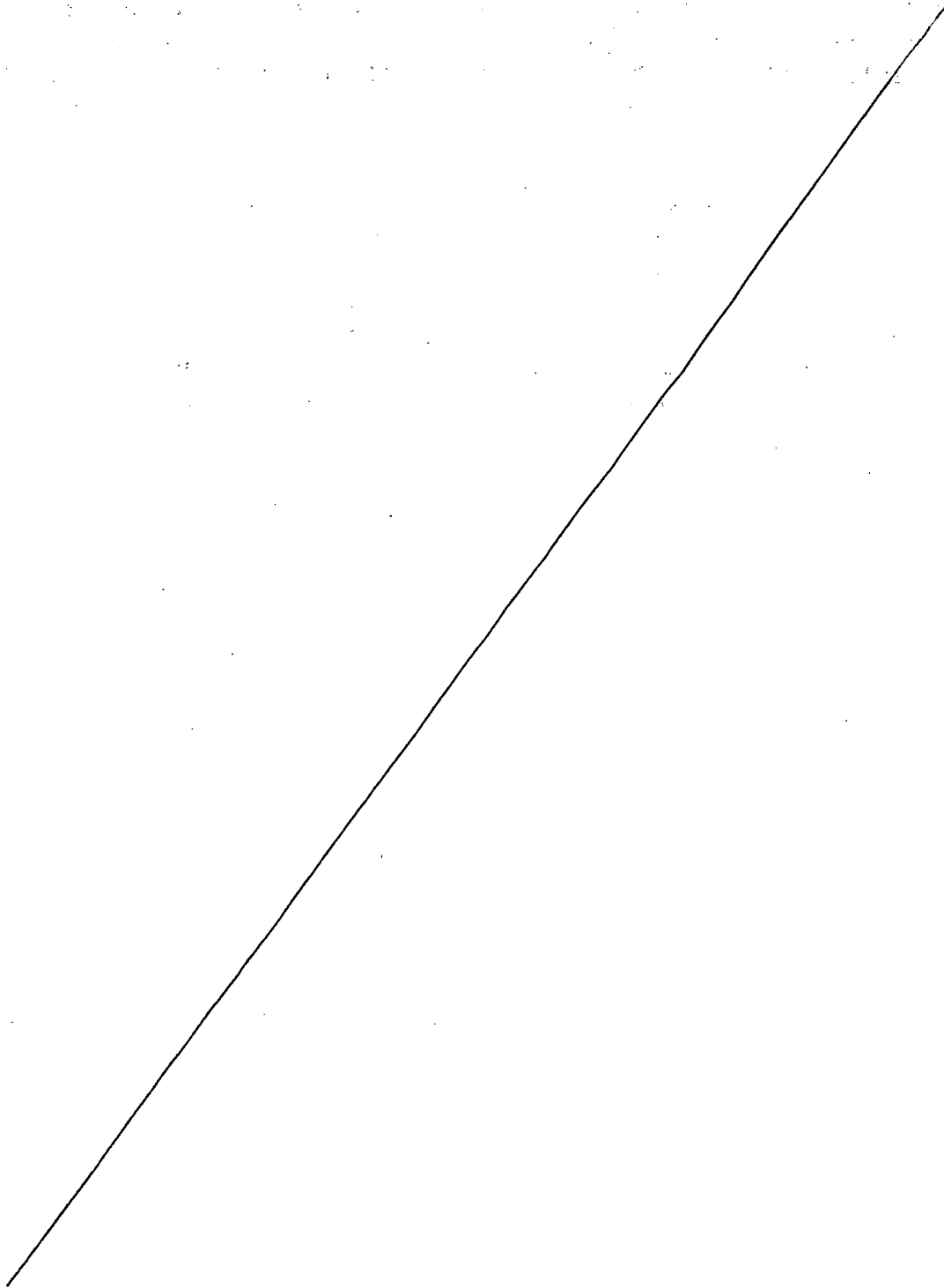
They did nothing until four months had passed—and *then only* because I had just indicated I was submitting my initial brief to the Appeals Court, but got an extension.

****PLEASE** make the motion to dismiss all the charges, and the expungement of the records on the criminal charges—they are without any validity, and they have ruined my reputation, health, credit rating, peace and tranquility—and I miss my service dog. ALL of those warrants should have been of short haired dogs—if I had actually knowingly been withholding food or water. They were in covered pens and runs, and had nest boxes or dog houses. Let me know when you send in this motion, so I can track the response. What they have done was not just, fair, reasonable, or lawful.

My Appeal from Common Pleas Court involved the violation of my US and SC constitution, county ordinance, and US and state code CITIZEN'S RIGHTS, particularly my privacy, trespass, and civil rights (relative to my service dog), and violating my due process of law and legal warrant rights as well. I have just (finally) submitted my initial brief to the Appeals Court, and have sent a list of designation of matter to be included—which has not been answered or contested—nor has the County ever given me ANY evidence, nor did they state their case first in Magistrate Court—as required by law. They never *allowed* me to question any witnesses, but simply closed the case due to an "agreement" arrived at by Mr. Sapp and the County, but without my knowledge or consent; ostensibly making Mr. Sapp my *general agent*.

I see no basis for criminal proceedings of this case, as the County has thoroughly mixed evidence from Magistrate and Criminal court, evidence from the "criminal" case offered in Magistrate Court (that I was not allowed to question nor object to), back door deals made after swearing to uphold my rights (initial hearing about the seizure), swearing or affirming the truth of things that had no basis in truth (illegal warrants), and trespassing and seizing many items of personal property that were never listed anywhere, while destroying and ransacking my real and personal property without legal right or warrant. The warrant must be executed and an inventory of all seized items returned to the judge within 10 days from the date of issuance. (§17-13-140) (and a copy to me, as well...but were very incomplete, they didn't even get the *gender* right in several cases, on the dogs)

The worst part, though—was the loss of *55 years of my life* that went with those outstanding Champion bloodlines and exceptional rare-color and pattern animals, all in about *5 hours*, without warning or due process. I was never given the chance to fight for them, so my appeal is to gain restitution for them, and what value was inherent in them and their offspring, for the next ten years. I was quietly engaged in breeding and selling my personal property livestock; nothing of mine can be seen without trespassing; and I enjoyed a small supplemental income while caring for my dying son. I had done this for 23 years, *completely unmolested* in that same place. All of this is gone now.



WITNESSES

DOCKET NO. 2016GS1500684

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Colleton

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

ARREST WARRANT NUMBER

2016A1510100279

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

Defendant

Witness:

True Bill

Rooke Dourly

Foreperson of Grand Jury

Date: 9/21/17

VERDICT

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

2017 SEP 21 PM 12:34
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF COLLETON

2016GS1500684

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #57 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500473

The State of South Carolina

County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100280

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

Defendant

VERDICT

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT

2017 SEP 21 PM 12:34
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2016GS1500473

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #59 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500474

The State of South Carolina

County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100281

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

VERDICT

Defendant

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

2017 SEP 21 PM 12:34

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

2016GS1500474

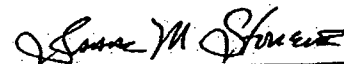
COUNTY OF COLLETON)

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #62 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

DOCKET NO. 2016GS1500471

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Colleton

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

ARREST WARRANT NUMBER

vs.

2016A1510100277

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

Defendant

Witness:

C.C.C. PLS. and G.S.

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

VERDICT

Foreperson of Petit Jury

Date:

INDICT

2017 SEP 21 PM 12:34
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA

INDICTMENT

2016GS1500471

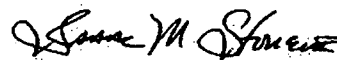
COUNTY OF COLLETON

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #43 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500471

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Colleton

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100277

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

Defendant

Witness:

C.C.C. PLS. and G.S.

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

VERDICT

Foreperson of Petit Jury

Date:

INDICT

2017 SEP 21 PM 12:04

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF COLLETON

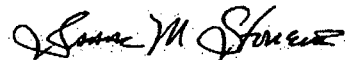
2016GS1500470

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #15 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500470

The State of South Carolina

County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100276

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Downey

Foreperson of Grand Jury

Date: 9/21/17

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

2017 SEP 21 PM 12:34
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2016GS1500469

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #12 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500469

The State of South Carolina

County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100275

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Drowdy

Foreperson of Grand Jury

Date: 9/21/17

Defendant

Witness:

VERDICT

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT

2017 SEP 21 PM 12:34
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2016GS1500468

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #11 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500468

The State of South Carolina
County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100274

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

2017 SEP 21 PM 12:04
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2016GS1500467

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #8 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

[Signature]

DOCKET NO. 2016GS1500467

The State of South Carolina
County of Colleton

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2016A1510100273

THE STATE

vs.

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

True Bill

Rooke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

2017 SEP 21 PM 12:34

COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2016GS1500466

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #14 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

DOCKET NO. 2016GS1500466

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of Colleton

Defendant

COURT OF GENERAL SESSIONS

September Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

ARREST WARRANT NUMBER

vs.

2016A1510100272

Lynne Lucille Vanhouse

Indictment For

III Treatment of Animals

SC Code: 47-1-40(A)

CDR Code: 3789

Defendant

Witness:

C.C.C. PLS. and G.S.

True Bill

Booke Drawdy

Foreperson of Grand Jury

Date: 9/21/17

VERDICT

Foreperson of Petit Jury

Date:

INDICT

2017 SEP 21 PM 12:30
COLLETON COUNTY
GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF COLLETON

2016GS1500472

At a Court of General Sessions, convened on September 21, 2017, the Grand Jurors of Colleton County present upon their oath:

III Treatment of Animals

That in Colleton County, South Carolina, on or about May 16, 2016, the Defendant, Lynne Lucille Vanhouse, did knowingly or intentionally deprive an animal of necessary sustenance or shelter, or by omission or commission knowingly or intentionally cause these acts to be done, to wit: Dog #55 as identified by Colleton County Sheriff's Office, all in violation of Section 47-1-40(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

2016-CP-15-1413

COUNTY OF COLLETON)

In Re: Seizure of 68 dogs and 5
cats by Colleton County)

FROM THE MAGISTRATE'S COURT

2016-CV-15-0669

Lynne Van House, Appellant)
Round O, SC 29474)

APPELLANT'S BRIEF IN RE MAGISTRATE
RETURN

Colleton County, et al, Respondant)
Walterboro, SC 29488)

2017 JAN 10 PM 2:11
PATRICIA A. ...
COLLETON ...
COMMON PLEAS ...

This brief is a direct response to the return filed by Judge Duffie in this Court. The two comments and specifications below are in addition to the table of contents list of the next pages, and are to enhance the understanding of the time line and actual response that follows. I am acting pro se, and ask the Court's indulgence in matters of form and content in that I have never studied law, and am in this position because of lack of money directly related to the matter at hand.

My copy of Judge Duffie's Answer is missing pages 5 through 8. I do not know what was said in those pages, so I can't comment or object to anything in them.

IN ADDITION: My Defendant's Exhibits 26-33 are inexplicably MISSING from the Exhibit list on Judge Duffie's Answer; and most of the Plaintiff's Exhibits are missing as well. These Defense Exhibits are of great importance, particularly the magazine (*Defendant's Exhibit #33*) entitled "Pet Business" my June 2016 issue, Article: "Swept Away?" which outlines the REASONS for the seizure of my animals and the on-going attempts of so-called "rescue" organizations like Peta, HSUS, and ASPCA to totally eliminate citizen's ability to buy/own purebred pets with specific breed characteristics, and to close down the multi-Billion dollar industry related to pet ownership. Also included in this missing list are: (*Defendant's Exhibit #29*) article, "Animal Enterprise Terrorism" which is the FBI's name for what happened to me; and (*Defendant's Exhibit #30*), an article by an attorney specializing in defending against unwarranted seizures of breeder's animals, and (*Defendant's Exhibits #32 and #33-same # as mag, different exhibit*) are articles regarding the virtually criminal over-vaccination of our pets, written by Veterinarians, (*Defendant's Exhibit #26*) is a Bill of Sale copy, 2 pages—with an explanation of how I have filled them out for decades. (*Defendant's Exhibit #27*) is a list by breed, name, and birthdate of all the animals that were taken from me. (*Defendant's Exhibit #28*) is a photo of a dog that was particularly harmed by the ropes around her muzzle with cuts and missing hair. This photo (#28) was taken the Friday before she was seized. The photo from the shelter was horrifying to most of my friends who saw it on TV.

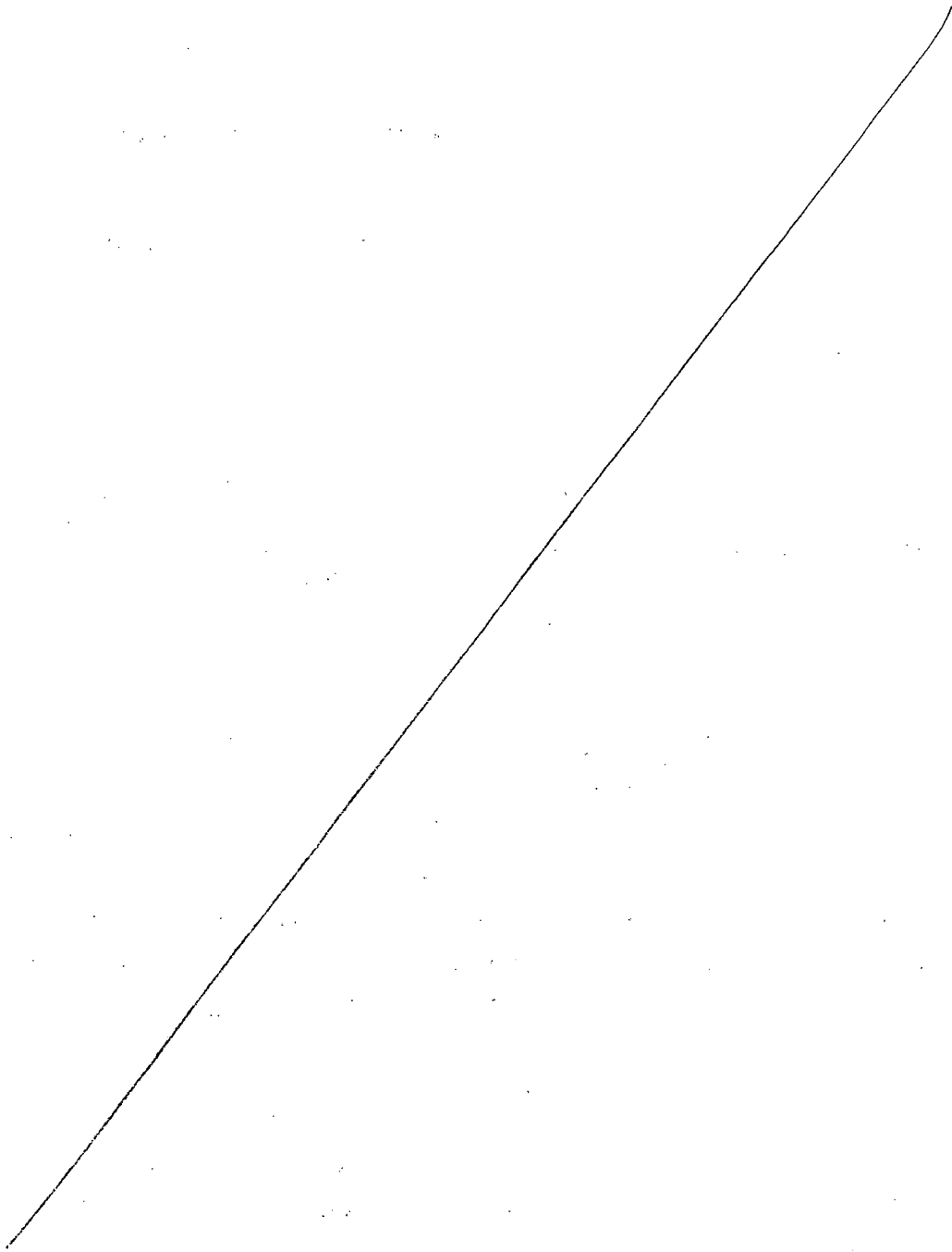
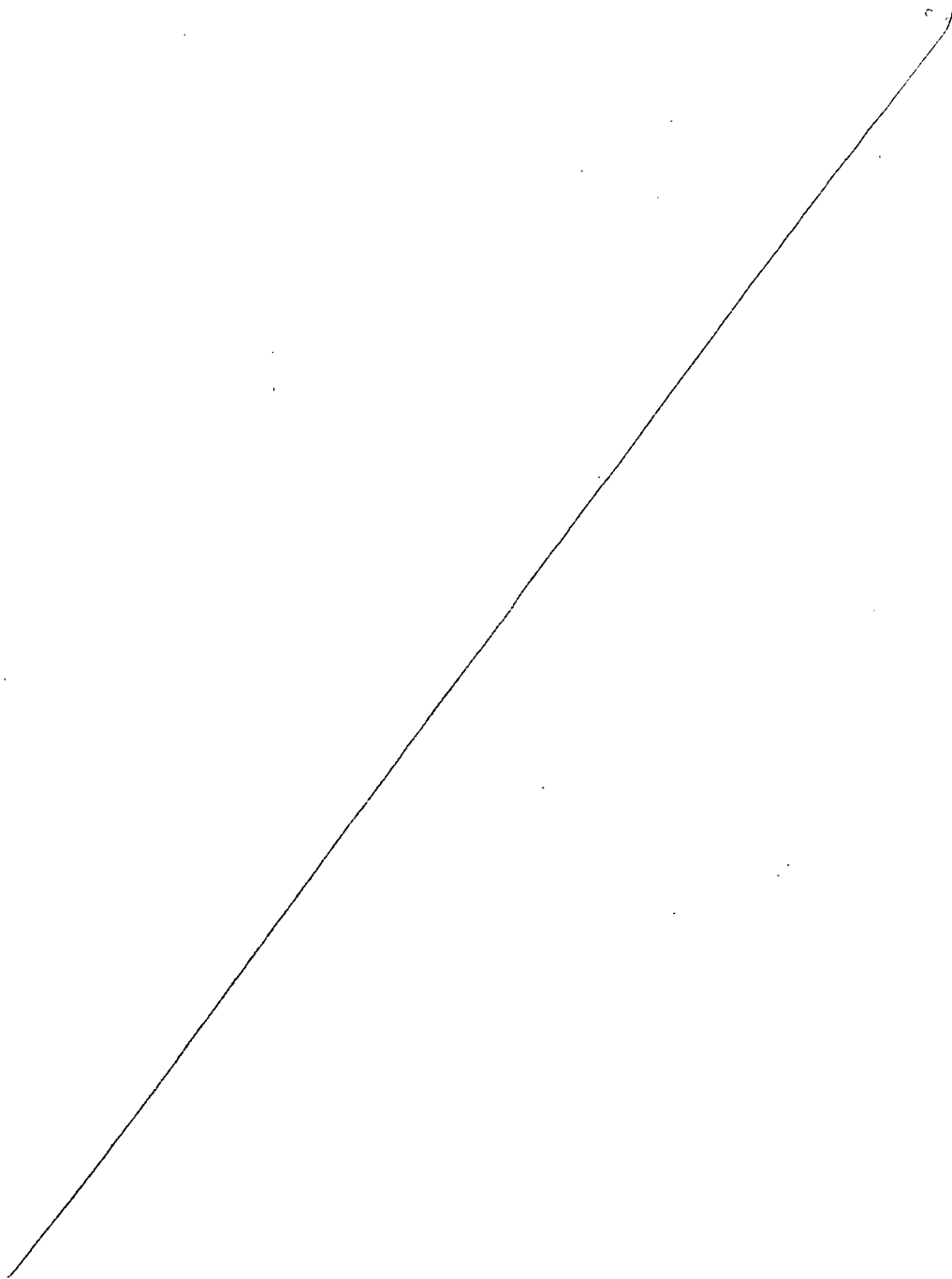


TABLE OF CONTENTS
Cases, Statutes, codes, and Authorities

- 1) **BESS VS BRACKEN COUNTY FISCAL COURT, 210 SW. 3d 177, 180 (Ky 2006) Pages 17, 31**
- 2) **BRINEGAR VS UNITED STATES, 338 US 160 at 174 Page 29**
- 3) **CANTWELL VS CONNECTICUT, 310 US 296 (1940) Page 13**
- 4) **CITY OF CUYAHOGA FALLS VS BUCKEYE COMMUNITY HOPE FOUNDATION, 538 US 188 Pages 23, 25, 33**
- 5) **CITY OF DES PLAINES VS SCIENTIFIC MACHINE MOVERS, INC. 9 Ill. App. 3D 438, 292 NE,2d 154 (1972) Pages 27, 38**
- 6) **COOLIDGE VS NEW HAMPSHIRE, 403 US 443, 467, et al. Pages 13, 14**
- 7) **CONWAY VS PASADENA HUMANE SOCIETY, 52 Cal. Rptr 2d 777 (1996) DAVIS A. WECHLER, 263 US 22, at 24 Pages 1, 24**
- 8) **ELDRIDGE VS MELCHER, Pa Superior Ct. 381, 313 A.2d 750 (1973) Annot., 97 ALR 374 (1935) Page 25**
- 9) **FROST VS RAILROAD COMMISSION, 271, US 583 (46 S. Ct. 605, 70L.5d.1101) Page 34**
- 10) **FW/PBS VS DALLAS, 493 US 215 (1990) Page 14**
- 11) **GAILBRAITH VS MONARCH GOLD DREDGING CO, 160 Or. 282, 84 P.2d 1110 (1938) Pages 27, 38**
- 12) **GRAN VS CITY OF ST. PAUL, 274 Minn. 220, 143 NW.2d 246 (1966) Page 31**
- 13) **HALL VS BENEFIT ASSOCIATION OF RAILROAD EMPLOYEES, 164 S.C. 80, 161 SE. 868 (1932) Page 26**
- 14) **HAYES VS EAGLE-PICHER INDUSTRIES, INC. 513 F.2d 892, 894 (10th Circuit 1945) Page 30**

- 15) KING CONSTRUCTION COMPANY VS MARY HELEN COAL CORP.
194 Ky. 435, 239 SW. 799 (1922) Pages 25, 37
- 16) KRISTI M. PERRY/SAN FRANCISCO VS CA GOVERNOR
A. SCHWARZENEGGER, Opinion 10-16696 (9th Circuit.2011) Page 7
- 17) LANIER VS STATE, 486 P.2d 981 (Alas. 1971) Page 20
- 18) O'NEILL, ET AL / LOUISVILLE KENNEL CLUB VS JEFFERSON
COUNTY METRO GOVERNMENT, ET AL, 42 USC 1983 Page 22
- 20) MANNING VS WYMER, 273 Cal. App. 2D 519, 78 Cal. Rptr. 600 (1969)
Pages 27, 38
- 21) MARBURY VS MADISON, 5th US (2 cranch) 137, 180 Page 24
- 22) MASS. CASU. INS. CO. VS FORMAN, 469 F.2d 259 (5th Circuit 1972)
Pages 27, 38
- 23) MILEWSKI VS ROFLAN CO, 195 F. Supp. 68 (D. Mass. 1961) Pages 27, 38
- 24) MILLER VS UNITED STATES, 230 f. 2d 486 Cal 192 Page 8
- 25) MILLER VS MUELLER, 28 Md. App. 141, 343 A 2d 922 (1975) Page 28
- 26) MIRANDA VS ARIZONA, 384 US 486 Page 24
- 27) MIXON VS STATE OF OHIO, 193 F. 3d 389-400 (6th Circuit 1999) Page15
- 28) MONTGOMERY VS GOLDSTEIN, 109 Or. 497, 220 P. 565, 567 Pages 19,
28
- 29) MURDOCK VS PENNSYLVANIA, 319 US 105, at 113, Page 23
- 30) STATE EX REL. MONTGOMERY VS GOLDSTEIN, 109 Or. 497, 220 P
565, 567 (1923) Pages 19, 27
- 31) STATE VS HUGHES, 22 Ariz. App. 19, 522 P2d 780 (1974) Page 37
- 32) SHERAR VS CULLEN, 481, F2d. 945 (1973) Pages 24, 28, 33

- 34) SOUTHERN PACIFIC TRANSPORTATION CO. VS PUBLIC UTILITIES COMMISSION, 18 Cal. 3D 309 Pages 7, 11, 12, 35
- 35) STRICKLAND VS WASHINGTON, 466 US 668 (1984) Page 26
- 36) THORNTON VS KELLY, 11 R.I. 501,161 SE at 202, Page 28; at 868, Page 31
- 37) TRUPIANO VS UNITED STATES, 344 US 699 (68 S.Ct. 1229, 92 L.Ed 1663) Page 1
- 38) UNITED STATES VS ADAMS,422 F.2d 575 (10th Circuit, 1970) Page 37
- 39) UNITED STATES VS BEEBE, 180 US 343, 352 (1901) Page 18
- 40) UNITED STATES VS CRAVERO, 530 F. 2d 666 (5th Circuit 1976) Page 37
- 41) US SUPREME COURT; Opinion/15 pdf/ 15-274 Justice Clarence Thomas, 2016 Texas Abortion Dissent.
- 42) WILSON VS EDDY, 2 Cal. Rptr. 826 (1969) Page 28
- 43) WINTERS VS COOK, 489 F.2d 174, 178 (5th Circuit, 1973) Page 29
- 44) YICK VO VS HOPKINS, SHERIFF, 118 US 356 (1886) Page 34
- 45) SC CODE OF LAWS:
 - Article 1, Section 10 Page 2, 3
 - Article 1, Section 14 Page 1
 - Article 7, Section 16
 - Section 16-5-10 Pages 29, 30, 31, 32, 33
 - Section 16-5-60 Pages 33, 41
 - Section 16-11-510 Pages 2, 8, 16, 31
 - Section 16-11-600 Pages 1, 4, 5
 - Section 16-11-640 Page 21
 - Section 16-11-650 Page 13
 - Section 16-7-150 Page 19
 - Section 47-1-120 Page 39 Plaintiff's Exhibit
 - Section 47-1-140 Page 39 Plaintiff's Exhibit



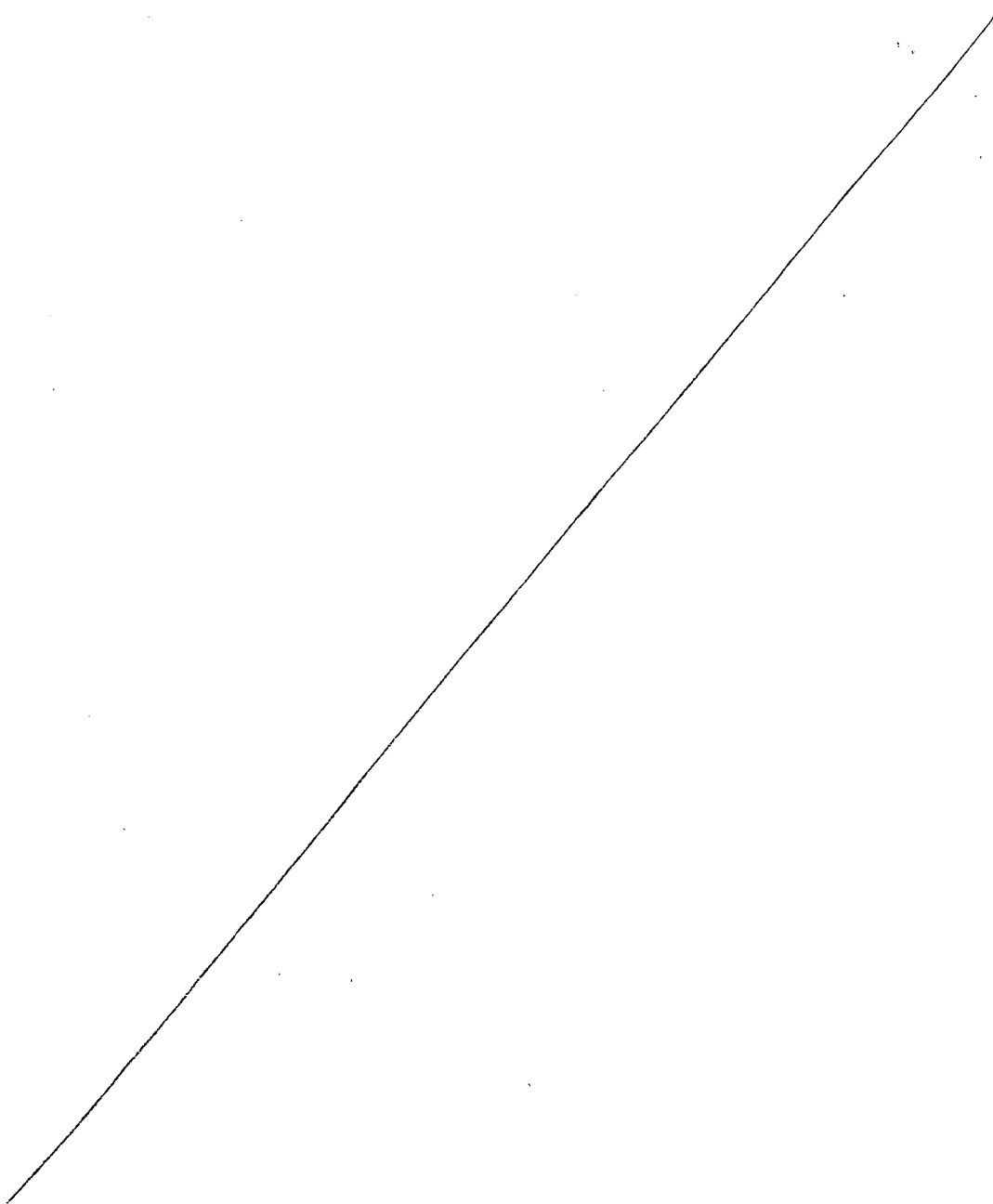
46) US CODE OF LAWS:

Title 18, Section 241, 242 Page 4

Title 42, Section 1983 Page 10 "Civil action for deprivation of rights"

Title 42, Section 1985 Page 10 "Conspiracy to interfere with civil rights"

Title 42, Section 1986 Page 10 "Action for neglect to prevent violation of civil rights"



* I accidentally changed the font & size when
printing this - Pg. #'s on Table of Contents may
no longer match.
---A TIME LINE---

PLEASE NOTE: All 25 of the Defendant's Exhibits that were entered in my defense of the seizure and invasion of my property were introduced at the appropriate time in the narrative that supported, or showed the violation of, what that particular exhibit covered. A mere list of them, especially noting simply that there is a particular number of pages relating in some way to the same numbered Exhibit does not do justice to my narrative of the sequence of the events. Only a transcript or a careful listening to the audio could ever do that. I have added in the actual wording in several cases for clarity. Also note several are missing from that list, details on first page of this Reply.

(Davis VS. Wechsler, 263 US 22, at 24)" "The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

US Supreme Court, 15 US 274: Opinion: Justice Clarence Thomas: "Our constitution renounces the notion that some constitutional rights are more equal than others. A plaintiff either possesses the constitutional right he is asserting, or not—and if not, the judiciary has no business creating ad hoc exceptions so that others can assert rights that seem especially important to vindicate. A law either infringes a constitutional right, or not; there is no room for the judiciary to invent tolerable degrees of encroachment."

SOMETIME PRIOR to May 13, 2016: A person who was said to be "known" by Mr. McNeill when I questioned him (interviews recorded by the County) on both May 13 and May 16) in regard to my right to "face" my accuser but was later claimed to have been an "anonymous" phone call; and (SC Bill of Rights Article 1, Section 14) was said (in Mr. McNeill's Press Release to the Press and Standard newspaper online copy-- Defendant's Exhibit #16) to have entered my totally closed, completely private, (Defendant's Exhibit #5-4th Amendment-Trupiano VS United States, 334 US 699 (68 S Ct. 1229, 92 L.ED 1663)"individual liberty depends on freedom from unreasonable intrusion") posted, (Defendant's Exhibit #2-warrantless searches are presumed to be violating the 4th Amendment)) and grandfathered (Defendant's Exhibit #1" A legal

provision that exempts a business or enterprise from a new rule, regulation or law that would affect rights or privileges previously held)) real property during a "walk in the woods." *NONE of my personal property is visible from anywhere around the perimeter of my real property, or even from the air. (Defendant's Exhibits #'s 17 and 18)* That includes ALL buildings, livestock, and vehicles. It is totally wooded, and all the surrounding properties are either wooded (2 sides) or open field (1 side), and completely unoccupied. (Also private property unless one of the owners was the complainant—and MY property was entered from the "walk in the woods" from THEIR property—which I still never authorized)

What IS obvious are the multiple "No Trespassing" signs (*some of Defendant's Exhibit #24*) located closely spaced all around the perimeter of my property (only 4 required by law, SC 16-11-600) and in many places in a second or third close layer surrounding several areas of the interior. During that "walk in the woods," this person passed AT LEAST 2-3, and probably up to a DOZEN or more of my posted signs in a concerted effort to actually see any of my personal property livestock. Even though Mr. McNeill said that he did not verify in any way the credentials of this person as an animal husbandry expert of any degree, a report was apparently taken (I've never seen that either) and followed up on by Mr. McNeill and later, many other Deputies, Officers, Vets, & Shelter volunteers because of the complainant's statement of finding "diseased and malnourished" animals "hidden in the woods". (*Defendant's Exhibit #16*) (*Defendant's Exhibit #7-right to confront witnesses who are accusing him of a crime*).

SC Trespass law would appear to state that ALL real property is PRIVATE—so it becomes CRIMINAL Trespass when the trespasser(s) are aware that they are NOT on their own property; are notified that the owner does not wish anybody to come onto it, via a sign, verbally, or any other kind of notification; AND the trespass is carried out anyway. *CRIMINAL TRESPASS is (obviously) a crime in SC. (SC Code 16-11-510-- Defendant's Exhibit #2.)* Mr. McNeill was quoted as saying what he "could" charge me with as far as so-called "lack" of medical records (which he refused to look at) across the number of all of my animals; although the dozens of people who REPEATEDLY trespassed onto my property over the course of all those invasions "could" also be

charged separately, per *Defendant's Exhibit #2, SC Code 16-11-510*) and I have not done so.

A LATER TIME-FRAME THAN ABOVE—PRIOR to May 13, 2016: Several unmarked vehicles (apparently from the Sheriff's Dept.) started following me, apparently taking note of my routine, and timing my comings and goings. I have been a hunter and tracker all of my life, and these observations are based on many years of experience.

My terminally disabled son in Walterboro is the main center of my routines, so I became familiar with the few vehicles employed in this surveillance, but couldn't stop any of them to ask why they were doing it. This surveillance was described in detail in Magistrate Court under Oath, with several Deputies present who were involved with the "raid" (Mr. Spears descriptive word) on my property—and NO ONE made any objection, nor questioned, nor denied that this practice was used against me, thus violating my privacy rights (*SC Constitution Bill of Rights-Article 1, section 10*) and sense of personal safety and security. (*4th Amendment to the Constitution of the US—Defendant's Exhibit #5*)

3) FRIDAY MAY 13, 2016. 1:45 PM: I left out of my latched gate to head into town to administer meds to my son and check up on him. After my gate was re-latched, and I was about to turn onto Hwy 61—a Black extended cab pickup with blacked out windows literally skidded into the ditch across the road from me in an effort to get stopped, apparently to observe me—my impression at the time was that he was waiting to see which direction I turned.

I waited a few moments to see if the driver was going to get out of the truck, but he did not. I turned right toward Sidney's Road, and when I got there to turn left, there was a small SUV, also Black with blacked-out windows, parked at the outside corner. That vehicle then pulled in directly behind me, and I was followed closely all the way to my son's apartment on North Lemacks St. This vehicle slowed, and I was watched until I'd clearly exited and locked my vehicle, and was walking toward my son's apartment, then they drove slowly past and disappeared. These actions by apparent law enforcement officers caused me great concern and appear to have been a form of purposeful harassment or stalking to gain information. (*Defendant's Exhibit #5 and SC Constitution Bill of Rights, Article 1, section 10*)

FRIDAY MAY 13, 2016 APPROX. 4:10 PM: I left my son's apartment and started back home. When I got to the Forks gas station and the Sidney's Road turn to the left, what appeared to be the same small Black SUV fell in behind me and followed me out toward my property. When I got 1000 feet or so from the stop sign on Hwy 61, the SUV suddenly sped up, passed me much too closely, ran through the stop sign while barely slowing—and turned right. When I got to the stop sign to make my own right turn, the whole sky and highway was lit up with flashing Blue lights directly in front of my property on both sides of the road. I pulled into the ditch past my driveway on the left. (their many vehicles were completely blocking my right of way, driveway, and gate, and I was refused access to my property, and ignored my right to enter and their violation of that right.)

FRIDAY MAY 13, 2016 4:30 pm: I parked my van, walked to outside my gate, observing that my previously latched gate was now unlatched, but pulled closed. I was stopped alongside a Black extended cab pickup which Mr. McNeill and three other Deputies were standing by. Mr. McNeill stopped me when I came to be surrounded by these officers, and said that he had "some questions" for me. He "introduced" all four people so hurriedly that I didn't catch any of the names except his—but when I asked for cards or a slower or louder name recitation (I'm slightly hard of hearing); I was told by the Officer that I later identified as Spears that if I continued to "obstruct" them in their "investigation" it would "go harder" on me. I was shocked, and felt very threatened and intimidated, particularly by Mr. Spears.

Although these were all apparently Animal Control officers, they were soon joined for the rest of this "raid" (Mr. Spears descriptive word) process by actual Deputies from the Sheriff's Department, the Sheriff, and several shelter and Veterinary representatives. (*Defendant's Exhibit # 13 & 14 --US Code Title 18, sections 241 and 242 concerning collusion by two or more persons to deprive citizens of their Constitutional rights under color of law and the taking of personal property for use or sale to another, under SC Bill of Rights, Article 1, Section 13*)

Mr. McNeill then asked me if I was Lynne Van House; I said I was. He asked if I lived "there" indicating an area behind my gate; I said I did. He asked me if I owned "the dogs that are back there." I then stated that I did own dogs which were kenneled on

my private, Grandfathered, Posted property, BUT asked why he was asking the questions. Mr. McNeill said he had had a "complaint."

For the first time of several, I asked Mr. McNeill WHO had complained, and was told that he "knew" who it was, but that he did not have to tell me except in "court". Mr. McNeill then proceeded to ask me to "escort" them ALL down to "where the dogs were" to "explain" some things they had "observed." I then informed them again that they had already trespassed onto my private property, invaded my peace and privacy, and apparently trampled all over my place knowing I was not there—and that there was no way that I'd ever allow them on my property willingly.

SC Code 16-11-600:

"Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry, as aforesaid, for the purpose of trespassing."

(Testimony in Magistrate Court when I asked him if HE was the person who had unlatched my gate.) Under oath, Mr. McNeill admitted that he had seen several No Trespassing signs at my gate, and at least one in either direction from my gate, out at the road; but that he had "walked around the gate on this little path" to gain entry. Also when under oath, I asked him why he had ignored all those no trespassing signs—he replied that he felt that they meant that "You had something to hide." I explained that I was hiding nothing—but trying to protect a lot, which he had ignored. (from the audio)

ANSWER Page 13, line 26: *"McNeill testified that the No Trespassing signs did not prevent or apply to a law enforcement officer entering property for investigative purposes."* (SC 16-11-600—see text above)

This and subsequent actions by the many armed law enforcement officers who came onto my property concerns me greatly because of the apparent belief that the uniform should allow any officer of the court to simply plunder in a private citizen's life and property at any time, regardless of the laws--because of a nebulous "suspicion" of some crime possibly having been committed, or an opinion that the person may be "hiding" something.

Mr. McNeill then informed me that he had called me "sometime this morning" about returning his call about "this" but that I had not returned his call, and was apparently "avoiding" them. I told him that I'd been in my trailer nearly all morning—and had received no call from him. When asked for a specific time, he would not say, nor was he willing to look at his phone to verify a time.

I told them that I wanted them to leave immediately; but instead I spent at least a half hour more outside my own gate; being loomed over; threatened that "It will go harder on you if you don't "cooperate" and that they "will come back and take all your dogs" if I didn't lead them all back down onto my property; but that IF I did allow them back on my property—they "might allow you to get back some of them."

The primary threatening, intimidating, and attempts at coercion came from Mr. Spears, backed up by a young brunette female officer who was video and audio recording everything on her phone, apparently to use against me in court in case I did happen to invite or allow them onto my property. I never did catch her name, nor did I ever give permission in any form allowing them to come on my private property in any manner.

Mr. Spears further waved a sheaf of papers highlighted in yellow at me, informing me that I was not legally allowed to give my own shots, or dock the tails on my Miniature Pinschers, because I was "practicing Veterinary medicine without a license"—which has always been legal in SC for the owned animals in one's care. Later, after I insisted he give me a copy of them, it proved that the papers that he was waving were statutes that applied to cutting the tails on horses (his card says he is an "equine officer")—and that it was, in fact, allowed if it was a "breed characteristic" for the horses to hold their tails in a certain way. Dogs were never mentioned at all. It was never a law, just a bill.

Dr. Buddy DeLoach, DVM, of Walterboro has seen dozens of my puppies that I've docked tails and removed dew claws on, and has never had anything negative to say about how it was done or the final result, and has always accepted my assertions of what shots had been given and when. We have even had discussions in the past of which brands of vaccines better protected puppies in this area of the country during my visits for health certificates, and which one of us had more "experience." This was a draw, both of us having over 50 years "in grade".

While I was still standing outside my own gate that Friday; Mr. McNeil was sitting in the truck, and wrote a couple of very generic misdemeanor citations, for "animal care" and "rabies" and then stepped back out of the truck (where he went when Officer Spears started threatening me) Mr. Spears then got in the truck and wrote 8 more citations for the same two things--7 for "animal care" and 1 for "rabies"—while Mr. McNeill then harangued and cajoled me (much less threateningly) to allow them access "willingly."

I was reminded of what has been described as the "good cop, bad cop" routine as this was going on.

The only time Mr. McNeill asked for any medical records, I told him that I would bring them out to my gate for his perusal at my convenience—but he insisted on "going to the house with me" to look at them, and I said again that that was NOT going to happen. (*Defendant's Exhibit #16*) claims that I had not shown them any documentation—and then further states that there was "a lot of proving she has to do" in relation to this documentation that he refused to let me bring out to him.

*I have since turned over the prior 10 years of orders from my primary vaccine and pharmaceutical company Revival Animal Health, (*Defendant's Exhibit #25*) pictures of my feed bin (some of *Defendant's Exhibit #24*) and over 5 months of feed purchases from Benton Feed, (*Defendant's Exhibit #19*) A better explanation and examination of these pages reveals nearly a TON of food was bought in a bit over 5 months, for my mostly TOY breed dogs; I also submitted pictures of partially used vaccine containers in my fridge. (some of *Defendant's Exhibit #24*)*

At that time, I asked Mr. McNeill if he had found any animals in danger or uncared for—he replied that he had not. (recorded on one of their phones)

The brunette officer claimed she'd seen one without water (but I later verified that the water was so clear, and in deep shade—that the water line in the bowl was hard to see) Other than that, nobody saw any animals in “any danger”. I told them at that time that I'd checked water and any pregnant ones closely at about 6 AM that day, and all of them were fine then. At that point, the brunette officer gasped, and exclaimed “you have pregnant ones down there?” I, of course, replied that I bred them—and of course I did. (*Kristi M. Perry/San Francisco V. CA Governor Arnold Schwarzenegger, Opinion 10-16696 (9th Circuit.2011) “Moral disapproval is not an adequate basis to deprive men and women of their Constitutional rights.”* In other words, Animal rights activists may not impose their sense of morality on me or my use of my personal property.)

Finally, I said I needed them to stop blocking my driveway, and to leave me alone and just leave. I drove my van down to the next driveway to the east, and parked—and waited until they all dispersed, then drove back and went into my place, latching the gate behind me. By the next day, I had installed an actual padlock on it, in place of the latch.

PLEASE NOTE: that on Monday the 16th, prior to the arrival of the first search warrant, Mr. Spears verbally threatened me again about “allowing” them to come onto my property without a warrant, and then made a comment to me about “not needing” to have me unlatch the gate for him to gain entry—and grabbed and jerked up the chain around my gate post to expose what he clearly assumed was still the latch. When he saw that I had replaced the latch with a padlock, he glared at me, and literally threw the chain back down onto the gate, and then climbed over the left side-wing to my gate and entered my property anyway, on foot, closely followed by the brunette officer.

I stopped him again down my driveway about 50 feet—and told him that he could not enter on my private property. His response was: “Yeah, well, Walterboro Horse Auction and the Round O Hunt Club thought that way—and they were wrong too.” (*Southern Pacific Transportation Co. VS Public Utilities Commission, 18 Cal. 3d 309*)

"Obviously, administrative agencies, like police officers, must obey the Constitution and may not deprive persons of constitutional rights"

FRIDAY, MAY 13, 2016 4:21 PM. When I got back in, I checked messages. The ONLY message from Mr. McNeill was at 4:21 PM—only EIGHT MINUTES before I pulled into the ditch by my gate. ALL he said after saying his name and that he was with Animal Control was that "I need you to call me back" and gave his cell phone number. I Immediately made notes on this message (since my voice mail does not allow saving or recording a message)--then I went down, took care of my animals, and took a good number of pictures of my own of the actual conditions as they were when Mr. McNeill and his armed force had made this first unwarranted search that Friday. My 4th Amendment rights say I should be secure against "unreasonable searches" and the SC Constitution adds against "invasions of privacy" but they had already committed criminal trespass, and searched and invaded my privacy on the "authority" of a person who had committed the very same crimes. (Defendant's Exhibit #5 and SC Constitution Article 1 section 10--which further claims a SC citizen's rights against unreasonable invasions of privacy.)

I had committed NO crime, (Miller VS United States, 230 F. 2d 486. Cal 192: "The claim and exercise of a fundamental right cannot be converted into a crime") I was simply quietly enjoying my peace and privacy; breeding, caring for, and selling the progeny of my personal property livestock, (SC 16-11-510) which declares ALL property that is not real estate, but is moveable—to be owned personal property, and specifically names ANIMALS) and taking care of my son, managing his worsening terminal disease.

The carefully guarded and zealously maintained bloodlines of the livestock I bred were literally my life's work—as animals of the quality of mine in health, longevity, and breeding ability are not being produced any longer.

Since I'm disabled myself, and with reduced time available because of my son's worsening condition; I had stopped breeding very much about 6 months earlier. I raised only enough pups to pay for my livestock's upkeep and enough extra for other bills of my own or my son's as they occurred.

My "daughter of the heart" Kimi was preparing to move down from Vermont to help me, to increase production of my exceptional quality pets and in protecting my exceptional bloodlines. She has already bought a house near me.

The officers admitted to me (They recorded this) that none of my animals were in any immediate danger --yet the first warrant cited an "emergency" condition, apparently in order to obtain the warrant. NO ONE of the several law officers that were in Magistrate Court and had been on site objected in any way to my statements about the verbal exchanges relative to my animals being in danger, as mentioned earlier in this narrative; yet Mr. McNeill "swore or affirmed" that my animals were "not being taken care of" and the warrant actually cited a head count that was only off by 2, proving a very careful inspection of them. (a litter of 3 Chihuahuas were born Monday AM the 16th, and a Min Pin momma had a litter of 7, 6 of which survived—10 days after the seizure--even after all the trauma she had been put through. Toy breed dogs do NOT have large strong litters like this if they are in any way "endangered.")

I allege that this "raid" was purposely orchestrated and initiated on a late Friday afternoon in order to severely restrict my access to proper legal counsel prior to the seizure. The first question I was asked by Mr. Spears on the Monday of the first seizure was "Do you have an attorney standing here now?" and when I said no—informed me that he guessed they'd "just go on and do this, then." (*Waeschle vs. Dragovic*, 576 F.3d 539, 544 (6th Cir. 2009) "*In order to establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest*"

They also admitted to taking pictures and videos while on that completely unwarranted Friday the 13th search, further invading my privacy while I was verified by them to not be there. These pictures and videos were then selectively used against me to obtain that first warrant signed by Judge Duffie. *Since all of this so-called "evidence" (most of which I have never seen despite 3 Motions for Discovery) was obtained in violation of my 4th Amendment and SC Bill of Rights guarantees, I also invoke the "Exclusionary Rule" as listed in my (Defendant's Exhibit #5) in that evidence obtained to be used against me was obtained illegally, and cannot be*

included in court against me, AND knowing that "If the Government becomes the lawbreakers, it breeds contempt for the law. " (Supreme Court Justice Louis Brandeis)

BOTH of the warrants were served to my "trailer" address 19897 Augusta Hwy. My "dog pens" address, 19893 Augusta Hwy, per Coastal Electric Coop, for my kenneling area at the far rear of my property—was not listed on either warrant. I only had one animal in my trailer, a 2-week old Min Pin puppy I was raising by hand, bottle feeding. The warrants were served to the WRONG ADDRESS for the "property" listed to be seized, which is against the statutes for legal warrants in South Carolina. Neither warrant appears to be able to pass the "exceptions" rules, such as chasing a known criminal holing up on my property during a chase, or if I had voluntarily given consent for a search—which I did not. Therefore, no true emergency exceptions apply here.

My mailbox clearly shows four numbered addresses—all four of which are mine, although only two are currently used. This is because of 911-addressing errors that could not be corrected by the time they discovered the errors 10 years after the fact. My trailer is 19897—my kenneling area at the far back of my property is 19893. Mr. McNeill admitted to me that he had checked at the Round O post office for an address when I first confronted him.

ANSWER: Page 13, starting line 13: However, Mr. McNeill claims under oath that he called 911 for both the address and phone number.

(The County has copies of the two Electric bills with the addresses on them) He never told me where he'd obtained my unlisted telephone number. I only have a wired land line, which I maintain myself; I have no cell phone service at my property.

MONDAY, MAY 16, 2016 1:45 PM: I stepped out of my trailer to go medicate my son at the usual time, but again had my gate and right of way blocked by vehicles and flashing blue lights. I asked why they were there, and was "answered" by a held up finger and told by Mr. McNeill that he'd be "with me" in "a few minutes". I waited on my side of my locked gate in my van and occasionally leaning on my side of the gate for about 30 minutes, while I was completely ignored by every one of the several carloads of people present and not allowed to leave. I finally left my van there in my driveway on the inside of my locked gate, locked the van, took the keys, and went

back to call my daughter Ranie in Wisconsin to tell her what was happening. (*Title 42, United States Code section 1983*) states that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

I came back out in a few minutes, and observed the same young female brunette officer that I'd seen and spoken with on Friday walking directly down my driveway toward the far back of my property—already at least 300 feet inside my property boundaries, and on my side of my locked gate. I asked her why she was there. She replied that she needed to "join them" and waved a hand toward the rear of my property, back where my main kenneling area was.

I started walking toward her to follow, and she told me that "you can't go back there." I replied that it was my property, and I'd walk where I chose. The two of us got back to my main kenneling area, about 800 feet from the highway, and directly down the center of my property (*Defendant's Exhibits #17 and #18*)—along my private driveway. On arrival back among my whelping pens, I was immediately confronted by our County Sheriff, Mr. Strickland, surrounded by 4 deputies including the female brunette.

Mr. Strickland rushed up and tried to loom over me, but is too short to do so, so he actually literally spat in my face while shouting that "this is unacceptable" while waving his arm at my kenneled dogs. When I asked him what he found unacceptable about my setup, he replied "How'd you like to spend your whole life locked up in a wire pen?" I quietly replied that I was not a dog, and this was all they had ever known. (I was never given the opportunity to inform him that the ones who wanted to run around outside the pens were allowed to do so with supervision.)

ANSWER Page 13, starting line 28: "one of Van House's dogs was out of the pen, but none were running at large" I often let my more active dogs out to play, as they asked, and this Miniature Pinscher female loved to chase squirrels in the woods. The

3 dogs that did that most often were the only ones of the shorthaired dogs that had ticks on them—and May is tick hatching season here.

I did add to Sheriff Strickland that what he was doing was against the law, that he was trespassing; and that I wanted them all to leave. He then screamed: "I AM the law!" and said the warrant was "on it's way." As the chief law enforcement officer in this county, I allege that he was elected to enforce the law, not claim to be it. (*Southern Pacific Transportation Co. VS Public Utilities Commission, 18 Cal. 3d 309*) "Obviously, administrative agencies, like police officers, must obey the Constitution and may not deprive persons of constitutional rights"

ANSWER: Page 15, starting line 15: Ms. Taylor admits she was there with the Sheriff on my property on Monday, but claims that the Sheriff arrived after the search warrant had been executed. I, however, always left my trailer to medicate my son a little before 2, and I was already blocked in. I went down and confronted the Sheriff, walked back up and unlocked my gate and moved my van—then went into my trailer to call my daughter and get over my terror enough to drive. The warrant was served on me after I came back out, at about 4 PM. It was only issued at 3:05 PM. so despite Ms. Taylor's assertion, Sheriff Strickland and many armed deputies were on my private property for at least an hour, probably closer to 2 hours, before any warrant was even issued, let alone served. These times could be verified by dispatch records if need be.

I asked Sheriff Strickland and the other officers again to go back out the other side of my gate until the warrant arrived and I'd been served with it. Mr. Strickland immediately screamed "are you going to unlock that F**king gate?" I replied that I would, once I was satisfied that any warrant served was in order; since I'd never been given time for any consultation with an attorney. He THEN screamed: "if you don't unlock that F**king gate NOW—I'll RIP the G*dD**med thing off it's F**king hinges and throw it in the G*dD**med woods! Oh, and THEN I'll tow that F**king car of yours out of my way and impound it! How do you like that?"

I have rarely been frightened of much of anything, but in this case, I was so shocked and frightened because of the people involved that I literally felt my breath leave me,

and I stepped back a pace. Sheriff Strickland followed—and stood glaring at me with his fists clenched.

I suddenly took in my surroundings: I had no one else there on site that would be a witness for me; I was at least 100 feet inside 3 of my property lines, and 800 feet from the other one; I was surrounded by nobody but him and his deputies; and all of the 4 deputies had their hands on the butts of their guns. It suddenly occurred to me that if I confronted him further in any way, I might well be shot right there, as he appeared completely out of control. As quietly as I could, I told him I'd unlock my gate, move my car, and wait in my trailer until the warrant arrived. I tried to be as non-confrontational as possible, because I was literally in fear of my life at that time.

The brunette officer volunteered to “escort” me with a smirk and her hand still on her gun—but another officer instead stepped up and walked with me back to the gate. I have no doubt that if she had “escorted” me, and I would have even tripped, the brunette would have shot me. (*Southern Pacific Transportation Co. VS Public Utilities Commission, 18 Cal. 3d 309*) “Obviously, Administrative agencies, like police officers, must obey the Constitution and may not deprive persons of constitutional rights.” I simply ran my van randomly into the woods by my driveway, unlocked my gate, and walked back to my trailer to talk to my daughter again and try to calm down. I was shaking so badly I almost couldn't walk there.

When I came back out of my trailer about 4 PM—two officers were standing in my back yard, and showed me the warrant. All it said was that they could “search for and seize approximately 63 dogs that were not being cared for by the owner”—but I was told that it allowed them to search all my buildings and grounds, and take whatever they thought was “important”, and they did; while breaking and bending pen doors and frames, ripping run gates off the hinges, breaking into outbuildings and my trailer, destroying my personal property, and taking many of my things that were never listed on any warrant. They also used a drug sniffing dog to locate my cats—and confiscated them as well. (*Coolidge VS New Hampshire, 403 US 443, 467, et al*) “A warrant must describe the specific place to be searched and persons or things to be seized with particularity sufficient to prevent a ‘general, exploratory rummaging in a person’s belongings.’” (*Cantwell VS Connecticut, 310 US 296 (1940)*) “The fundamental concept of liberty embodied in the 14th Amendment embraces the liberties guaranteed in the

1st Amendment...freedom of conscience and religious belief is absolute...freedom to act is subject to regulation, however...must not unduly infringe on the protected freedom."

In other words, neither my neighbor nor government officials have the authority to supersede my God and deprive me of my private, personal property in this manner. (SC 16-11-650) *"A person other than the owner...who willfully and knowingly removes, destroys, or leaves down any portion of a fence in this State intended to enclose animals of any kind...or who willfully and knowingly leaves open or removes a gate...intended for the same purpose...shall be guilty of a misdemeanor."*

Again, The SC Code section 1, that deals with Search and Seizure, mirrors the US Constitution's 4th Amendment (Defendant's Exhibit #5)—but adds even more about privacy for her citizens. It states: SC Code section 1 *"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and against unreasonable violations of privacy, shall not be infringed, and no warrants shall issue; except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

This was clearly not done on several important levels, most notably the "probable cause", and the "particular" place, persons, or things descriptions.

MONDAY, MAY 16, 4 PM. I was told both that I could not stay, AND was informed that I "could leave" if I chose, to finally go to medicate my son. I left and spent some time with David, but was terrified as to what my poor animals were going through—so I went back about 2 hours later, around 6 PM, and watched the many animal control people, Deputies, a Veterinarian, (Dr. Laurie Campbell) and shelter volunteers catching and loading them into crates and trucks. I was told by one of the officers that I could not go within 50 feet of whatever truck they were loading or I would be arrested for interfering.

At one point, two of the women simply picked up two of my plastic dog crates out of my yard, and started to walk away. When I asked what they were doing with them, one replied that they had "run out of resources" and "have to use yours" but none of the at least six (I'm missing seven) taken ever showed up on the seizure lists; I did identify six of mine pictured on the various TV segments. After my questioning this

action of theirs in court, Ms. Taylor attempted to "return" 3 of them to me after the next hearing—but 2 of those offered were not mine. I got back one tiny crate out of the 7 missing. (*Coolidge VS New Hampshire*, 403 US 443, 467, et al) "A warrant must describe the specific place to be searched and persons or things to be seized with particularity sufficient to prevent a 'general, exploratory rummaging in a person's belongings.'" (*FW/PBS VS City of Dallas*, 493 US 215 (1990) "The government must prove a "significant governmental interest" in infringing on Constitutionally protected rights, and even if there is found a significant interest to infringe on the rights of the person, the government will do so in the least intrusive manner." In my case, no general rummaging through every single area and building on my property should have occurred nor should they have confiscated anything not on the warrant.

My animals were always kept isolated and safe from everyone but me—both to protect them from random "bugs" carried on stranger's feet, clothes, and tires—and because when people know what you have, they tend to think you won't "miss" one or two if they steal them when you are gone.

I lost literally DOZENS of my most "friendly" animals (usually puppies) while I worked at the Ford place in Walterboro—because the public knew I was there for 10 hours every weekday, and many knew where I lived. People would simply go out and help themselves. That's one of the main reasons that my property was so totally "closed" to everyone. (The County has a screen shot of the front page of my website at Phoenix-kennel.com showing that it had been publicly posted as totally closed to everyone, and why that was so—for many years)

My animals had literally never even seen anybody but me; but I witnessed them that day suddenly swooped upon by several total strangers in groups; grabbed with huge bite-proof gloves; snatched and strangled with a catch pole; muzzled with ropes which caused sores and loss of hair on their noses; and dragged and carried to the trucks by their necks, hides, and strangling ropes. My poor dogs defecated and urinated on themselves in terror; fear-bit; and cried and screamed pitifully; and my cats scratched, bit, screamed, and growled. Was this humane treatment?

I sat on my back porch crying and listening to them in their mortal distress—and had a stroke that paralyzed the left side of my vocal chords--apparently permanently--while

witnessing this, I've had another TIA since from the stress and pain of losing my animals so traumatically.

The "rescuers" also were heard by my "daughter" Kimi, (whom I had on the phone to help me cope) to laugh, yell, sing, dance, give high-fives, and gleefully comment about the "beautiful" dogs they had "found". She asked me about what they were doing and I described this scene in detail as she listened. That first warrant was apparently signed because Mr. McNeill "swore and affirmed" that many animals were "in immediate danger;" but Kimi commented that if she didn't know better—she'd have thought I was having a party from the noise and comments they made.

If my animals had been as ill or uncared for as the warrant, the press releases, and the several TV blurbs aired that night and following claimed—that joyful scene we witnessed would certainly never have happened, nor would Mr. McNeill have waited 4 days to ask for a warrant. This was also verbalized by myself in Magistrate Court, and NO ONE objected to my description of the actions carried out during this "raid" in any way.

Several times during the first seizure, I begged various people to allow me to identify certain ones who were pregnant, (5 of them) specify which one should not be fed certain foods because of allergies, (Spotz) point out one very old boy who had a weak heart, (Kobalt) and especially that they all needed to have blood titers run before vaccinating against anything—because of the probability of over-vaccinating. .”
(Siebert v. Severino, 256 F.3d 648, 660 (7th Cir. 2001) “[T]here can be no dispute that an animal owner has a substantial interest in maintaining his rights in a seized animal. . . . Animal owners [] have a substantial interest in their ‘mere’ pets.”

My appeals were totally ignored, and all of them were over-vaccinated, over-wormed, and forced to have many tests run which were not only un-necessary—but actually became life-threatening or -taking in several cases.

MONDAY, MAY 16, 2016, approximately 9 PM: The trucks, all of my animals, and much other personal property finally was gone. One officer stayed in my yard in the dark, and told me to wait for the “seizure lists” to be given to me. When I asked why they weren't already there, since my property was gone—he said that officer Taylor

had to go down to the Red Oak Church a mile from my place, and get the minister to copy all the paperwork on his printer; thus further humiliating and vilifying me to the neighbors that I still live near; after all evening of nearly blocking the highway with blue lights and "official" vehicles at my gate for all the passing traffic to see and speculate over. I cannot claim slander or libel in this instance, since I don't know exactly how much the neighbors were told or what the minister read—but I can say that all my neighbors have been very stand-offish since this happened, and I find it very regrettable .

Again, the SC Constitution specifies "unreasonable invasions of privacy" as something that cannot legally be imposed on it's citizens. At this point, all I had even been accused of were misdemeanors, (with NO supporting evidence shown to me because they never had any)—and I'd had no time (since the first two searches were separated only by a weekend)—to contact an attorney or allow for due process of law. (*Waeschle v. Dragovic*, 576 F.3d 539, 544 (6th Cir. 2009) "*In order to establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest.*"

(*Defendant's Exhibit #6, 5th Amendment*) This Exhibit also carefully states that I was not to have been "deprived of life, liberty, or property, nor should my private property (SC 16-11-510) have been taken for "public use" (sold as pets by the shelters) without just compensation to me.

My life's work of 55 years was taken and my entire life was disrupted beyond redemption in a mere 5 hours. (*Mixon VS State of Ohio*, 193 f. 3d 389-400 (6th circuit 1999) "We must construe the complaint in the light most favorable to the plaintiff and accept all the facts and allegations contained therein are true."

When the seizure lists and a copy of this warrant were finally given to me—they were, and still are—largely undecipherable—they often ignored or mis-stated gender, color, and breed, and almost none were listed by "condition" which Dr. Laurie Campbell was stated in the "Press Release" as being there to "verify". (*Defendant's Exhibit #16*) *Press and Standard newspaper press release.*

To this day, I have identified only about a third of my own dogs from these lists—because I was never allowed to actually see the dogs, or even see pictures, after the seizure, and because the descriptions were so poorly stated and misleading. It seems apparent that they never intended for me to see any of my animals ever again, so they were totally unconcerned with a description, since they had my dogs and cats in hand.

I've been told in court that all of my animals have been “adopted” (which translates into being spayed, neutered, aborted, adopted, or killed by this time.) Their value to me as breeding animals, and any ability I would have had to partially salvage my special bloodlines with at least the pregnant dogs, was totally destroyed within less than 2 weeks of the seizure. The so-called “evidence” for Criminal court is also gone, most of them are dead apparently, from the descriptions of them in *Plaintiff's Exhibit #9*, I submit that because the shelter decided they were not “adoptable” due to what they clearly viewed as temperament problems, old age, or health issues--they were chosen as the 10 criminal cases, and then destroyed. “The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a legal proceeding. Any testimony of plaintiff's witnesses would not overcome the spoliation inference born of the lost evidentiary value of the missing product itself.”

Even the HSUS and the ASPCA have specifications for how “evidence” (seized animals) is to be kept and maintained—for use either in court, or in case the “evidence” were to ever have been given back to the owner. Neither the County nor the shelters made no obvious attempt to keep any of them in the “same condition as when seized,” not even the ones for Criminal court. (*Bess VS Bracken County Fiscal Court*, 210 s.w. 3d 177, 180 (Ky 2006) “...recognizing that dogs are personal property...the government is not permitted to deprive an animal owner of his property without due process of law. The risk of erroneous deprivation of this property interest is significant.”

TUESDAY, MAY 17, 2016. The Vet, Dr. Mary Campbell, (who chose and evaluated the 10 so-called “criminally tortured” dogs) stated under oath in Magistrate Court that she went onto my property to take pictures of the “conditions the animals were living in”. Since this was done after the animals were already removed, and the pens and

runs already partially destroyed by the officers—this was not valid evidence to have been introduced, and is one of the reasons for my Motion #2 denied by Judge Duffie.

The facts are that several of the runs that she pictured and described as “deplorable” during testimony did not contain any dogs at all at the time of the seizure, but were unoccupied, and awaiting repair and refurbishing by myself. In any breeding or animal keeping operation, there are always things to repair, things to refurbish, and new accommodations to be built—and all of these things were being done as part of the process of care at the time of the seizure of my livestock. Her “evidence” collected after the fact of what she was supposed to be documenting--should never have been admitted.

In addition, her “worst 10” which she used for Criminal Court were all longhaired and kenneled on the ground (and were the only ones of them all that had any fleas—until they were all mixed in together in trucks for transport to the shelter) and the comparison chart from Purina she was using to claim “body condition” was of a shorthaired dog. 2/3 of my dogs were very shorthaired and kenneled off the ground (no fleas)—and yet her 10 supposed worst were all longhaired—and she admitted under oath that you could not evaluate body condition on a longhaired dog by just looking at it or from a casual exam. (from the audio)

If all of my dogs were so “emaciated” -- as claimed by several people, then why were none of the shorthaired ones on the list (which could be easily visually evaluated) for so-called emaciated body condition? I allege that they were not underweight, as shown by the photos indicating the number of ribs and other factors (5 ribs, definite tuck-up, and definite waist viewed from above for an ideal condition) and comparing to the County’s “chart,” and actual weight as recorded on the County’s intake exams—but that the 10 were chosen strictly as the least adoptable, and for no other reason.

The Motion was denied for the reason that it “should have been done at the beginning of the hearing” by Mr. Sapp—which of course was not done, nor did he follow virtually any of the specific instructions I gave him to carry out during the hearing I missed at his insistence that he'd “take care of it for me.”

I did not know until I received the thumb drive of the audio of all the hearings, particularly the one hearing I missed on May 31, that he actually worked for the County's interests in taking my dogs away permanently—instead of getting them back, as I'd hired him to do. (*United States VS Beebe, 180 US. At 352*) “A judgement entered upon such a compromise is subject to be set aside on the ground of the lack of authority of the attorney to make the compromise upon which the judgement rests...entering or permitting to be entered such judgement is valid because it's assumed the attorney acted with special authority; but when it is proved he had none, the judgement will be vacated on that ground.”

His and the County's moral objections pertaining to the fact that I kept my breeding livestock outside and in wire pens (as opposed to them being pampered house pets) should never have entered into his decision to surrender my animals to the County—he should have recused himself as soon as he realized that he did not agree with how my animals were being kept, but he did not. (*Montgomery VS Goldstein, 109 Or. 497,220 P. 565, 567 (1923)*) “An attorney at law...is a special agent limited in duty and authority to the vigilant... defense of the rights of his client...Because the attorney serves as a special agent, the scope of his authority is confined to only those actions necessary to accomplish the specific purpose for which he is employed.” I hired him to get my animals returned, not surrendered.

9) TUESDAY, MAY 18, 2016: I went into town to see Mr. Sapp about another matter, but as soon as I stepped into his office, he rushed out of his inner office and said: “Lynne, what the H*ll happened?” I asked what he meant, and he said: “With the dogs.” I asked how he knew anything about it, and he stated that it was “all over the TV—haven't you seen it?” I do not watch TV—so I had no idea that all the Statewide large TV stations were invited to the Hilton Head shelter to film.)

I've found segments about the “rescue” on Greenville, Charleston, Florence, Columbia, and Savannah TV stations—and there may be more—all of them gave my name and address, and said the dogs were in “deplorable” condition, while panning crates and pens of my dogs at the shelter--all obviously healthy, if very frightened and dirty because they had repeatedly urinated and defecated on themselves from fright during transport. IF the sound was turned off, and the dogs just looked at—it became

even more obvious that there was nothing visually wrong with my dogs, and they were not "dehydrated, emaciated, and constipated" as was so boldly claimed.

The newspapers had also been summoned to the Hilton Head animal shelter to await the arrival of my dogs the day before as well, and I'd not been made aware of that either. AP wire photo had been alerted, and blurbs about the "rescue" appeared as far away as San Francisco and Seattle, thereby sullyng my long-standing good reputation nationally. (SC 16-7-150) *"Any person who shall with malicious intent originate, utter, circulate, or publish any false statement or matter concerning another the effect of which shall tend to injure such person in his character or reputation" is subject to fine, imprisonment, or both.*" All this precise information "leaked" to all these information outlets appears suspiciously like an attempt to ruin me before I had any chance to defend myself.

I mention here that in less than an hour after my arrest on the criminal charges, my mug shot taken at the jail was broadcast on Charleston Channel five news. My disabled son happened to see this before I could get out of the bond hearing and reassure him that I was not going to stay in jail, and had a Grand Mal seizure as a result. There could also be claim laid for damages for this.

Mr. Sapp hurried me into his inner office, and brought up the Charleston segment on his computer—As I described above, I saw that the video and the audio descriptions didn't match, and pointed this out—Mr. Sapp and the women in his office agreed with my statement at that time.

At this point he told me that I'd need to ask for a hearing—and I asked for particulars. His statement that "I want to help you with this" seemed a Godsend at the time, so I agreed to get him some money for his help in getting ALL my dogs back, before they were altered or damaged by all the various things that might be done to them by the people at the shelter. Mr. Sapp always fully understood that I wanted ALL my dogs back, and that he was hired to do this for me. I was still aimed at retaining all those irreplaceable bloodlines that had been snatched so suddenly, and was anxious for him to start working on it immediately. He said he would, and to relax, he'd "handle it." Instead, he did the opposite of what he knew I wanted. (*Lanier VS State, 486 P.2d 981 Alas.1971*) *"Attorney's waivers of the client's Constitutional*

rights without consent will not bind the client if the waiver occurs before or after trial or results from a decision during the pre-trial period."

10) WEDNESDAY, MAY 18, 2016—Approximately 2 PM: I again came out of my trailer, drove my car to my gate, and was again confronted with a large number of various types of vehicles and people; including a large van, several police vehicles, unmarked POV's, Animal shelter vehicles, etc. All were again sprawled across my gate, right-of-way, and the ditches on both sides of my driveway and the other side of the road, blue lights flashing, and blocking my ability to leave and medicate my son.

PLEASE NOTE: a small doe deer had been hit and killed on the road early that morning, and her carcass had been by my side of the road about 50 feet east of my gate. By the time I tried to go out that afternoon, buzzards had reduced her to a leg or two and a backbone. I don't know where her skull went, but I do know that her *carcass was driven over, ignored, parked on, and totally unnoticed*—because they were focusing so strongly on my BURIED animals that had died and been placed in my burial pit over the last 23 years.

In testimony in Magistrate Court, Ms. Taylor stated that she had "found" A total of 107 partial carcasses—including the animals she found in the woods surrounding my burial pit, and those she dug up out of the pit. They were of several species, ages, and conditions. Even if they had all been my animals, and even if they did not make any mistakes and count any of them more than once from partials—that would still have been fewer than 5 per year...even including newborns who didn't make it, old age deaths, etc. This is far from a large number, considering the usual number of my breeding animals in residence.

Dr. Mary Campbell, in her testimony under oath in the County's portion of this case that was cut short by Judge Duffie's Order—admitted that the carcasses ranged from 3 months old to at least 15 years since their deaths—and she could not say what ANY of them had died of. She speculated, and her testimony in this regard has no relevance since she admitted to not having any idea of cause of death of any of them, despite describing herself as a "forensic" Veterinarian. (from the audio)

9) WEDNESDAY, MAY 18, 2016 After 2 PM: This time, I was told that they had a warrant to "find out what all those animals died of" that they had "discovered" during their initial raid. (see above) This warrant was also served to the wrong address, and specified all my buildings this time, as well as where they had decided to dig; at my burial pit. I was shown this warrant, but never given a copy of it. They again broke into buildings, ransacked contents, took pictures of and confiscated, many things—many of which were, again, not listed on the warrant to be seized.

I was told that they'd be there "most of the night" so I'd better leave, and go stay with my son. (SC 16-11-640) *"It shall be unlawful for any person not an occupant owner, or invitee to enter any private property enclosed by walls or fences or closed gates between the hours of 6 PM and 6 AM...the provisions... are supplemental to existing law relating to trespass."* I came back out about 9:30 PM to see if there was any chance of sleeping in my own bed that night—but my gate and driveway were still completely blocked, and I could not get anybody to answer me when I tapped on various windows of running vehicles, and yelled for somebody. It was very dark, the blue strobe lights were blinding, and I became afraid, again, of being accosted or shot if I went into my own property to get anything out of my trailer. I finally just went back to David's—and spent the night on the sofa fully dressed.

Before I left the first time that day, I had requested that officer Taylor leave the "seizure list" on the seat of an old truck sitting in my yard—and she did, as I discovered the next morning. It did not "specifically" list virtually anything taken—leaving categories like "bucket of meds" and "box of bones" as being apparently adequate for their uses—but leaving me with many questions and much damage to my premises and to my memories of the animals they had dug back up and taken away.

FRIDAY, MAY 20, 2016: I received a phone call from Mr. McNeill, who told me that he was at the Hilton Head Shelter, and asked: "Look here, what are you gonna do about these dogs—are you gonna give them up?" Of course, I told him NO—they had been illegally taken, and I wanted them ALL back—and again reiterated that they HAD to run blood titers in order to not damage their breeding ability with over-vaccination. (Defendant's Exhibits #32 and #33)

Mr. McNeill then told me that I'd "have better luck" in "getting back" just the 24 that "regulations said I could have." After I reminded him that I was Grandfathered in, and I was not operating under that particular regulation that he wanted to place me under; he told me that the "Vet bills were mounting" and that IF I "ever" got them back, I'd have to pay them all first. I reminded him that I'd specifically insisted that none of them have any vaccinations or Veterinary attention before garnering a blood titer reading to assure the necessity of what they intended to do to them—and he then asked if I would be "willing" to talk to "Ms. Trice here". I told Mr. McNeill that I'd talk to anybody—but I still intended to fight to get all my dogs back. When Ms. Trice got on (This was all done with speaker phone) she informed me that the Vet bills were "already up to \$15,000!" (*The Louisville Kennel Club, Inc. et al v. Louisville/Jefferson County Metro Government, No. 3:2007cv00230 - Document 57 (W.D. Ky. 2009)*)

Recognizing that animals are property, and the government cannot seize the property and force the owner to pay a caretaker's fee in advance of court and/or to kill them, since they must be able to return the property in the same condition as they seized it, if the defendant is found not guilty. If seized, however, they must be maintained in a "humane manner without altering" until a conclusion is reached in court.

After I asked how in the world it could have gotten that high when they had not been authorized by me, the owner, to do anything to them yet—she quickly told me that "we haven't even gotten to all of them to "clean them up" yet—but did you know that several have already tested positive for heartworm?" I told Ms. Trice that I found that very hard to believe—since all of them got Ivermectin at the recommended dose every month. I further asked if she meant that some had heartworm LARVAE in their bloodstream, (which is what the Ivermectin every month kills if they are present from mosquito bites) or if they actually had heartworms? She didn't answer that question.

I again told her that I did not want any of them vaccinated or altered—because I was going to fight to get ALL of my breeding stock back. Ms. Trice then proceeded to tell me that if I refused to surrender any of them voluntarily, and they wound up being given up involuntarily—that I'd be sued by them to get all the money they had spent on them, and I was likely to "lose my house and everything". However, if I gave up "all but just the 24 that you can TRY to get back" that the "charges" for the Vet bills would be waived except for those 24 if I got them back, and I wouldn't be sued for

those many thousands of dollars for the others. (*Murdock v. Pennsylvania*, 319 U.S. 105, at 113) "A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

Out of curiosity, and because I really wanted to get a handle on what she was thinking—I asked her, if I took that route, would I be allowed to choose WHICH 24— and she instantly said: "oh, no—just the 24 "healthiest" ones" and that the rest would be altered and "adopted out" immediately. (*City of Cuyahoga Falls V. Buckeye Community Hope Foundation*, 538 US. 188) "The right of ownership of property includes the inherent right to use one's property." My "use" of my property was by breeding my adults and selling their offspring. This suggestion by Ms. Trice certainly would not have served my needs in retaining my bloodlines or the specific breed characteristics I was trying to salvage; so at that point, I told Ms. Trice that we apparently had nothing else to say to each other, and we said goodbye and hung up.

Answer: Page 13, line 11: Interestingly—Mr. McNeill denied under oath any memory of this conversation at all—despite his having traveled to Hilton Head to make the call in the first place, and it having been made from the shelter's phone.

MONDAY, MAY 23, 2016: I was called by Mr. Sapp and told that there was to be a hearing on May 31—to determine if the County had "legally" seized my personal property. Naturally, I immediately told him that I wanted them all back—and wanted him to particularly concentrate on the Constitutional aspects of my defense and reasoning—particularly the 4th Amendment. Mr. Sapp claimed to both myself and a friend that I had asked him to call (who is well versed on many Constitutional issues) that he had "no intention of defending my Constitutional rights." (*Miranda VS Arizona*, 384 US 436) "Where rights secured by the Constitution are involved, there can be no legislation or rule-making which would abrogate them" (*Marbury VS Madison*, 5th US 137,180) "All laws which are repugnant to the Constitution are null and void." (*Davis v. Wechsler*, 263 US 22, at 24) "The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

Instead, Mr. Sapp began arguing nearly daily that "all I'm trying to do is keep you out of prison" and that I just needed to surrender them all at this hearing—and "try to get on with your life". He then further asserted that if I "pled guilty" that I'd "only have to

pay a fine, and take some courses—and you probably would be “allowed” to keep a few pets in the future” just as though that would serve me just fine to lose my life's work, and the enormous value inherent in them, in this sudden and irrevocable way. I had committed no crime, but he expected me to plead guilty and pay a fine. (*Sherar V. Cullen*, 481, F2d.945 (1973) “For a crime to exist, there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights.” A “party” is a human—animals are property, by law. An animal has no rights (or responsibilities) under the law, so, there cannot be an injured party (victim). If there is no victim, and no probable victim—then any “animal rights/activism” is simply a moral disapproval or objection to methods.

I was stunned, and this cavalier attitude toward my life's work scared me—so I specifically asked him if he intended to try to get all my dogs back—and he said he would try; but that I needed to “accept that they probably won't be coming back.” (*City of Cuyahoga Falls VS Buckeye Community Hope Foundation*, 538 US.188) Reinforcing in fact on appeal that “The right of ownership of property includes the inherent right to use one's property.”

I showed up on the day of the first hearing on May 31 in his office, and Mr. Sapp “advised” me as my attorney—to NOT go to this initial hearing, as there would be “lots of TV trucks and camera crews” there—as well as a “bunch of angry women” and he didn't want to “put you through that”. I argued this point right up until time to leave for the Hearing.

I reluctantly agreed to not attend, after he said “don't you trust me?”—and I stayed in his office until after the hearing. When he got back, he told me that he'd been “scared” by “at least” 20 women all “screaming for your blood”—and he was very glad I had not gone with him. I still thought he was on “my side” in trying to get my dogs back at that point. (*King Construction Co. VS Mary Helen Coal Company*, 194 Ky. 435, 239 S.W. 799 (1922)) “The court said that it is a universal rule that a client is not bound by his attorney without ratification where the attorney has a personal interest in the subject matter involved or where there is a conflict of interest between the attorney and the client.” (As verified by the audio.)

I started lobbying repeatedly (almost daily) for him to put in a Motion to the court to get them back, and couldn't seem to get him to do so—plus I kept asking why they had been deemed to have been legally seized in the first place, and why they hadn't been given back on May 31st, at least until the June 21 hearing to see if they were to be involuntarily surrendered, since I had given him my statement to be read into the record at the Hearing, in my absence. (*Eldridge VS Melcher* 226 Pa. Super. Ct 381, 313 A.2d750 (1973)) "The attorney, merely because of his employment as counsel...cannot affect his client by out of court admissions of fact which were not made, in order to dispense with formal proof." This was never done, as evidenced by the audio of that hearing. (*Kristi M. Perry/San Francisco VS CA Governor Schwarzenegger. Opinion* 10-16696 (9th Circuit, 2011)) "Moral disapproval is not an adequate basis to deprive men and women of their Constitutional rights."

Instead of answering my questions; he started to comment about the "horrible" conditions he had "seen" on pictures that were taken on that Friday (unwarranted) search. (He had apparently seen pictures (which I have never seen) during the initial hearing on May 31 as to whether it was a legal seizure.) I have no defense against something I've never seen—and find it likely that much of that "evidence" was not even taken on or from my property; I have seen no chain of evidence.

I finally became suspicious that he was NOT really making any effort to get my animals back to me as he had been hired to do—so I wrote a letter to Judge Duffie articulating my many concerns about this whole procedure and the fact that Mr. Sapp was probably not working in my best interest, and asking for the hearing about getting them back.

I had never had any connection to the justice system—so I did not know anything about procedure; but Judge Duffie kindly accepted my letter as a Motion for a hearing about keeping "some" of my dogs. Again, this appears to have been because Mr. Sapp was paying only lip service to actually getting any of them back to me, and whether the wording was "some" or "all" made no real difference, since it was his clear intention to see that NONE of them came back to me. (*Hall VS Benefit Association of Railroad Employees*, 164 S.C. 80, (1932) "Attorneys ...without express authority, have no right to compromise or settle their client's rights." (*Strickland VS Washington*, 466 US 668 (1984) "The court held that where defense council's conflict

was "actual" as opposed to "potential," a "fairly rigid" presumption of prejudice applies."

The day Mr. Sapp got notice of the hearing—I walked into his office about another matter, again—and he rushed out of his inner office white as a sheet, sweating, and running his hands through his hair and rubbing them on his pants. His first words to me were: "Lynne, what the H*LL have you done?" After I finally understood what he was so upset about, I explained that since we'd only had until the 15th to file to keep my dogs—and he hadn't done it—that I had.

He was very angry and terrifically upset, and told me that I hadn't "*appreciated*" what he was trying to do—so I asked him exactly what it was he was trying to do—and he said "keep you out of prison." I then told him that I thought he was no longer working for my best interests, and he agreed that he needed to "resign" because I wasn't doing what "I told you to do." (*Massachusetts Cas. Ins. Co VS Forman* 469 F.2d 259 (5th Circuit 1972); (*Milewski VS Rolfan Co*, 195 F. Supp. 68 (D. Mass. 1961); (*Manning VS Wymer*), 273 Cal. App. 2D 519, 78 Cal. Rptr. 600 (1969); (*City of Des Plaines VS Scientific Mach. Movers*, 9 Ill. App. 3D 438, 292 NE,2d 154 (1972); (*Gailbraith VS Monarch Gold Dredging Co.* 160 Or. 282, 84 P.2d 1110 (1938) "According to the great weight of American Authority, only after acquiring express authority in the form of his client's consent may the attorney compromise his client's claim or cause of action." He was only allowed to do this with my EXPRESS consent, which he did not have. (*Montgomery VS Goldstein*, 109 Or. 497,220 P. 565, 567 (1923) "An attorney at law...is a special agent limited in duty and authority to the vigilant... defense of the rights of his client." "Because the attorney serves as a special agent, the scope of his authority is confined to only those actions necessary to accomplish the specific purpose for which he is employed."

When the hearing date of June 21 arrived, Mr. Sapp showed up, excused himself as my counsel—and left. I was asked if I wanted to have time to get another attorney, and I said I had no more money—so I'd go pro se from then on out of sheer necessity.

The hearing to determine if it was a legally sound seizure began, and proceeded much as Judge Duffie's narrative states it—with a few notable exceptions and important points left out; primarily full questions and answers instead of phrases—which

occasionally sheds a different light on the remarks that Judge Duffie lists as important points. I will attempt to follow his narrative closely, but add to or clarify by page and line.

ANSWER-Page 1 line 6: states "Attorney Benjamin C.P. Sapp appeared on behalf of Lynne Lucille Van House. Mr. Sapp advised the court that VanHouse waived her appearance at the hearing, and he would be speaking on her behalf."

Now that I finally have the actual testimony audio of that hearing which he INSISTED I NOT attend—it's clear to me exactly why I wasn't supposed to show up. Mr. Sapp clearly had no intention of actually defending my right to get my dogs back—even temporarily—and fully intended to make sure that the County got at least temporary custody of all of them; to make it easier in the future to make sure they got them permanently.

If I had been there, I would have continued my argument that I needed them ALL brought back to me—and Mr. Sapp clearly didn't want the hassle, despite the fact that he claimed to speak on MY behalf. (*Montgomery VS Goldstein, 109 Or. 497,220 P. 565, 567 (1923) "An attorney at law...is a special agent limited in duty and authority to the vigilant... defense of the rights of his client."* "Because the attorney serves as a special agent, the scope of his authority is confined to only those actions necessary to accomplish the specific purpose for which he is employed.")

ANSWER-Page 1 beginning on line 14: Mr. Sapp claimed that I agreed that there was "probable cause" for the dogs to be removed from my property. That was NEVER the case, as my timeline clearly shows. Mr. Sapp continued with his testimony that he (and myself) "had seen photographs and spoken with Deputy Taylor." Again, I actually saw about 12 photos all together of the ones on Ms. Taylor's laptop, and this was the interrogation I was in at the time—with Miranda Rights having been read to me, and in an interrogation room at the jail. In testimony later under oath, I asked Ms. Taylor how many pictures, of those taken on my property, I ever actually saw—at first, she said she didn't know. When pressed, with "a dozen, two dozen, a hundred?" She finally said she'd probably shown me "about a dozen." (from the audio)

Out of those “dozen” photos—at least 2 were “staged;” one by taking a photo of an un-inhabitable pen which was not being used, as a supposed “example” of typical housing--and another picture showing, for the photo, a dog in another unused pen—Sandy had been moved into that pen from another, in order to show the “conditions” she was supposedly living in. I allege that many of the “evidence” photos that were taken on my property are similar to these, and that this is one reason that the County continues to ignore my requests to possess copies of them through Discovery.

ANSWER-Page 1, starting on line 17: Mr. Sapp stated that it was a “horrible situation” and that since it was his “understanding” that I could only have 24 animals on my property, & that I was in violation of the County Code--And that I “waived my rights” to the other 49 animals—that I had consented to a “probable cause” to have had them “removed from her property”, and that I “consented” to the animals remaining in the custody of the County. (From the audio) (Wilson VS Eddy, 2 Cal. App. 3d 613, 82 Cal. Rptr.826 (1969) (Miller VS Mueller, 28 Md. App.141,343 A.2d 922 (1975) Thornton VS Kelly, 11 R.I. at 202) “It is well established that absent some expressed authority, the attorney has no implied plenary power to make, enter into, or alter a contract on behalf of his client.” (Sherar VS Cullen, 481, F2d.945 (1973) “For a crime to exist, there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights.” .An animal has no rights (or responsibilities) under the law, so there cannot be an injured party (victim). If there is no victim, and no probable victim—then any “animal rights/activism” is simply a moral disapproval or objection to methods. I was only engaged in harvesting my livestock by raising and selling their puppies:

I did not agree, at any time, to any of those waivers or violations, and would have vigorously refused to accept those statements--and defended my own position-- IF he had said them within my hearing. There was no expressed authority to do what he did. _

The whole point of my hiring a DEFENSE attorney was for him to DEFEND me and my Constitutional rights, not act on behalf of the County to persecute me and assist them to take my property/life’s work and sell it.

(Brinegar VS United States, supra, at 174) "Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common law tradition, to some extent embodied in the Constitution, has crystalized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty, and property."(Winters VS Cook, 489 F.2d 174, 178 (5th circuit, 1973) "(W) here an inherently personal right of fundamental importance is involved...Both counsel and the Judge would have to make certain that the client had been sufficiently informed and made a truly intelligent waiver in every situation where an attorney's action or inaction might involve any possible constitutional rights."

ANSWER-Page 2, starting on line 8: Attorney Sapp said he had "discussed" the issue with Trice and that "costs" were approximately \$15,000. Trice confirmed that figure, and said that these costs would be waived if I relinquished all the animals—as she also said during the phone call from the shelter with Mr. McNeill. Mr. Sapp then stated that he wished to "preserve" my rights to request return of "up to 24 of the dogs" to me, so we could "discuss" trying to get the 24, or whether to relinquish all of them in order to have the "care" costs removed. (SC 16-5-10) (Regarding two or more persons banding together to "hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws...of the US or this State.")

AGAIN—I never held any stance except that my dogs were illegally removed from my Grandfathered Private property—and I wanted them all back. Mr. Sapp advised the court and Trice that he'd get back to Trice after talking to me, and later claimed that "all parties" agreed to these terms. (Hayes VS Eagle-Picher Industries, Inc., 513 F.2d 892, 894 (10th Cir. 1945)) "So long as the client unequivocally repudiates an unauthorized agreement immediately after learning of it,...there will have been no ratification." I immediately disclaimed all of this—as soon as I heard of it in court.

Mr. McNeill, Ms. Taylor, & Ms. Trice, plus a couple of other deputies AND Mr. Sapp's office—ALL had my phone number AND my e-mail address by that time, and none of them let me know what they were doing—clearly because they knew that I'd never go along with it. ANY of them could have called or e-mailed to try to verify the surrender

with ME, who had the most to lose—and they did not. (SC 16-5-10) “Conspiracy against civil rights”

ANSWER-Page 2, starting line 29: Mr. Sapp claims to have talked to me after the hearing, and that I agreed to the terms he had set up. He NEVER told me what was said (or agreed to) in that hearing, and never indicated that he would arrange for them to take the dogs regardless of what I said when we spoke—but only that he'd “gotten” me until June 15 to “decide” about giving up all of the dogs. I had to listen to the audio of it before I ever found out what was actually said. I most certainly never agreed to those terms.

From testimony under oath, Plaintiff's argument: audio Lynne: “Mr. Sapp, do you recall at what point you determined to make my decision for me against my wishes?”

Mr. Sapp: “Lynne, we discussed that after the Court Order; and whether or not that's what you wanted, that's what I did, and I thought it was in your best interests.”

IN FACT, the very next day, June 1--he began the 3 day process of the e-mails and phone calls, which I never knew about until much later—to surrender all my dogs to the County, in “exchange” for dropping the misdemeanor charges—and told me he was “sure” he would be able to avoid any “criminal” charges.

ANSWER-Page 12, starting on line 25: “He (Mr. Sapp) was having preliminary discussions with Deputy Taylor and was close to working something out when Sapp and Vanhouse had their falling out”

ANSWER-Page 15, starting on line 6: “In an e-mail to Sapp, Taylor...reserved her right to file the General Sessions charges which were not part of the agreement.”

This shows that Mr. Sapp understood immediately after the May 31 hearing that Ms. Taylor intended to proceed with the criminal charges, but told me differently. (Defendant's Exhibit #8—“Excessive bail shall not be required”) I submit that \$50,000 bond (with the admonition that if I was arrested for anything, I'd go to jail) is excessive.

JUNE 30, 2016: In a copy of an undated letter to Judge Duffie, County Attorney Sean Thornton said that Judge Duffie's requirement to maintain possession of all seized animals pending a hearing in July could not be met, because Mr. Sapp had informed Mr. McNeill on June 1 that his then client "would relinquish all the animals to the County." (*Gran VS City of St. Paul*, 274 Minn.220, 143 NW 2d 246 (1966) (*Thornton VS Kelly*, at 211, 161 SE at 868) It is the well settled law of this state that the authority of an attorney of record to settle claims is limited to the claims presented by the pleadings in a given case and that any settlement that goes beyond these matters must be expressly agreed to by the client, the general rule is that compromises based solely on the attorney's implied authority are voidable and not binding on the client."

It was at that point with the receipt of that letter copy that I became aware that most of my animals were already gone; because Mr. Thornton went on to say that only 22 animals were still being held in Ridgeland. His next statement was: "*The County will maintain custody of those animals pending your July ruling.*" This was not done—by the time of THAT hearing, I was informed by Mr. Bennett that all the animals were "adopted out." In addition, it was notated in that letter that copies of the e-mails were attached, but they were never included with the letter copy to ME. (SC 16-5-10) "It is unlawful for two or more persons to band or conspire together or go...upon the public highway or upon the premises of another with the intent to injure, oppress, or violate the person or property of a citizen...or attempt by any means, measures, or acts to hinder, obstruct, or prevent a citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution and laws of the United States or by the constitution and laws of this state." (*Bess VS Bracken County Fiscal Court* 210 S.W. 3d 177, 180 (Ky 2006) "Recognizing that dogs are personal property...the government is not permitted to deprive an animal owner of his property without due process of law. The risk of erroneous deprivation of the property interest is significant."

By June 2, I was informed I was to report to the jail for arraignment and arrest on "torture" charges, apparently because I continued to insist I was innocent, and I refused to "just stop fighting" as they kept telling me to do. They just kept piling more on me, apparently hoping I'd quit and just give in to their taking of all my personal property. (SC 16-5-60) "Suits against county for damages to person or property resulting from violation of person's civil rights."

ANSWER-Page 4, beginning line 15: "there is a 20 acre field to the side of her property and she is allowed to capture or kill any wild animal, which then becomes her personal property". This entire sentence has been totally misconstrued from actual testimony, as on the audio. What I *actually* said was that this law (SC 16-11-510) also says that any wild animal that comes onto my property is considered to be my personal property, the same as my breeding livestock, and that Ms. Taylor had spent some time during my interrogation trying to get me to "admit" to killing wild animals on my property, and disposing of them there, perhaps to cover the number of wild animal carcasses they "found". I pointed out, with this illustration, that although I was allowed by law to kill and bury any wild animal that came on my property—I usually live-trapped them, and turned them loose into that 20 acre field, scaring them away from my property in the hope that they would not wander back. I mentioned raccoons and possums in the audio.

ANSWER-Page 9, beginning line 1: *My animals are my personal property, (per SC 16-11-510). Since animals cannot be held responsible for anything they do (they cannot commit a crime)—they therefore cannot have "rights" nor can they be victims. Continuing that line of reasoning, they can't also then be "victims of a crime." It is not a crime to keep and use (breed and sell) your own personal property. (Sherar VS Cullen, 481, F2d.945 (1973)) "For a crime to exist, there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights." A "party" is a PERSON, not property.*

Although my animals were given food, water, shelter, individual affection and attention, and medical care, as required by SC law, they were not my pets; they were my breeding livestock. I sold exceptional quality puppies that became beloved household pets—because that is what I strove to produce. (Defendant's Exhibit #21)—*a great number of unsolicited, glowing, seller reviews from all over the country and locally.*) Livestock is solely possessed by the owner, and only the owner can use them (harvest them) as is normally done for that species. Veal calves are butchered; chickens are raised to be eaten or lay eggs; cows are milked; sheep and goats are eaten, milked, and wool harvested; dogs and cats are used for breeding, for service, and to sell their progeny. THIS is what I did right there for 23 years. (City of Cuyahoga

Falls VS Buckeye Community Hope Foundation, 538 US 188) "The right of ownership of property includes the inherent right to use one's property."

PLEASE NOTE: one of the dogs taken out of my back yard was a SERVICE DOG, thus violating my civil rights and disability rights as well, and depriving me of her service and companionship. (SC 16-11-510) "It is unlawful for a person to willfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property or the goods or chattels of another" Violation is a felony and a fine at the discretion of the court if convicted.

ANSWER-Page 9, beginning line 19: Animals, since they are personal property (see paragraph above) only have as many "rights" as their owner gives them. The statement that "*animals have just as many rights as a suitcase*"—was not said. What I DID say is that animals have only as many inherent rights as any owned property, but are usually given more by their owners, because they are living. People tend to imbue their pets with human characteristics (think Mickey, Donald, and Goofy) but that does not mean they actually have them. I think the word I used was jewelry, not suitcase—but the audio is very garbled and low toned. (per audio)

I included a comment here in the audio testimony regarding my 2006 Relay van. Lynne: IF my van had been observed by a neighbor (who came onto my posted private property in my absence) as being overdue for an oil change—should he rightfully be allowed to call the Sheriff and demand that a search warrant be obtained to seize my van because it "wasn't being taken care of"? Should my van then be impounded, lots of unnecessary work done to it to raise the repair bill well beyond my ability to pay—and then sold to the highest bidder because I couldn't "buy it back" from the County? Should I then potentially be sued for the difference in price for the "care"? Common sense dictates that this scenario is absurd—yet this is very representative of what I have endured. (*Frost, et al. VS Railroad Commission, 271 US 583 46 S Ct. 605, 70 L.5d. 110*) "The State has no authority to unreasonably burden the exercise of fundamental rights such that the burden compels the relinquishment of such rights in exchange for privileges" (*Yick Vo VS Hopkins, Sheriff*: 118 US 356 (1886) "Sovereignty itself is not subject to the law; for it is the author and source of law...sovereignty...remains with the people, by whom and for whom all government

exists and acts...for the very idea that one man may be compelled to hold his life or the means of his living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails..."

The main difference is that my van can be replaced in kind—my breeding animals, and those 55 years of outstanding bloodlines that they represented—are lost forever. (SC 16-5-60) "Any citizen who shall be hindered, prevented, or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgement roll is delivered to them for filing in their office."

Shortly after this statement, Mr. McNeill asked me a couple of questions, in his capacity as representing the County. His main question was if it was "safe" to have buried animals housed "close" to my living ones. I asked him what did he mean? Safe for who? Safe for what? Safe against what? He said "just SAFE". I told him that inasmuch as my dead animals had been in a 6-foot deep burial pit—and humans are buried 6 feet deep (and they have chemicals in them) that, YES—I thought it was safe.

Mr. McNeill then threw up his hands, and said: "no more questions!"

On July 20, the hearing was re-convened with Mr. Bennett suddenly having been hired to represent the County, with no explanation of why the switch to an attorney for the County instead of Mr. McNeill. At that point, I became the true "underdog" here—and the County got an experienced attorney for their representation, while I remained pro se by necessity.

PLEASE NOTE: Interestingly, Mr. Bennett had the total case and all the evidence that the County had amassed (all of it that I'd asked for in Discovery twice already,) in front of him in just a few days.

Mr. Bennett stood and asked for a hearing as to whether there was an "enforceable settlement" agreement between the parties. It turns out he meant, upon further questioning and comment—was Mr. Sapp representing me for ALL aspects of my case during the short time he was representing me, and therefore was he legally able to decide FOR me that my dogs needed to be surrendered to the County without any input from me given to any of the involved parties; just his word that he "understood" me to mean yes? (*Southern Pacific Transportation Co. VS Public Utilities Commission, 18 Cal, 3d 309*) "Obviously, administrative agencies, like police officers, must obey the Constitution and not deprive persons of their constitutional rights." I allege that this extends to all officers of the court, including attorneys.

The agreement that Mr. Sapp and the County had reached was outlined, and Mr. Sapp agreed FOR me without my input, to relinquish all the animals, and the 10 misdemeanor charges were dropped. (I'd already proven, with pictures and purchase statements—that my animals WERE fed, watered, medicated, and sheltered as required by SC law and some of Dr. Mary Campbell's testimony verified this as well—so this was actually a moot point by this time)

The e-mails that were the sum of the "agreements" between Mr. Sapp and the County, along with the telephone conversations that were said to have taken place were finally revealed to me. I had never seen the e-mails, and was never told they existed (except for that cryptic notation in the one letter copy from Mr. Thornton) and would have most certainly refused the "agreement" had I known what Mr. Sapp was doing.

My Motion to rescind the first search warrant was denied because it was deemed "not appropriate" but there was no indication of why this was. I would like to know which rules that apply to the making of a legal warrant Judge Duffie felt applied to this, to make my motion inappropriate?

My Motion that the Friday unwarranted search evidence collected when I wasn't there be excluded because of that illegal search--was held pending hearing my other Motions, but was almost immediately denied when the "enforceable agreement" Motion was ordered as valid. This search was done well before my hiring of Mr. Sapp,

and the evidence garnered at that time should have been excluded because the evidence was seized before he represented me.

My Motion that evidence seized that was not included on the seizure list should be excluded also, and that items that were seized that were not listed on the search warrant be returned to me were all held in abeyance as well, but then denied as well, as soon as the "enforceable agreement" Motion was ordered.

PLEASE NOTE: If the evidence was not listed on the seizure list, there is no chain of evidence that it came from my premises at all, and should be excluded because of a lack of definite validity and provable relation to the case. In that same light, any evidence related to this case not on those selfsame seizure lists that is in the County's possession, that I can identify, name, describe, or assert is mine, should be immediately returned to me or suitable restitution made for same.

In essence, if Mr. Sapp's actions were to be deemed to have been those of a GENERAL Attorney, instead of the SPECIAL Attorney as he was hired to be—ALL of my Motions would be denied, since Mr. Sapp did all those things against my best interest BEFORE we parted company in our agreement of representation for cause; Regardless of the fact that the first, Unwarranted search was done prior to his hiring.

Mr. Bennett was instructed by Judge Duffie to write up a preliminary Order denying most particularly the "Enforceable Agreement." When this Order finally got to me in it's nearly complete form in Court (Mr. Bennett claimed he'd e-mailed me a copy, but it was soon determined that he had not)—that it contained only 4 Citations, all from SC Supreme Court rulings. I discovered, after research, that all four of these were intertwined, each one referring to the other 3 as further proof and as a Citation in and of itself. One of them was even clearly listed when further researched as NOT being usable as a Citation.

My proposed Order clearly lists my objections on these grounds by citation.

I firmly initially refuted all of these in Court after a quick reading of each—because they did not have relevance as to whether Mr. Sapp had been hired by me as a

General Power of Attorney to act on my behalf in any decision, or as a Special Power Of Attorney specifically to get my dogs back, which was clearly the issue.

I was told I could "tweak" this proposed Order, and I made a Motion to allow me to write up my OWN version of what happened-with Case law for whether or not Mr. Sapp was my General P.O.A. I was told that I could, and I wrote up a very clear and concise Preliminary Order of my own—with citations from US Supreme Court rulings, SC Supreme Court rulings, and State and US Codes of Law clearly indicating that Mr. Sapp had been hired as a Special Attorney, and his adverse actions in my case had no legal basis

MY proposed Order was ignored—and Mr. Bennett's/Judge Duffie's version of the Order denying all my Motions was Ordered intact with no apparent attempt to consider any of my case law or arguments as presented, nor to justify those that were used against me, although I feel that I'd already shown conclusively that they had no relevance to my case.

When Mr. Sapp was called as a witness for the County in reference to the above conflict of interest, I asked him several questions, one about whether he had been hired to make decisions for me; he answered: "Lynne, as I said before, I was just trying to help you out...I considered that I was doing the best job that I possibly could in light of the many facts and circumstances surrounding this, and there were many—I was trying to help you out." He did not give me a yes or no answer at all.

A second question was more specific: "Mr. Sapp, did I ever, even once, at any time—tell you that you could give away any of my dogs? Mr. Sapp prevaricated for a time, then replied that he "understood that it was in your best interests."

At no time would he say that I told him to or agreed to surrender any or all of them. In other words, there was never any agreement between us as to his course of action, he simply decided for me to surrender my animals without my knowledge or consent. (King Construction Co. VS Mary Helen Coal Corp., 194 Ky. 435, 239 S.W. 799 (1922))
"The court said that it is a universal rule that a client is not bound by acts of his attorney without ratification, where the attorney has a personal interest in the subject matter involved or where there is a conflict of interest between the attorney and the

client." (*United States VS Cravero*, 530F.2d 666 (5th circuit 1976); (*United States VS Adams*, 422 F.2d 575 (10th circuit 1970); *State VS Hughes*, 22 Ariz. App. 19, 522 P.2d 780 (1974) "*Counsel's implied authority to make admissions and stipulations affecting his client's rights and interests must comply with the general limitation that the attorney's actions based on implied authority relate to procedure and remedies and not disrupt substantive rights or the cause of action.*"

From testimony under oath, Mr. Sapp: Plaintiff's argument:

Mr. Bennett: "Your understanding was that she had authorized you to enter into the agreement?"

Mr. Sapp: "She was very upset, I don't know if she was in her right mind or not, but it was my understanding that she would relinquish the dogs in exchange for dropping the charges and eliminating the restitution and that it would be in her best interests."

(*Massachusetts Casualty Insurance Co VS Forman*); (*Milewski VS Rolfan CO*); (*Manning VS Wymer*); (*City of Des Plaines VS Scientific Mach. Movers; Gailbraith VS Monarch Gold Dredging Co*) "According to the great weight of American Authority, only after acquiring express authority in the form of his client's consent may the attorney compromise his client's claim or cause of action."

Again, at no time did I ever give Mr. Sapp permission to do anything but fight for my right to get them all back intact. This was discussed at very little depth, not great depth as claimed in his testimony, since there isn't much of any place to go from "NO—I will not" which was my answer to his arguments to give them up. Mr. Sapp's statement that I'd said "let bygones be bygones" was absolutely never said by myself—although it may have been uttered by Mr. Sapp as part of his arguments to me. Of course, I never felt that to be the case; my intention was to continue to fight for my rights and my animals, because I was not guilty of anything but quietly living my life in the privacy of my property, bothering no one. I asked little of the people around me but simply to be left alone.

ANSWER-Page 18, Line 10: Her comments about water buckets being "scattered about" containing "dirty water, no water, and some contained clean water." Are very redundant—since she did not state if any of them were actually IN any of the pens or runs she was supposed to "assess". I did have buckets sitting around outside the pens and runs—for easy access in my daily care of the dogs, and to be sure that nothing ever went thirsty, but some had been kicked over, emptied, and possibly contaminated by this time--by the people who did the seizures.

Her pictures of so-called "fencing materials" are actually thousands of dollars worth of chain link dog run panels, and a huge number of exercise pens, wire dog crates, and rolls of wire; and were definitely a plus in regard to my on-going care of my dogs—but were shown in court in an apparent attempt to vilify, embarrass, or humiliate me in regard to my personal living area upkeep, which was none of her business to "assess".

Photo (6)17 was of the burial pit—with old dog food bags piled up (dug up) out of it. This photo was taken, again, AFTER it had already been dug up, torn apart, and ransacked by the County.

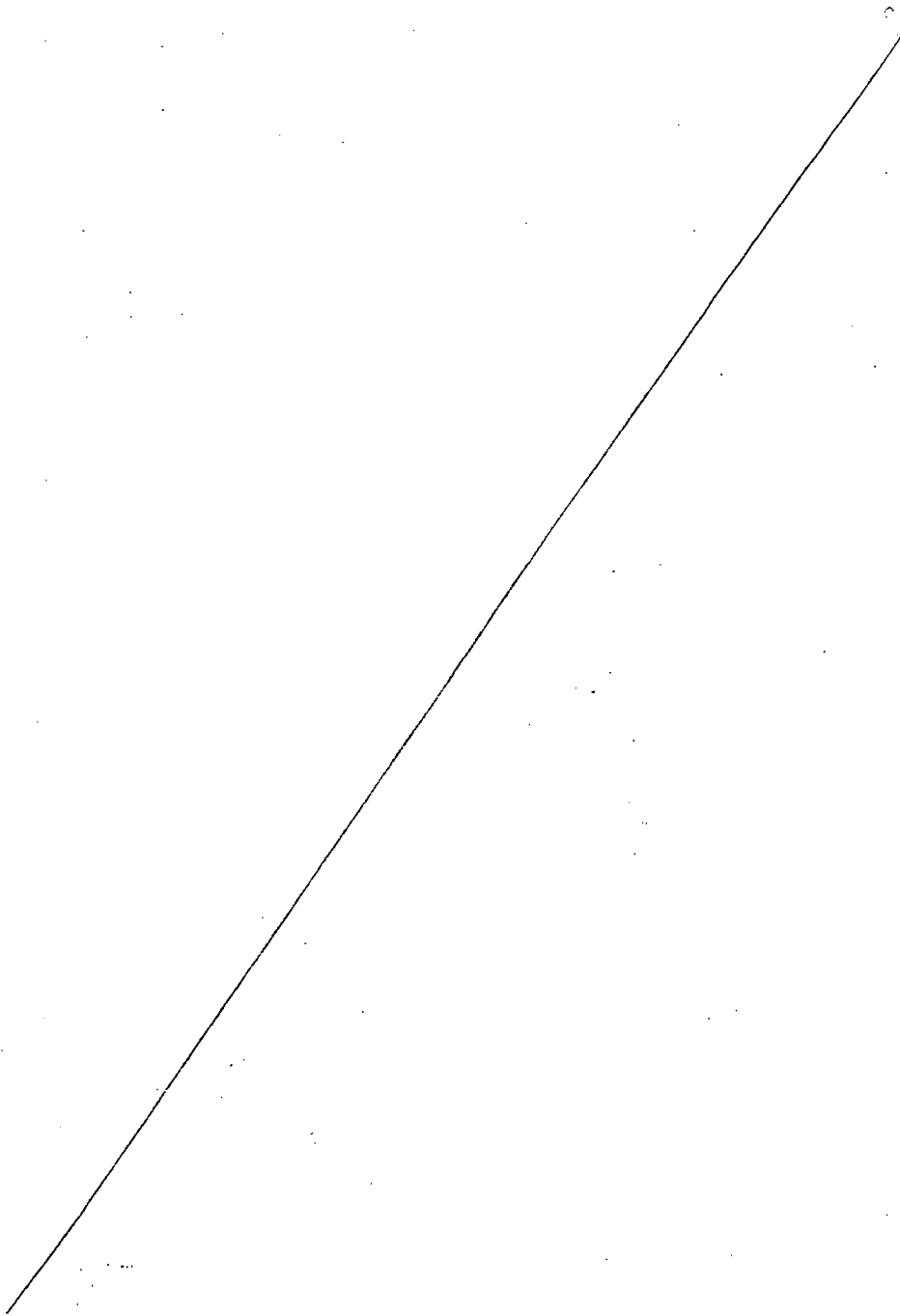
ANSWER: Page 18, Line 30: The comment that "it did not appear to me there were any attempts to bury the animals" is patently inflammatory—inasmuch as she only saw the pit AFTER the remains were DUG UP and contents were scattered.

NOTHING she had photos of that pertained to my personal property or my private life or space had any place in this invasion of my privacy. In South Carolina, especially—privacy is deeply valued, and should be guarded—and mine was not.

I feel that my evidence as here presented is legally and factually unassailable, and clearly shows that the County's charges and insinuations are false and misleading—and that they have perpetrated many crimes against me to cover up their errors in judgement and law enforcement.

I ask the Court not only for suitable and reasonable restitution for the value of the animals and other property that were immediately taken and destroyed for my use, but also the actual monetary value of the many generations of animals that would have been produced and sold in the next 20 years with the additional assistance of Kimi and her daughter as was planned, as well as punitive damages for my badly

damaged health, destroyed credit rating, ruined national and local reputation, and irrevocable total loss of this supplemental retirement income. (SC 16-5-60) "Any citizen who shall be hindered, prevented, or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgement roll is delivered to them for filing in their office."



STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN RE: Seizure of 68 Dogs and)
5 Cats by Colleton County)

Colleton County,)

Petitioner,)

-vs-)

Lynne Lucille Vanhouse)
19897 Augusta Highway)
Round O, S.C. 2947-4179,)

Respondent.)

IN THE MAGISTRATE'S COURT

2016-CV-15-0669

IN THE COMMON PLEAS COURT

2016-CP-15-1413

MAGISTRATE'S RETURN

2016 NOV 14 AM 8:57
PATRICIA A. HART
COLLETON COUNTY
COMMON PLEAS
CLERK

The above captioned matter first came to be heard before the undersigned Magistrate on May 31, 2016 pursuant to the written Request for Seizure from Colleton County dated May 15, 2016 and Request for Custody Hearing dated May 17, 2016 to determine whether cause exists for seizure of certain animals. Reginald McNeil, Director of the Colleton County Animal Control Department, appeared on behalf of Colleton County. Attorney Benjamin C.P. Sapp appeared on behalf of Lucille Lynne VanHouse. Attorney Sapp advised the Court that VanHouse waived her appearance at the hearing and he would be speaking on her behalf. Also present at the hearing were Veterinarian Lori Campbell, Beaufort Veterinarian Dr. Mary Campbell, Executive Director of Valient Animal Rescue Michelle Reed, employee of Port Royal Veterinary Hospital Shelia Ellis, member of Hilton Head Humane Association Nancy Foard, Talulah Trice, employee of Colleton County Animal Control Anthony Montgomery, member of Hilton Head Human Association Frannie Derthoffer, and Colleton County Sheriff Deputy Jody Taylor.

Attorney Sapp informed the Court that an evidentiary hearing was not necessary because VanHouse consented that there was probable cause for removing her animals from her property. He advised the Court that he and his client had seen photographs and spoken with Deputy Taylor. He stated that it was a horrible situation. He advised the Court that his understanding is that VanHouse can only have 24 animals on her property

[Signature]
175

pursuant to the Colleton County Code of Ordinances and that she is in violation of that code. Attorney Sapp advised that VanHouse waived her rights to the other 49 animals and VanHouse consented to a finding of probable cause to remove the animals from her property. McNeil advised the Court that 68 dogs and cats were removed in total. Attorney Sapp stated that VanHouse consents to the animals remaining in the custody of the County. The Court was also advised that a court date was scheduled for June 21, 2016 for the Magistrate level charges brought against VanHouse. Deputy Taylor stated that care costs for the animals was approximately \$15,000.00. Attorney Sapp stated that he discussed the issue with Trice and Trice advised him that if VanHouse relinquished the animals the care providers would waive the reimbursement for the care cost. Trice confirmed this.

Attorney Sapp stated that he wished to preserve VanHouse's right to request return up to 24 of the dogs to her so that he could discuss with her whether she wanted to seek return of 24 of the dogs or relinquish all of the dogs in order to have the care cost fees waived. Attorney Sapp advised the Court and parties that he would let Trice know VanHouse's intentions by the end of the week as to whether she will request custody back of some of the animals. All parties agreed to these terms on the record. Thereafter, on June 1, 2016 the Court issued its written order confirming the agreement of the parties.

On June 14, 2016 the Court received a detailed letter from VanHouse outlining several concerns with the matter and differences with her attorney. The Court treated the letter as a motion to reconsider the Court's order of June 1, return some of the animals to VanHouse, and make a determination whether the search warrants issued were legal. The Court scheduled a hearing to address these issues for June 21, 2016. Present at the hearing were Reginald McNeil, Deputy Jody Taylor, Colleton County Animal Control employee Ashley Vitello, Michelle Reed, Mary Campbell, Shelia Ellis, Talulah Trice, Lori Campbell, Frannie Derthoffer, attorney Benjamin C.P. Sapp, and Lucille Lynne VanHouse.

At the onset of the hearing, attorney Sapp moved to be relieved as counsel for VanHouse due to differences that had arisen. Attorney Sapp stated that he talked with VanHouse the day after the first hearing and she agreed it would be in the best interest

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176

to release the dogs given there were criminal charges. He then stated VanHouse subsequently filed the written letter requesting the Court reconsider its order and that he had not seen the letter. Sapp stated that VanHouse filed the letter pro se without his advice and they do not see eye to eye. VanHouse stated that she understands that Sapp has made a motion to no longer be her attorney in this civil action and she consented to the motion to have attorney Sapp relieved as her attorney. The Court granted the motion with the consent of the parties. Thereafter, VanHouse had no objection to attorney Sapp being excused. The Court advised VanHouse that the Court would reschedule the hearing to allow her the opportunity to seek another attorney. VanHouse waived postponement of the hearing and requested to proceed pro se.

VanHouse was sworn under oath by the Court and gave the following testimony and argument related to her motion. She stated that there was a repeated invasion of her real property and unlawful of her personal property. Her constitutional and privacy rights were violated. The seizure of the animals was not legal. She asked the Court to reconsider and rescind the ruling that there was probable cause to remove the animals from her property and also rule that the search warrants were unlawful, requiring a return of the animals to her and/or restitution for any damages.

Without objection from Colleton County, VanHouse introduced the following exhibits into evidence, which were admitted into evidence by the Court:

Defendant Exhibit #1	"Grandfather Clause" document – 2 pages;
Defendant Exhibit #2	"Criminal Trespass" document – 1 page;
Defendant Exhibit #3	"First Amendment" document;
Defendant Exhibit #4	"Addressing Unconstitutional State Laws, County and City Ordinances" – 2 Pages;
Defendant Exhibit #5	"Fourth Amendment" document – 6 pages;
Defendant Exhibit #6	"Fifth Amendment" document;
Defendant Exhibit #7	"Sixth Amendment" document;
Defendant Exhibit #8	"Eight Amendment" document – 4 pages;
Defendant Exhibit #9	"Ninth Amendment" document;
Defendant Exhibit #10	"Fourteenth Amendment" document – 3 pages;
Defendant Exhibit #11	"Sixteen AmJur 2d Section 177" document;
Defendant Exhibit #12	"Cooper vs. Aaron" document;
Defendant Exhibit #13	"U.S.C. Title 18-Crimes and Criminal Procedure" document;
Defendant Exhibit #13(sic)	"42 U.S.C. Section 1983 Civil Action" document;
Defendant Exhibit #14	"42 U.S.C. Section 1985-Conspiracy" document – 2 pages;

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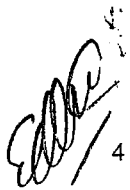
Defendant Exhibit #15	"18 USC Section 2381-Treason"
Defendant Exhibit #16	"Article from <u>Press and Standard</u> " document – 2 pages;
Defendant Exhibit #17	"Drawing of VanHouse property" document;
Defendant Exhibit #18	"Google Earth aerial photograph of VanHouse property" document;
Defendant Exhibit #19	"Receipt from Benton Feed and Seed" document – 4 pages;
Defendant Exhibit #20	"Bill of Sale form" document – 2 pages;
Defendant Exhibit #21	"Seller Reviews" document – 6 pages;
Defendant Exhibit #22	"Preamble to the Constitution" document – 5 pages;
Defendant Exhibit #23	"My defense at seizure hearing" document;
Defendant Exhibit #24	10 pages of photographs;
Defendant Exhibit #25	"Collection of 22 Orders" document.

VanHouse continued to testify that her 8.93 acres of property has been grandfathered in as a kennel for at least the 23 years she has owned the property. The property was used as a kennel by the prior two owners also. She has been operating as kennel long before the adoption of the South Carolina rabies laws, however, she always gave her animals rabies shots. Her property is legally posted against trespassers and has been published in the newspaper. No trespass signs are located around the perimeter in numerous areas on her property.

(At this time in the hearing VanHouse's son David Matthew Breen entered the courtroom.)

VanHouse stated there are No Trespass signs posted around her kenneling area to protect her dogs against outside influences. She stated that the First Amendment to the Constitution gives her God-given dominion over her animals. They are her livestock. She maintains that livestock is personal property under South Carolina Code 16-11-510 which states that everything that is not real property is personal property, which includes animals. She believes that possession of her personal property is a basic property right. There is a 20 acre field to the side of her property and she is allowed to capture or kill any wild animal, which then becomes her personal property.

(VanHouse's testimony and argument ceased at this time because of the health issue that unexpectedly arose with her son in the courtroom. EMS was called to the scene and her son was transported via EMS to the hospital. Due to the emergency circumstances the hearing was adjourned by the Court until a later date so that VanHouse could attend to her son.)



property. They cannot be victims. They are her property to harvest. VanHouse stated the County violated her Ninth Amendment rights because her right to exercise God-given dominion over her animals was denied. VanHouse stated her Fourth Amendment Equal Protection rights were violated because companion animal owners are being held to a higher standard than owners of other animals.

(VanHouse submitted a summary of case law to the Court to support her positions.)

The Court, with the consent of the parties admitted into evidence the search warrant dated May 16, 2016 as Court's Exhibit #1 and the search warrant dated May 18, 2016 as Court's Exhibit #2.

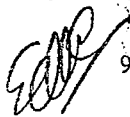
The following is testimony given by VanHouse on cross-examination:

VanHouse stated that McNeil spoke with her on that Friday after unlatching the gate and after he unlatched the gate and walked down the property. He asked her to escort him back down the property to explain some things he had seen and she denied his request. She was served with a search warrant the following Monday. She remembers McNeil explained the requirements for licensed commercial kennels and she told him she was not a commercial kennel and was grandfathered in. In the past she has had veterinarian Buddy Deloach see her animals at his clinic that she was shipping out for sale and would not come back to her property. VanHouse stated animals have just as much rights as a suitcase. The only rights they have are what the owners give them.

(The hearing was adjourned at the end of the day to be scheduled to reconvene at a later date.)

The hearing was reconvened on July 20, 2016. Director Reginald McNeil of the Colleton County Animal Control Shelter was present along with attorney E.W. Bennett, Jr. who advised the Court he would be representing Colleton County in the matter going forward. Lucille Lynne VanHouse was also present.

Prior to continuing with testimony and argument related to VanHouse's motion for reconsideration and return of some of the animals, attorney Bennett stood and made a motion for a hearing to determine whether there was an enforceable settlement agreement between the parties entered into during the week of May 31, 2016. Attorney Bennett stated it was his understanding that an agreement was reached between attorney



Sapp on behalf of VanHouse and Colleton County. VanHouse was to relinquish control of all of the animals and Colleton County agreed to dismiss all 10 outstanding Magistrate level citations. Attorney Bennett stated that the Magistrate level citations were in fact dismissed by McNeil. Attorney Bennett stated that the County agreed to waive \$18,000.00 in treatment costs related to the animals. In response, VanHouse stated she never saw emails between attorney Sapp and the County. She gave attorney Sapp a \$500.00 retainer after he volunteered his services. She opposed the motion hearing request by the County because she personally did not make an agreement. At that time the undersigned Magistrate determined that an evidentiary hearing was appropriate on the County's motion to determine whether there is was an enforceable settlement agreement.

VanHouse then made 4 motions. The Court denied her motion to rescind the first search warrant at that time as not being appropriate. The Court held in abeyance pending the motion hearing on the settlement agreement VanHouse's other 3 grounds which were: (1) that the evidence be excluded based on an unlawful warrantless search; (2) that the evidence seized from her address which was not included on the search warrant be excluded; and (3) that the Court make a determination that items were seized which were not listed on the search warrant.

Colleton County then called attorney Benjamin C.P. Sapp and after being duly sworn he testified as follows. Prior to attorney Sapp being asked any questions and giving any testimony it was made clear by attorney Bennett that the County would not ask attorney Sapp any questions that violated the attorney/client privilege and further instructed attorney Sapp that if he believed a question or his response to a question would violate attorney/client privilege he was encouraged to invoke the attorney/client privilege at that time. Sapp stated he is an attorney practicing in Walterboro and has been licensed since 1995. He was representing VanHouse on a probate matter when the issue regarding the animals came about. VanHouse retained him to represent her on the issue regarding animals and paid him a \$500.00 retainer. He was also representing her with regard to the 10 Magistrate level citations she received.

Sapp stated that he and VanHouse met and discussed the matter at length regarding that initial seizure held on May 31, 2016. Sapp stated that VanHouse was very

 10
180

upset and agreed that Sapp should attend the seizure hearing in her absence. Sapp testified that prior to the hearing he met with Deputy Taylor, the Animal Control Officer, representatives from Hilton Head Humane Society, and representatives from Beaufort County that were providing services to the animals. He stated that the County and service providers were going to levy \$15,000.00 in restitution for animal care costs against VanHouse. Prior to the hearing date Sapp previously interviewed with VanHouse with Deputy Taylor and VanHouse gave a statement at that time. Deputy Taylor showed Sapp pictures and it was "pretty disturbing stuff."

At the seizure hearing Sapp stated he could not agree to anything that day and would talk with VanHouse the next day with regard to resolving the matter. The following day he called VanHouse and told her what happened. VanHouse was upset, however, she agreed that it would be in her best interest to relinquish all of the animals.

Sapp testified he notified the Court, Deputy Taylor, and Animal Control Officer McNeil about the agreement. He stated that it was his opinion that relinquishment of custody of all of the animals was in her best interest and they would deal with any General Sessions criminal charges later on. Sapp testified VanHouse authorized him to enter into a binding agreement to relinquish all of the dogs in exchange for a waiver of the \$15,000.00 in restitution and dismissal of the Magistrate level tickets. He was hoping that by entering into the agreement the General Sessions charges would be dismissed but that is not what happened. There were negotiations about working out the General Sessions charges but no deal was struck.

Sapp called Officer McNeil, Deputy Taylor, and Trice to let them know that VanHouse was agreeing to relinquish all of the animals in exchange for waiver of the \$15,000.00 restitution and dismissal of the Magistrate charges. He represented to these individuals that he had authority from VanHouse to act on her behalf. In reliance on Sapp's representations the Magistrate level charges were dismissed.

An email from Sapp's office dated Friday, June 3, 2016 was sent to Trice confirming relinquishment of all of the animals in exchange for a waiver of the restitution. Trice responded "yes" to the agreement. Then Trice sent an email asking if the agreement was effective immediately and Sapp's office responded by email "yes."

A handwritten signature in black ink, appearing to be "E. Sapp", with a date "11" written next to it.

181

Plaintiff's Exhibit #1 which is 5 pages of emails was admitted into evidence over objection by VanHouse on the grounds that she had no knowledge of the emails.

Sapp's office did not courtesy copy VanHouse on the emails. Sapp testified that the seizure hearing was on a Monday. He spoke with VanHouse the next day. The emails were sent on that Friday. He recalls there was language initially in the Court's June 1 Order that VanHouse would have until June 15 to move to have some of the animals returned, however, VanHouse agreed later the week of the hearing to relinquish all of the animals. VanHouse came back to Sapp's office later on and that is when he and VanHouse had their differences.

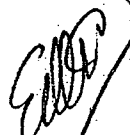
Sapp testified that he no longer represents VanHouse. She filed a motion into the Court for reconsideration that was not favorable to his representation of her. They agreed he would be relieved at the hearing on July 12, 2016.

Plaintiff's Exhibit #2 which is the Court's Order dated June 1, 2016 was admitted into evidence.

Sapp testified the agreement to relinquish all of the animals was entered into after the June 1 Order, therefore, there was no reason to have a hearing on her motion if the settlement agreement is enforceable.

On cross-examination by VanHouse, Sapp testified that the June 1 Order stated that VanHouse was given the timeframe of until June 15 for her to present arguments to get back 24 of the dogs not all 68. Sapp and VanHouse discussed and decided not to fight the matter. He knew she wanted the dogs back but they decided it was better to let the dogs go. Sapp never made any decision against her wishes. He did what he thought she wanted and would be in her best interest. Sapp acknowledged fault for his secretary not providing a courtesy copy of the emails to VanHouse. Sapp testified he has known Deputy Taylor ever since 1995 and believes she is a fair law enforcement officer. He was having preliminary discussions with Deputy Taylor about the General Sessions charges and was close to working something out when Sapp and VanHouse had their falling out. VanHouse was served with General Sessions warrants and arrested on June 3, 2016.

Colleton County then called Reginald McNeil as a witness. After being sworn in under oath Reginald McNeil testified as follows.


12
182

He is the director for the Colleton County Animal Shelter. He is familiar with the agreement attorney Sapp negotiated on behalf of VanHouse. He received copies of the emails from Trice. The emails reflected the agreement. He called Sapp to confirm the emails and they talked about dismissing the Magistrate tickets. The agreement for relinquishment of all of the animals was confirmed during the week of the June 1 Order. McNeil dismissed all of the Magistrate tickets because of the agreement. McNeil stated that the County wants to be granted the right to re-prosecute the Magistrate tickets if the agreement is determined to be non-binding. McNeil testified that he had no communication with VanHouse regarding the agreement. He only talked with attorney Sapp.

On cross-examination McNeil stated he does not recall talking with VanHouse on the telephone after the seizure. He recalls a conversation at her gate on the initial Friday afternoon. She told him she wanted to get in touch with her lawyer. He called 911 to get the name and phone number for the address. He called VanHouse's telephone number and after receiving no answer left a voice message. As he walked beside the road he saw No Trespass signs down the road. He took a photo of the No Trespass sign in the tree. He walked further down and saw a No Trespass sign on the gate. He saw plenty of No Trespass signs. He thought she may have something to hide. He does not recall the time he called VanHouse and left a message. That Friday the gate was not unlatched by anyone. He could not drive on her property that day.

Colleton County moved to introduce Plaintiff's Exhibit No. 3 which is a 5 page document including the copies of the 1090 Magistrate's citations into evidence. VanHouse objected to the admission on the grounds that she did not receive one of the tickets and only had 9. The Court admitted Plaintiff's Exhibit No. 3 over objection of VanHouse.

McNeil testified the No Trespass signs did not prevent or apply to a law enforcement officer entering property for investigative purposes. Animal control officers may enter property if the need arises to preserve animal welfare. One of VanHouse's dogs was out of the pen but none were running at-large. He was informed of the VanHouse issue when he received an anonymous call that someone saw a disturbing


13
183

seen on her property and he was conducting an animal welfare check pursuant to the call.

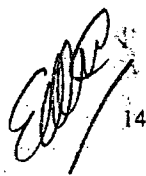
McNeil spoke with VanHouse on the telephone on the initial Friday and the following Monday. He never saw VanHouse sign anything or give verbal consent to take her dogs.

The next witness called by Colleton County was Deputy Jody Taylor. After being duly sworn under oath Deputy Taylor testified as follows. She is an administrative lieutenant with the Colleton County Sheriff's Office. She has eighteen years' experience in investigations. On May 16, 2016 she received a phone call from Deputy Raymond Davis asking for advice on a call he was out on with animal control. He believed animals lives were in danger. The Colleton County Sheriff's Office typically assists animal control with their investigations. As a result of her investigation she has filed 10 General Session warrants against VanHouse.

Taylor was present at the May 31, 2016 seizure hearing. She recalls attorney Sapp being there representing VanHouse. The option that was provided for attorney Sapp was to relinquish custody of the animals and the County would waive \$15,000.00 in boarding costs and the 10 Magistrate charges would be dismissed. Taylor stated this was discussed in open court on the record. She had previous conversations with Sapp concerning the case. She needed a statement from VanHouse and Sapp made VanHouse available for a statement which occurred on the day prior to the hearing. Sapp was present at the interview.

Taylor recalls the Magistrate Judge issued an Order from the May 31, 2016 hearing. VanHouse had until June 15, 2016 to file a motion to have some of the dogs returned, however, Sapp sent an email stating VanHouse would agree to relinquish custody to all of the dogs pursuant to the agreement. That email was sent Friday, June 3rd. She received a telephone call from Trice about the email. Taylor had not seen the email and Trice sent Taylor a copy.

Taylor believed Sapp was VanHouse's attorney based on the circumstances. Sapp confirmed the agreement with Taylor in a telephone call. They also discussed the General Sessions charges and she told him she would have to move forward pressing


14
184

those charges and then they would be in a better position with the Solicitor's Office to work it out.

Plaintiff's Exhibit No. 4 was offered into evidence by Colleton County which was copies of the emails. The Exhibit was admitted into evidence without objection.

Taylor sent Sapp an email confirming the agreement to waive the care costs and dismiss the Magistrate charges if all of the dogs were relinquished, however, she reserved her right to file the General Sessions charges which were not part of the agreement. Taylor believes the settlement agreement was binding and that attorney Sapp was fully aware of the overwhelming evidence in the case against VanHouse.

During the VanHouse interview Taylor does not recall VanHouse saying she wanted to keep or relinquish the dogs. During the interview Sapp told VanHouse it was inappropriate and something had to be done or she was going to serve time.

Taylor was not at the VanHouse property on the initial Friday. She was there the following Monday. She advised VanHouse animal control was securing a search warrant to seize the dogs. The Sheriff arrived later after the search warrant had been executed. Taylor was there with the Sheriff when VanHouse walked out.

Taylor does not recall pulling VanHouse's website and showing VanHouse the front page. She does recall looking at the webpage and asking if the dogs shown on the webpage were still alive.

When executing the search warrant she saw there were large number of dogs and cats, the conditions were deplorable, there was no water, feces was piled up, the animals were thin, there were ticks and fleas to an extreme extent, the odor was sickening, there were skeletal remains, there were rotting animal carcasses, and there was large amounts of household garbage on the property. There were containers with medicine for the dogs with syringes on the ground. There were jars of baby food on the dogs' cages. The cages were wrapped in plastic with impeded airflow and the temperature that day was around 98 degrees. The animals were not acting right from a mental state. There was a large pit that held household garbage and they found dog food bags with rotting dead dog carcasses in them, some as many as 5 to 6 dogs per bag. They found 81 dead animals in a mass area. 20 dead animals were found in a building. 4 dead animals were found in cat pens. There were 107 dead animals found total. 3 remains from non-domestic

 15

185

animals were also found. There were 68 dogs and 5 cats found alive. 10 dogs scored a 1 or 2 on the Purina Body Conditioning System. The General Session warrants were issued related to these 10 dogs.

Taylor was concerned about the 5 to 6 deceased animals in a dog food bag which indicated to her that they all may have died at the same time. VanHouse told her most of the animals died of old age. VanHouse said she was feeding the baby food to the dogs to supplement their diet.

(At this time the County rested its case with regard to the motion to enforce the settlement agreement.)

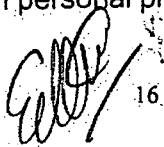
VanHouse then recalled herself to the stand and after being duly sworn under oath testified as follows. The fact that her dogs should never have been taken away has always been her position. At no point did she ever state she was thinking about giving away some of the dogs. At her initial meeting with attorney Sapp she stated she wanted the dogs back and Sapp said they needed to work on keeping her out of prison. She told Sapp that he was missing the point which was her personal property was wrongfully taken.

Sapp never stated to her that he had given the animals away. She kept asking Sapp about a motion to get the dogs back. He kept saying they were as good as gone. At no time did VanHouse know Sapp had given the dogs away. She never saw the emails until they were produced in court.

Almost no one has been on the property in 23 years so that she can protect her animals from disease and parasites. She attended to her dogs at least twice a day. The plastic was over the pens to keep the dogs in the pen dry. Also if it were a cool day, the plastic would have solar gain which would keep the animals warm at night. VanHouse disputes the Purina Scoring Scale because she is not sure which dogs the County is talking about.

On cross-examination Colleton County moved to admit Plaintiff's Exhibit No. 5 into evidence which 2 pages was being Statute Section 47-1-120 and 47-1-140. Plaintiff's Exhibit No. 5 was admitted into evidence without objection.

At that time VanHouse made the motion to relieve attorney Bennett from the case on the grounds that he has shown personal prejudice against her and based on a conflict

 16

186

of interest due to the fact that attorney Bennett represented an opposing party in a previous probate matter against her. She also stated that attorney Bennett was engaging in a personal attack on her and badgering and intimidating her. Attorney Bennett denied the allegations of personal attack and intimidation. The Court denied Plaintiff's motion to remove attorney Bennett from the case, however, the Court also notified VanHouse if at any time going forward she believes attorney Bennett is engaging in badgering or intimidation she is to notify the Court and the Court will rule on and address the matter at that time.

VanHouse then made a motion to allow her daughter to testify by telephone because she lives in Wisconsin. The County objected to the motion and the Court denied the motion.

(At the time VanHouse rested on her case relative to the motion related to the settlement agreements.

The Court took the matter under advisement and continued with allowing the parties to present their evidence on VanHouse's original motion hearing.)

The County began its case in chief on the original motion hearing by presenting Dr. Mary Campbell as a witness. After being duly sworn under oath Dr. Campbell testified as follows. She is the owner and veterinarian at Port Royal Veterinary Hospital. She received her degree from Michigan State University Veterinarian School. He has 25 years experience as a veterinarian with 7 years in Port Royal. She is certified in veterinary forensic science. She has assisted in about 25 animal abuse cases. She has been qualified and testified as an expert 10 times in Court.

The County made a motion to qualify Dr. Campbell as an expert in the field of veterinary science and she was so qualified by the Court without objection.

Dr. Campbell testified that she received a call from Trice, the Director of Beaufort County Animal Services about the VanHouse matter. She was advised there was a large number of animals seized in Colleton County and they needed help. She went to VanHouse's property the day after the seizure which was May 18. She recalls a search warrant was served and thereafter she walked the property and photographed the holding areas, trash piles, skeletal remains, etc.


17
187

At this time Plaintiff's Exhibit No. 6 which is a flash drive of photographs taken by Dr. Campbell was marked for identification purposes for testimony.

Campbell testified Exhibit No. 6(1) shows the driveway into VanHouse's property looking into the back. Photograph 6(2) shows her trailer with a couple of pickups and some officers along with debris and bags of soil on the ground. Photograph 6(3) shows the overall surroundings. Photograph 6(4) shows items in the yard. Photograph 6(5) shows her trailer and pickup. Photograph 6(6) shows some of the animal pens. Photograph 6(7) shows the first pen she looked at and the plastic hanging over the pen. Photograph 6(8) shows general set-up with fecal material present.

Campbell testified she found water bowls and buckets scattered about. Some contained dirty water, some contained no water, and a couple contained clean water. Photograph 6(9) depicted fencing materials stacked on the property and toilets and items scattered about. Photographs 6(10) and 6(11) depicted junk vehicles. Photograph 6(12) depicted connected pens which were the cleanest she saw. Photograph 6(13) depicted the same pens. Photograph 6(14) showed an apparent trash pile with empty dog food bags as Photograph 6(15). Photograph 6(16) showed a bag of lime and dog food in a container. Photograph 6(17) showed a burial pit with layers of dog food bags, rusted cans, oil containers, and bones. As she walked through the property she could see remains of animals and bones. She went back to the property and went through the bags of dog food finding the remains. Campbell found over 40 skulls. She found carcasses fully decomposed with some being liquified, some having just fur, and some just bones. The teeth showed significant dental disease. The skulls appeared to be of the breed of the Sheltie and ^{Chihuahua} ~~Chihuahua~~ ^{EAD} breed. Some appeared to be young in age but most were adult. She could not determine the cause of death due to extreme decomposition.

Campbell testified the smell resembled a septic tank. She saw 5 cat remains. There was a cage of decomposed birds and bird skeletons. There was a cage with a dead cat. There was a cage with a skeletonized Guinea pig.

Campbell testified she had never encountered anything like this before. She was shocked at the number of remains. There were bones scattered 20 to 30 yards around the area of the burial pit. It did not appear to her there were any attempts to bury the animals.

 18

188

Photograph 6(26) depicted flagging showing the location of the animal remains. Most carcasses looked at least 3 months old. Photograph 6(27) showed a line of pens. There was an extreme amount of fecal material. The large amount of fecal material would concentrate parasites and expose the animals to parasites. There was a high level of fleas and the individuals on site got fleas and ticks on them. Campbell testified the lime was used to help remove the smell.

Photograph 6(28) depicted a large pen. There were tracks in the pens where the dogs were circling and pacing. This indicated they were under stress and had lack of exercise. The smell around this area made her eyes burn. Photograph 6(29) depicted standing water. Photograph 6(30) was a view looking into a pen which was mounded higher and higher going back and the wood on the pen was chewed.

Campbell testified cleanliness was absent and there was a huge amount of fecal matter, standing water, and debris on the property. Photograph 6(40) depicted a small pen with plastic over the top and fecal material under and inside the pen as well as dirty water. Photograph 6(41) depicted fecal material stacked. Campbell testified she agreed it was like a concentration camp for dogs.

Photograph 6(52) depicted empty dirty bowls. Campbell did not find any dishes with food in them. These were the worst accommodations she has ever seen.

Photograph 6(80) depicted dishes and raised pens. She had to work in a filter mask because the odor and ammonia in this area. Photograph 6(82) depicted skeletal remains of cats in a pen. Photograph 6(86) depicted an enclosed cat pen. There was brush, leaves, and vines on top. Skeletal remains were inside.

Campbell testified in a situation where there were dead animals in pens with live animals, the live animals likely ate the dead animals. Campbell testified she treated the most severely needy of the live animals which was about 12 to 15. She examined most all of the others.

Plaintiff's Exhibit Number 7 entitled "Nestle Purina Body Conditioning System" was admitted into evidence without objection.

Campbell testified this system is designed to be an objective way to assess and score animal body condition. In this case there were dogs in the range from 1 to 4. She treated the dogs that scored 1's and 2's. The dogs were emaciated, ribs and hips were


189

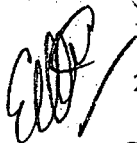
easily visible, matting was $\frac{3}{4}$ of an inch thick and the dogs had to be anesthetized to be shaved and treated. The dogs were covered in fleas and 3 to 4 different species of ticks. The dogs had intestinal parasites. The dogs were not receiving enough caloric intake. She had no doubt the animals were ill-treated. It is her recommendation as a veterinarian that VanHouse never receive the animals back due to the appalling conditions and filthy conditions of the animals. Campbell testified the property is not suitable to keep animals.

Plaintiff's Exhibit Number 8 consisting of 6 General Sessions warrants and sets of photographs attached to them were admitted into evidence over objection of VanHouse. Plaintiff's Exhibit Number 9 consisting of records as to the dogs' treatment were admitted into evidence without objection. Plaintiff's Exhibit Number 10 consisting of a packet of warrants was admitted into evidence without objection.

At this time the Court adjourned the hearing for the day. VanHouse had objections she wanted to reserve until the next Court date. The Court advised the parties that when they reconvene the following week the Court would receive testimony and argument on the exclusionary objection made by VanHouse, argument as to the exclusionary rule's applicability in civil proceedings, and argument on the legality of entering VanHouse's property on the initial Friday, all to address VanHouse's pending motions.

The hearing was reconvened on July 27, 2016. Attorney Bennett informed the Court and parties that he had been advised that all the animals had been adopted out, spayed, and neutered. The Court heard arguments from both parties related to the County's motion to enforce settlement agreement. After hearing the argument of the parties, the Court found the settlement agreement to be in existence, valid, and binding upon the parties and granted the County's motion to enforce the terms of the settlement agreement. In accord, the Court dismissed VanHouse's motions for reconsideration and return of the animals to her.

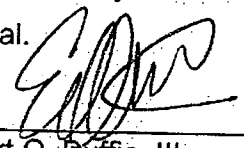
On August 8, 2016 VanHouse filed a motion to declare a mistrial. A hearing was scheduled on August 15, 2016. Earlier on the date of the hearing VanHouse also filed a motion to suppress evidence. Present at the hearing on August 15th were attorney Bennett and VanHouse. Attorney Bennett, on behalf of the County, waived any issue as to lack of notice of service of the motions and agreed to go forward on both motions. VanHouse's grounds for her motions were that nobody objected to her testimony and

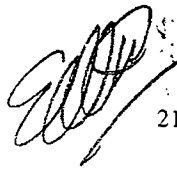

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190

evidence with the exception of two exhibits and the initial intrusion on her property was illegal, and therefore, she should be entitled to a mistrial and/or suppression of evidence. After hearing argument from both parties the Court denied VanHouse's motions to declare a mistrial and to suppress evidence.

The Court issued its Order Enforcing the Prior Settlement Agreement and Dismissing Respondent's Motion to Reconsider Order issued by this Court on June 1, 2016 and Motion to Return to Respondent Some Animals Previously Seized by Colleton Count. Thereafter, VanHouse timely filed a Notice of Appeal.

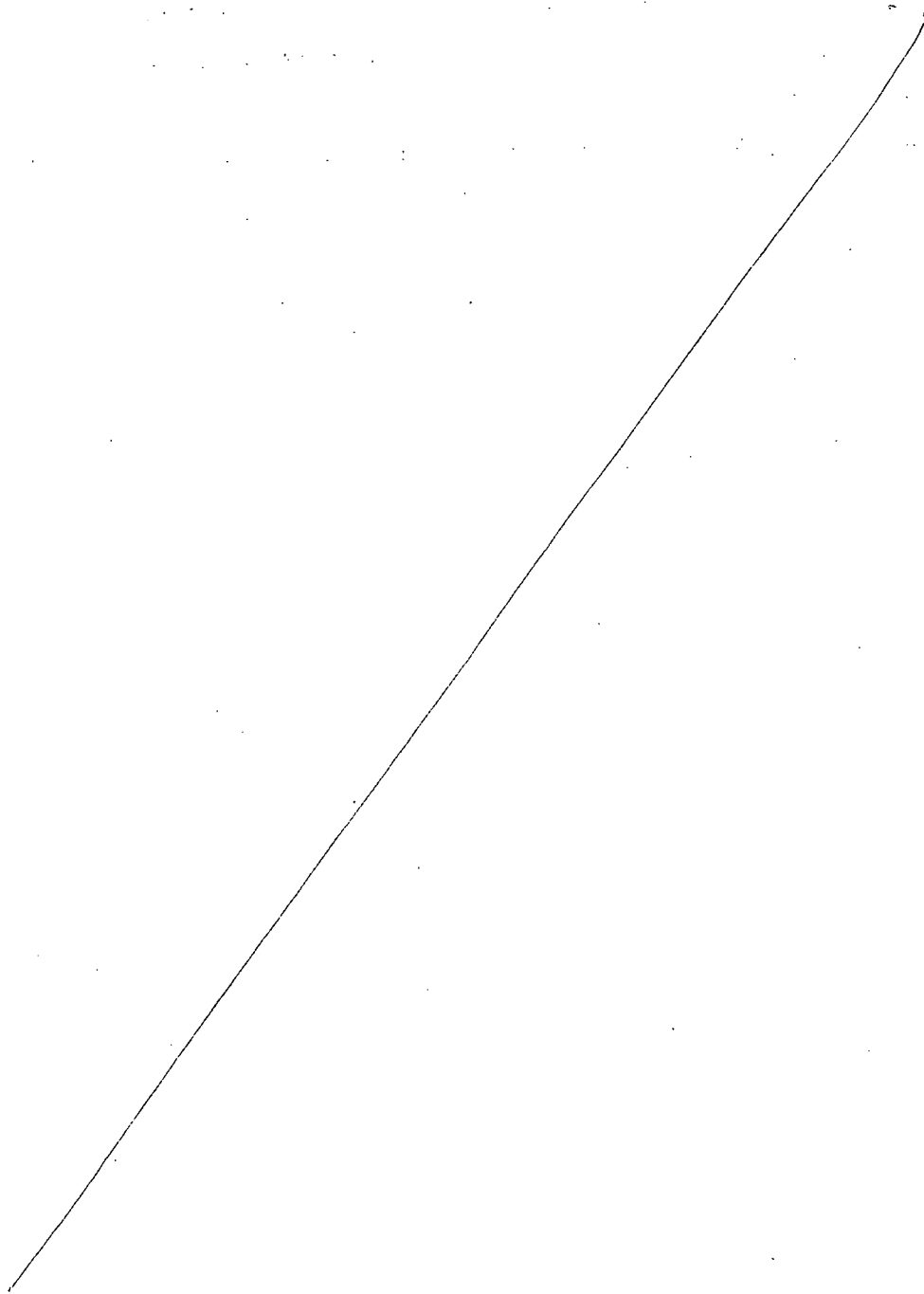
10 November 2016
Walterboro, South Carolina



Elbert O. Duffie, III
Magistrate for Colleton County

21

191



**Michael BESS; and Timothy Poe, Appellants, v. BRACKEN COUNTY FISCAL COURT,
Appellee**

- **Country of Origin:** United States
- **Court Name:** Court of Appeals of Kentucky
- **Primary Citation:** 210 S.W.3d 177 (Ky.App.,2006)
- **Date of Decision:** Wednesday, December 6, 2006
- **Judge Name:** VANMETER, Judge
- **Jurisdiction Level:** Kentucky

In 2004, the Bracken County Fiscal Court passed an ordinance which dealt generally with animal control and included provisions banning pit bull terriers. Bracken County, Ky. Ordinance §§ 53.001-53.99 (Sept. 27, 2004). Under the ordinance, a "pit bull terrier" is defined as any dog which is a registered American Staffordshire Terrier, Staffordshire Bull Terrier or American Pit Bull Terrier, or one which conforms to the standards of such a dog, or one which has the predominant physical characteristics of such a dog. Ordinance § 53.90. The fiscal court determined by ordinance that pit bull terriers "have inherently vicious and dangerous propensities, and are potentially hazardous and unreasonably dangerous to the health, safety, and welfare" of the citizens of Bracken County, and it declared that the ownership and keeping of such dogs in the county is "a public nuisance." Ordinance §§ 53.91(A) and (B). Further, the "ownership, location, maintenance, keeping, harboring, or use" of pit bull terriers was made punishable by a fine of up to \$500, and/or incarceration of up to 90 days, and any animals meeting the definition of pit bull terriers were made subject to forfeiture and euthanasia. Ordinance §§ 53.91(C) and 53.92.

Following its passage, appellants Michael Bess and Timothy Poe instituted this action challenging the ordinance and seeking a temporary injunction against its enforcement. The trial court denied the motion and dismissed the complaint, holding that under its "police powers" the fiscal court was authorized to regulate or ban pit bull terriers, and to take them without compensation. This appeal followed.

see *City of Toledo v. Tellings*, 2006 WL 513946 (Ohio App.2006), disc. appeal accepted, 110 Ohio St.3d 1437, 852 N.E.2d 186 (2006) (statute which labeled pit bulls as vicious violated procedural and substantive due process, as well as equal protection, since no rational basis existed to single out pit bulls as inherently dangerous). See generally Russell G. Donaldson, Annotation, Validity and Construction of Statute, Ordinance, or Regulation Applying to Specific Dog Breeds, Such as "Pit Bulls" or "Bull Terriers," 80 A.L.R.4th 70 (1990).

As noted above, Kentucky law recognizes that dogs can be property. KRS 258.245; Duff v. Louisville & N.R. Co., 219 Ky. 238, 240, 292 S.W. 814, 815 (1927); Commonwealth v. Hazelwood, 84 Ky. 681, 684, 2 S.W. 489, 490 (1887).

The judgment of the Bracken Circuit Court is affirmed.
ALL CONCUR.
Ky.App.,2006.

338 U.S. 160

Brinegar v. United States (No. 12)

Argued: October 18-19, 1948

Decided: June 27, 1949

Syllabus

Petitioner was convicted in a federal district court for a violation of the Liquor Enforcement Act of 1936, on charges of transporting intoxicating liquor into Oklahoma contrary to the laws of that State. He challenged the validity of his conviction because of the use in evidence against him of liquor seized in a search of his automobile without a warrant and allegedly in violation of the Fourth Amendment. At the hearing on petitioner's motion to suppress this evidence, it appeared that one of the federal agents who made the search and seizure had arrested petitioner five months previously for illegally transporting liquor; that he had twice seen petitioner loading liquor into a car or truck in Missouri, where the sale of liquor was legal, and that he knew petitioner had a reputation for hauling liquor. This officer, accompanied by another, recognized petitioner and his car, which appeared to be heavily loaded, going west in Oklahoma not far from the Missouri line. They gave chase, overtook petitioner, and forced his car to the side of the road. Upon interrogation, petitioner admitted that he had twelve cases of liquor in his car, whereupon the officers searched the car, seized the liquor and arrested petitioner.

[p174]

The court's rulings, one admitting, the other excluding the identical testimony, were neither inconsistent nor improper. They illustrate the difference in standards and latitude allowed in passing upon the distinct issues of probable cause and guilt.

*"Guilt in a criminal case must be *proved beyond a reasonable doubt*, and by evidence confined to that which long experience in the common law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. *These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.*"

United States Supreme Court

BRADY V. MARYLAND

373, US 83, (1963)

Case Summary:

- Brady was convicted of murder and sentenced to death after the prosecution withheld a statement by Boblit in which Boblit confessed to the killing.
- Brady then appealed to the court of appeals claiming that suppressing the statement violated his Constitutional right to Due Process.
- The court held the prosecution's suppression of the statement was unconstitutional.
- The Supreme Court affirmed, stating that due process requires the prosecution upon request, to turn over evidence that relates to the defendant's guilt or innocence even if such evidence is favorable to the defense.
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Statement of the Facts:

Both Brady and Boblit were suspected of murder. Prior to trial, Brady's attorney asked to review Boblit's statements. The Prosecutor kept the statement from Brady, in which Boblit admitted to the actual killing. Brady confessed to his involvement in the crime, but claimed no role in the actual murder. The court found Brady guilty of the murder and sentenced him to death. Brady learned of the suppression of Boblit's statement after sentencing and appealed.

Procedural History:

The court of appeals held the prosecutor improperly suppressed the statement in violation of Due Process.

Rule of Law or Legal Principle Applied:

The Due Process Clause requires the prosecution to turn over evidence relating to a defendant's guilt, innocence or sentencing upon request, even if it is favorable to the defense.

Issue and Holding:

Whether the prosecution must turn over evidence favorable to the defense under the Due Process Clause? **Yes.**

Judgment:

The Court affirmed the judgment of the court of appeals.

Reasoning:

If the evidence relates to the defendant's guilt, innocence or sentencing, the Due Process clause requires the prosecution to turn over evidence that is favorable to the defense. In both *Mooney v. Holohan*, 294 U.S. 103 (1935), and *Napue v. Illinois*, 360 U.S. 264 (1959), the Court held that prosecutors may not present false testimony or allow false testimony to go uncorrected. The present case builds on that precedent.

Withholding favorable evidence material to culpability or sentencing after a request by the defense equates to a denial of Due Process. The purpose of this rule is to safeguard the accused's right to a fair trial and finding a violation is in no way contingent upon whether the prosecutor acted in good or bad faith. A fair process serves the good of the people not just merely punishing the guilty.

Significance:

Brady v. Maryland as a landmark case is where we get the present day "Brady Rule" from. The rule requires the prosecution to disclose any material, exculpatory evidence in the government's possession to the defense, upon the defense's request.

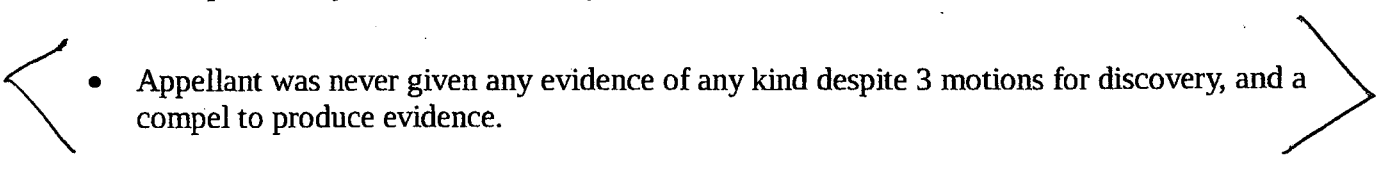
Brady Rule

The Brady Rule, named after Brady v. Maryland, 373 U.S. 83 (1963), requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense. A "Brady material" or evidence the prosecutor is required to disclose under this rule includes any evidence favorable to the accused--evidence that goes towards negating a defendant's guilt, that would reduce a defendant's potential sentence, or evidence going to the credibility of a witness.

If the prosecution does not disclose material exculpatory evidence under this rule, and prejudice has ensued, the evidence will be suppressed. The evidence will be suppressed regardless of whether the prosecutor knew the evidence was in his or her possession, or whether or not the prosecutor intentionally or inadvertently withheld the evidence from the defense.

Further, in cases subsequent to Brady, the Supreme Court has eliminated the requirement for a defendant to have requested a favorable information, stating that the Prosecution has a constitutional duty to disclose, that is triggered by the potential impact of favorable but undisclosed evidence See Kyles v. Whitley 514 U.S. 419, 434 (1995); United States v. Bagley, 473 U.S. 667 (1985).

The defendant bears the burden to prove that the undisclosed evidence was both material and favorable. In other words, the defendant must prove that there is a "reasonable probability" that the outcome of the trial would have been different, had the evidence been disclosed by the prosecutor. See Kyles, 514 U.S. at 433 (1995). Bagley and Kyles Court further defined the "materiality" standard, outlining the four aspects of materiality. First, the "reasonable probability" of a different result is not a question of whether the defendant would more likely than not have received a different verdict with the evidence, but whether the government's evidentiary suppression undermines the confidence in the outcome of the trial. The second aspect is that it is not a sufficiency of evidence test, and the defendant only has to show that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict. Third aspect is that there is no need for a harmless error review, because a Brady violation, by definition, could not be treated as a harmless error. Fourth and final aspect of materiality the Kyles Court stressed was that the suppressed evidence must be considered collective, not item by item, looking at the cumulative effect to determine whether a reasonable probability is reached. See Kyles, 514 U.S. at 433-438.

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- Appellant was never given any evidence of any kind despite 3 motions for discovery, and a compel to produce evidence.

United States Supreme Court
CANTWELL v. STATE OF CONNECTICUT, (1940)

No. 632

Argued: March 29, 1940 Decided: May 20, 1940

[310 U.S. 296, 297]

Mr. Hayden C. Covington, of New York City, for appellants and petitioners.

Messrs. Edwin S. Pickett, of New Haven, Conn., and Francis A. Pallotti, of Hartford, Conn, for
appellee and respondent.

[310 U.S. 296, 300]

Mr. Justice ROBERTS, delivered the opinion of the Court.

Newton Cantwell and his two sons, Jesse and Russell, members of a group known as Jehovah's witnesses, and claiming to be ordained ministers, were arrested in New Haven, Connecticut, and each was charged by information in five counts, with statutory and common law offenses. After trial in the Court of Common Pleas of New Haven County each of them was convicted on the third count, which charged a violation of 6294 of the General Statutes of Connecticut,¹ and on the fifth count, which charged commission of the common law offense of inciting a breach of the peace. On appeal to the Supreme Court the conviction of all three on the third count was affirmed. The conviction of Jesse Cantwell, on the fifth count, was also affirmed, but the conviction of Newton and Russell on that count was reversed and a new trial ordered as to them. ²

By demurrers to the information, by requests for rulings of law at the trial, and by their assignments of error in the State Supreme Court, the appellants pressed the contention that the statute under which the third count was drawn was offensive to the due process clause of the Fourteenth Amendment because, on its face and as construed and applied, it denied them freedom of speech and prohibited their free exercise of religion. In like manner [310 U.S. 296, 301] they made the point that they could not be found guilty on the fifth count, without violation of the Amendment.

We have jurisdiction on appeal from the judgments on the third count, as there was drawn in question the validity of a state statute under the federal Constitution, and the decision was in favor of validity. Since the conviction on the fifth count was not based upon a statute, but presents a substantial question under the federal Constitution, we granted the writ of certiorari in respect of it.

The facts adduced to sustain the convictions on the third count follow. On the day of their arrest the appellants were engaged in going singly from house to house on Cassius Street in New Haven. They were individually equipped with a bag containing books and pamphlets on religious subjects, a portable phonograph and a set of records, each of which, when played, introduced, and was a description of, one of the books. Each appellant asked the person who responded to his call for permission to play one of the records. If permission was granted he asked the person to buy the book described and, upon refusal, he solicited such contribution towards the publication of the pamphlets as the listener was willing to make. If a contribution was received a pamphlet was delivered upon condition that it would be read.

Cassius Street is in a thickly populated neighborhood, where about ninety per cent of the residents are Roman Catholics. A phonograph record, describing a book entitled 'Enemies', included an attack on the Catholic religion. None of the persons interviewed were members of Jehovah's witnesses.

First. We hold that the statute, as construed and applied to the appellants, *deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment*. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. 3 *The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof*. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. *Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law*. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts, -*freedom to believe and freedom to act*. The first is absolute but, in the nature of things, the [310 U.S. 296, 304] second cannot be. Conduct remains subject to regulation for the protection of society. *The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom*. N4 o one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. 5 It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.

“The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed in the First Amendment ...freedom to act is subject to regulation, however...must not unduly infringe on the protected freedom.”

Cuyahoga Falls v. Buckeye Community Hope Foundation,
538 U.S. 188 (2003)

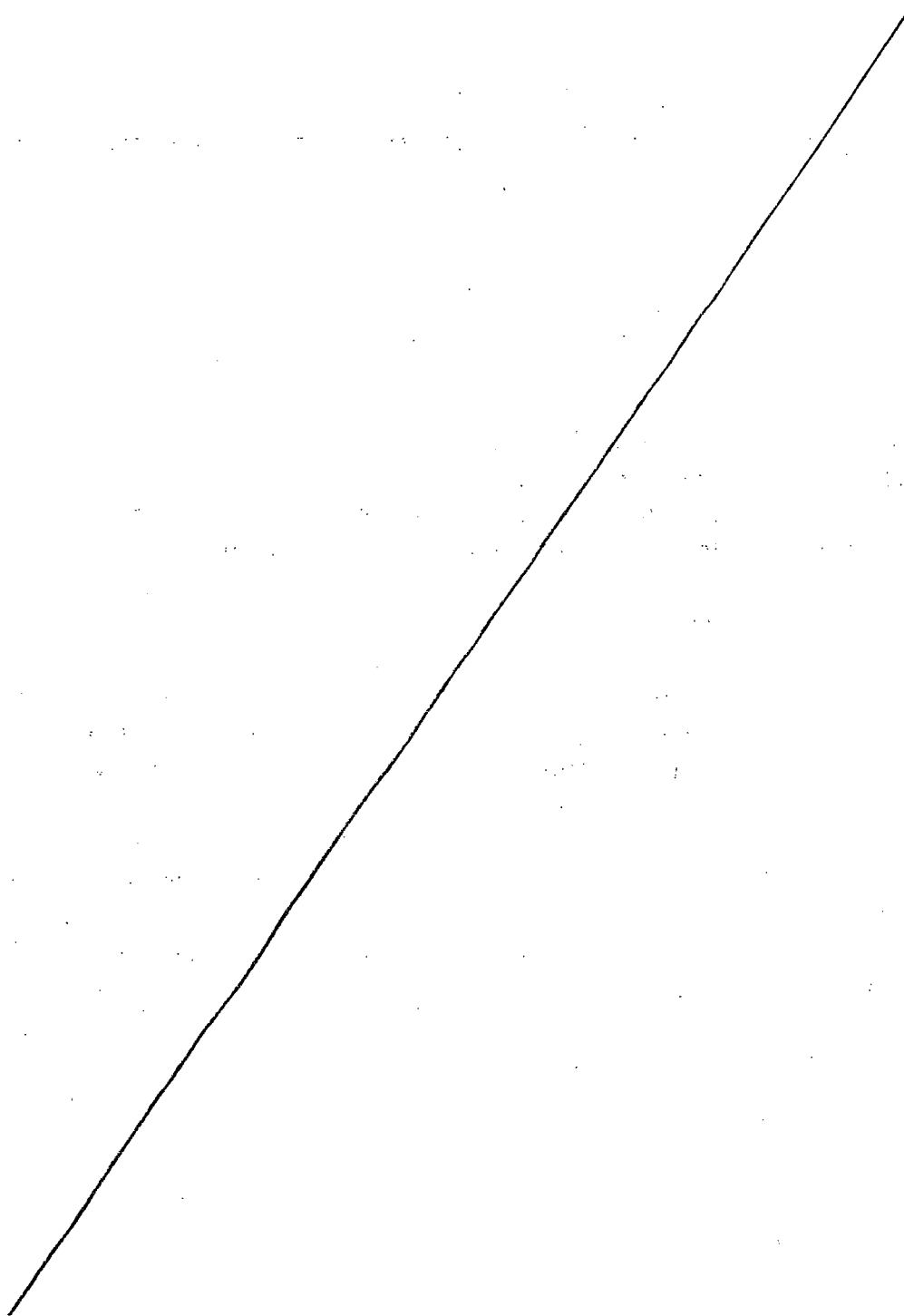
OCTOBER TERM, 2002
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT

Syllabus

No. 01-1269. Argued January 21, 2003-Decided March 25, 2003

After the City Council of Cuyahoga Falls, Ohio (hereinafter City), passed a site-plan ordinance authorizing construction of a low-income housing complex by respondents—a nonprofit corporation dedicated to developing affordable housing and related parties—a group of citizens filed a formal petition requesting that the ordinance be repealed or submitted to a popular vote. Pursuant to the City's charter, the referendum petition stayed the site plan's implementation until its approval by the voters. An Ohio court denied respondents an injunction against the petition, and the city engineer, on advice from the city law director, denied their request for building permits. The voters eventually passed the referendum, thus repealing the ordinance. Subsequently, the Ohio Supreme Court declared the referendum invalid under Ohio's Constitution, the City issued the building permits, and construction commenced. While the state litigation was still pending, respondents filed a federal suit against the City and its officials, seeking an injunction ordering the City to issue the building permits, as well as declaratory and monetary relief. They claimed that by submitting the site plan to voters, the City and its officials violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the Fair Housing Act. The District Court, *inter alia*, denied the City's summary judgment motion. After the Ohio Supreme Court invalidated the referendum, thus reducing the federal action to a claim for damages for the construction delay, the District Court granted the City and its officials summary judgment. In reversing, the Sixth Circuit found that respondents had produced sufficient evidence to go to trial on the allegation that the City, by *allowing the petition to stay the site plan's implementation, gave effect to the racial bias reflected in the public's opposition to the project*; that respondents had stated a valid Fair Housing Act claim because the City's actions had a disparate impact based on race and family status; and that *a genuine issue of material fact existed as to whether the City had engaged in arbitrary and irrational government conduct in violation of substantive due process.*

*“The ownership of property includes the inherent right to use one's property”



THE CITY OF DES PLAINES, Plaintiff-Appellee,
v.
SCIENTIFIC MACHINERY MOVERS, INCORPORATED, Defendant-Appellant.

No. 55541.

Illinois Appellate Court 1 First District.

December 19, 1972.

*439 Rudnick, Wolfe, Synderman & Foreman, of Chicago, (Jerome L. Fels, of counsel,) for appellant.

Robert J. Di Leonardi, of Des Plaines, for appellee.

Reversed and remanded.

Mr. PRESIDING JUSTICE STAMOS delivered the opinion of the court:

Scientific Machinery Movers, Inc. (hereinafter referred to as Scientific) is engaged in the business of trading in, receiving, moving, storing and installing heavy industrial machinery. The company has maintained its office and warehouse facilities at 517 Laurel Ave., Des Plaines, Illinois, since beginning operation in 1965.

The area in which the business is located was originally zoned C-2 for light commercial enterprises, and the business was a nonconforming use under this classification. In about 1967, however, the area was rezoned by the city to R-5, a residential classification. Prior to the instant litigation, no action had ever been taken by the city to abate the nonconforming use.

On February 25, 1969, the City of Des Plaines filed a complaint in the Circuit Court of Cook County. Count I alleged use of the property in violation of the zoning ordinances of the city and prayed for a "penalty" judgment of \$200 per day for the period of the nonconforming use and an injunction restraining Scientific from conducting business at its present location. Count II alleged that the conduct of the business constitutes a public nuisance to the extent that the outside of the building on the premises is used to store machinery, equipment, inoperative rolling stock *440 and junk. The city prayed for penalty fines of \$200 for each violation involving junk and \$150 for each additional nuisance offense.

After being served with a copy of this complaint, officials of the corporation consulted their regular attorney (hereinafter referred to as General Counsel). Since the case involved litigation, he recommended that an attorney experienced in the field be retained to handle the matter. A trial attorney (hereinafter referred to as Special Counsel) was contacted and he began negotiations with the city to settle the dispute.

The record before us indicates that during the period the negotiations were being conducted, Special Counsel requested and received several extensions of time within which to file an answer to the complaint. During the same period, both General and Special Counsel became aware that Scientific had purchased property outside of the City of Des Plaines which was zoned for heavy industrial activity. It is apparent that neither attorney undertook to discuss these proposed plans in detail with officers of the corporation. However, the information was conveyed to counsel for the city who indicated that movement of the business from the city could form the basis for an equitable out-of-court settlement,

and an agreement was subsequently reached which was to be incorporated into a consent decree. The agreement provided that (1) Scientific was to remove all heavy industrial machinery, equipment and tangible personal property from the premises outside of the building, (2) a fence was to be erected around the premises, (3) Scientific would be allowed to keep rolling stock within the fence enclosure, (4) the parkway at the rear of the building was to be resodded, (5) the entire operation of the business within the City of Des Plaines was to cease completely not later than September 3, 1970 (about one year later), and (6) the city would agree to dismiss the lawsuit with prejudice and relinquish any right to fines, costs and penalties resulting from the alleged violations.

Verbal agreement to the above terms was reached by negotiation between counsel for the city, Special Counsel and, to a lesser extent, General Counsel, but was never reduced to the form of a signed document. Special Counsel later testified that he had understood counsel for the city to *imply* during the discussions that the term providing for cessation of all business in Des Plaines would not be enforced, but was merely a lever to force compliance with the remainder of the provisions.

Following this agreement, Special Counsel contacted officers of Scientific and communicated all of the terms of the proposed decree to them, except the provision for discontinuance of the business. Based upon the information received, verbal consent to the settlement was given. During this period, however, the extensions of time during which defendant would be allowed to answer expired and Scientific stood in default for *441 failure to file a responsive pleading. Subsequently, counsel for the city drafted a "Consent Decree," incorporating the agreed terms and including a statement indicating that the order was to be entered in default, and provided Special Counsel with a copy. No objection was made to its terms, and, after proper notice to all attorneys involved, the decree was entered by a magistrate of the Circuit Court on September 17, 1969. Special Counsel spoke to counsel for the city in the courthouse on that day but did not appear in court to enter any objections.

Special Counsel later advised Scientific by letter that a settlement had been reached, itemized the terms of the decree, but once again omitted any mention of the provision for the complete cessation of business within one year of the default.

Officers of Scientific later learned of the cessation of business provision and, on September 10, 1970, filed a petition under Section 72 of the Civil Practice Act to vacate the decree. After hearing evidence and argument for both sides, the court denied relief and petitioner now appeals from that decision.

In urging reversal, Scientific contends that (1) the magistrate who entered the decree was completely without jurisdiction to act in the case and therefore the decree is void and (2) the denial of the petitioner's motion to vacate the order was an abuse of discretion in that the relief granted went beyond that requested in the complaint, the order is a consent decree which lacked the actual consent of Scientific and the attorney acted without authority in agreeing to it and the decree is therefore void.

¶ 7, 8 In the case at bar, we believe that the discretion of the court was substantially limited by the established rule of law that *an attorney employed to defend a suit has no authority to compromise, to give up any right of his client, or to consent to judgment against his client without the express consent or authorization of that client.* (Town of Hutton v. Ingram, 225 Ill. App. 97; Fessler v. Weiss, 348 Ill. App. 21, 107 N.E.2d 795). In the hearing on this petition, there was no dispute that the attorneys for petitioner did not obtain petitioner's consent to the terms of the decree which was entered. Under such circumstances, it was a clear abuse of discretion for the magistrate to refuse to vacate the decree. We reverse and remand for the vacature of the decree and for further proceedings not inconsistent with this opinion. "Only after express authority by consent of his client may the attorney compromise is client's course of action"

SUPREME COURT OF THE UNITED STATES

CITY OF MONTEREY v. DEL MONTE DUNES AT MONTEREY, LTD. et al.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 97—1235. Argued October 7, 1998—Decided May 24, 1999

After petitioner city imposed more rigorous demands each of the five times it rejected applications to develop a parcel of land owned by respondent Del Monte Dunes and its predecessor in interest, Del Monte Dunes brought this suit under 42 U.S.C. § 1983. The District Court submitted the case to the jury on Del Monte Dunes' theory that the city effected a regulatory taking or otherwise injured the property by unlawful acts, without paying compensation or providing an adequate postdeprivation remedy for the loss. The court instructed the jury to find for Del Monte Dunes if it found either that Del Monte Dunes had been denied all economically viable use of its property or that the city's decision to reject the final development proposal did not substantially advance a legitimate public purpose. The jury found for Del Monte Dunes. In affirming, the Ninth Circuit ruled, *inter alia*, that the District Court did not err in allowing Del Monte Dunes' takings claim to be tried to a jury, because Del Monte Dunes had a right to a jury trial under §1983; that whether Del Monte Dunes had been denied all economically viable use of the property and whether the city's denial of the final proposal substantially advanced legitimate public interests were, on the facts of this case, questions suitable for the jury; and that the jury reasonably could have decided each of these questions in Del Monte Dunes' favor.

Held: The judgment is affirmed.

95 F.3d 1422, affirmed.

Justice Kennedy delivered the opinion of the Court, except as to Part IV—A—2, concluding that:

1. The Ninth Circuit's discussion of the rough-proportionality standard of *Dolan v. City of Tigard*, 512 U.S. 374, 391, is irrelevant to this Court's disposition of the case. Although this Court believes the *Dolan* standard is inapposite to a case such as this one, the jury instructions did not mention proportionality, let alone require the jury to find for Del Monte Dunes unless the city's actions were roughly proportional to its asserted interests. The rough-proportionality discussion, furthermore, was unnecessary to sustain the jury's verdict, given the Ninth Circuit's holding that Del Monte Dunes had proffered evidence sufficient to rebut each of the city's reasons for denying the final development plan. Pp. 10—11.

2. In holding that the jury could have found the city's denial of the final development plan not reasonably related to legitimate public interests, the Ninth Circuit did not impermissibly adopt a rule allowing wholesale interference by judge or jury with municipal land-use policies, laws, or routine regulatory decisions. As the city itself proposed the essence of the jury instructions, it cannot now contend that these instructions did not provide an accurate statement of the law. In any event, the instructions are consistent with this Court's previous general discussions of regulatory takings liability. See, e.g., *Agins v. City of Tiburon*, 447 U.S. 255, 260. Given that the city did not challenge below the applicability or continued viability of these authorities, the Court declines the suggestions of amici to revisit them.

3. *The District Court properly submitted the question of liability on Del Monte Dunes' regulatory takings claim to the jury. Pp. 15—19, 27—32.*

(a) The propriety of such submission depends on whether Del Monte Dunes had a statutory or constitutional right to a jury trial, and, if it did, the nature and extent of the right. *Because §1983 does not itself confer the jury right when it authorizes "an action at law" to redress deprivation of a federal right under color of state law, the constitutional question must be reached. The Court's interpretation of the Seventh Amendment—which provides that "[i]n Suits at common law, . . . the right of trial by jury shall be preserved"—has been guided by historical analysis comprising two principal inquiries: (1) whether the cause of action either was tried at law at the time of the founding or is at least analogous to one that was, and (2) if so, whether the particular trial decision must fall to the jury in order to preserve the substance of the common-law right as it existed in 1791. Markman v. Westview Instruments, Inc., 517 U.S. 370, 376. Pp. 15—17.*

(b) *Del Monte Dunes' §1983 suit is an action at law for Seventh Amendment purposes. Pp. 17—19.*

(2) *A §1983 suit seeking legal relief is an action at law within the Seventh Amendment's meaning. It is undisputed that when the Amendment was adopted there was no action equivalent to §1983. It is settled law, however, that the Amendment's jury guarantee extends to statutory claims unknown to the common law, so long as the claims can be said to "soun[d] basically in tort," and seek legal relief. Curtis v. Loether, 415 U.S. 189, 195—196. There can be no doubt that §1983 claims sound in tort. See, e.g., Heck v. Humphrey, 512 U.S. 477, 483. Here Del Monte Dunes sought legal relief in the form of damages for the unconstitutional denial of just compensation. Damages for a constitutional violation are a legal remedy. See, e.g., Teamsters v. Terry, 494 U.S. 558, 570. Pp. 17—19.*

(4) *In actions at law otherwise within the purview of the Seventh Amendment, the issue whether a landowner has been deprived of all economically viable use of his property is for the jury. The issue is predominantly factual, e.g., Pennsylvania Coal Co. v. Mahon, 260 U.S. 393,*

413, and in actions at law such issues are in most cases allocated to the jury, see, e.g., *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657. Pp. 29—30.

(d) *This Seventh Amendment holding is limited in various respects: It does not address the jury's role in an ordinary inverse condemnation suit, or attempt a precise demarcation of the respective provinces of judge and jury in determining whether a zoning decision substantially advances legitimate governmental interests that would extend to other contexts. Del Monte Dunes' argument was not that the city had followed its zoning ordinances and policies but rather that it had not done so. As is often true in §1983 actions, the disputed questions were whether the government had denied a constitutional right in acting outside the bounds of its authority, and, if so, the extent of any resulting damages. These were questions for the jury. Pp. 30—32.*

Justice Kennedy, joined by The Chief Justice, Justice Stevens, and Justice Thomas, concluded in Part IV—A—2 that the city's request to create an exception to the general Seventh Amendment rule governing §1983 actions for claims alleging violations of the Fifth Amendment Takings Clause must be rejected. Pp. 19—27.

2. *Even when analyzed not as a §1983 action simpliciter, but as a §1983 action seeking redress for an uncompensated taking, Del Monte Dunes' suit remains an action at law. Contrary to the city's submission, a formal condemnation proceeding—as to which the Court has said there is no constitutional jury right, e.g., United States v. Reynolds, 397 U.S. 14, 18—is not the controlling analogy here. That analogy is rendered inapposite by fundamental differences between a condemnation proceeding and a §1983 action to redress an uncompensated taking. Most important, when the government initiates condemnation proceedings, it concedes the landowner's right to receive just compensation and seeks a mere determination of the amount of compensation due. Liability simply is not an issue. This difference renders the analogy not only unhelpful but inapposite. See, e.g., Bonaparte v. Camden & Amboy R. Co., 3 F. Cas. 821, 829 (No. 1, 617) (CC NJ). Moreover, when the government condemns property for public use, it provides the landowner a forum for seeking just compensation as is required by the Constitution. See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 316. If the condemnation proceedings do not, in fact, deny the landowner just compensation, the government's actions are neither unconstitutional nor unlawful. E.g., Williamson, supra, at 195. In this case, however, Del Monte Dunes was denied not only its property but also just compensation or even an adequate forum for seeking it. In these circumstances, the original understanding of the Takings Clause and historical practice support the conclusion that the cause of action sounds in tort and is most analogous to the various actions that lay at common law to recover damages for interference with property interests. In such common-law actions, there was a right to trial by jury. See, e.g., Feltner, supra, at 349. The city's argument that because the Constitution allows the government to take property for*

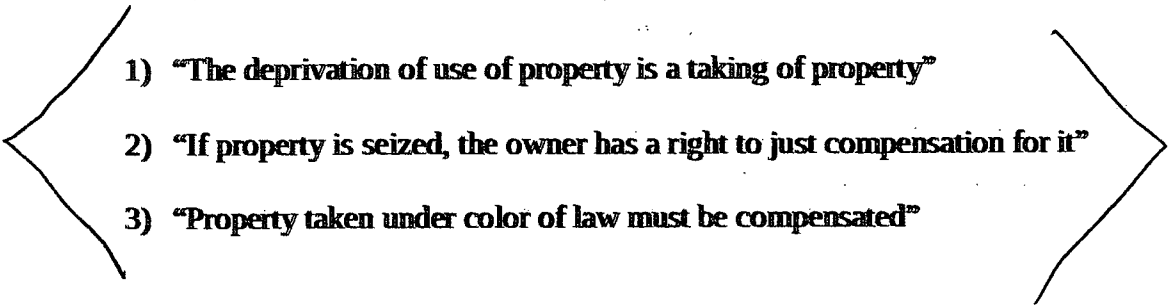
public use, a taking for that purpose cannot be tortious or unlawful, is rejected. *When the government repudiates its duty to provide just compensation, see, e.g., First English, supra, at 315, it violates the Constitution, and its actions are unlawful and tortious. Pp. 20—27.*

Justice Scalia concluded:

1. *The Seventh Amendment provides respondents with a right to a jury trial on their §1983 claim. All §1983 actions must be treated alike insofar as that right is concerned. Section 1983 establishes a unique, or at least distinctive, cause of action, in that the legal duty which is the basis for relief is ultimately defined not by the claim-creating statute itself, but by an extrinsic body of law to which the statute refers, namely “federal rights elsewhere conferred.” Baker v. McCollan, 443 U.S. 137, 144, n. 3. The question before the Court then is not what common-law action is most analogous to some generic suit seeking compensation for a Fifth Amendment taking, but what common-law action is most analogous to a §1983 claim. This Court has concluded that all §1983 claims should be characterized in the same way, Wilson v. Garcia, 471 U.S. 261, 271—272, as tort actions for the recovery of damages for personal injuries, id., at 276. Pp. 1—5.*

2. *It is clear that a §1983 cause of action for damages is a tort action for which jury trial would have been provided at common law. See, e.g., Curtis v. Loether, 415 U.S. 189, 195. Pp. 5—8.*

3. *The trial court properly submitted the particular issues raised by respondents’ §1983 claim to the jury. The question whether they were deprived of all economically viable use of their property presents primarily a question of fact appropriate for jury consideration. As to the question whether petitioner’s rejection of respondents’ building plans substantially advanced a legitimate public purpose, the subquestion whether the government’s asserted basis for its challenged action represents a legitimate state interest was properly removed from the jury’s cognizance, but the subquestion whether that legitimate state interest is substantially furthered by the challenged government action is, at least in the highly particularized context of the present case, a jury question. Pp. 8—10.*

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- 1) “The deprivation of use of property is a taking of property”
 - 2) “If property is seized, the owner has a right to just compensation for it”
 - 3) “Property taken under color of law must be compensated”

U.S. Supreme Court

Coolidge v. New Hampshire, 403 U.S. 443 (1971)

Coolidge v. New Hampshire

No. 323

Argued January 12, 1971

Decided June 21, 1971

403 U.S. 443

CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

Syllabus

Police went to petitioner's home on January 28, 1964, to question him about a murder. In the course of their inquiry, he showed them three guns, and he agreed to take a lie detector test on February 2. The test was inconclusive on the murder, but, during its course, petitioner admitted a theft. In petitioner's absence, two other policemen came to the house and questioned petitioner's wife to check petitioner's story and corroborate his admission of the theft. Unaware of the visit of the other officers who had been shown the guns and knowing little about the murder weapon, the police asked about any guns there might be in the house, and were shown four by petitioner's wife which she offered to let them take. After one policeman first declined the offer, they took the guns, along with various articles of petitioner's clothing his wife made available to them. On February 19, petitioner was arrested in his house for the murder, and, on that date, a warrant to search petitioner's automobile was applied for by the police chief and issued by the Attorney General (who had assumed charge of the investigation and was later the chief prosecutor at the trial), acting as a justice of the peace. The car, which, at the time of the arrest, was parked in petitioner's driveway, was subsequently towed to the police station, where, on February 21 and on two occasions the next year, it was searched. Vacuum sweepings from the car as well as from the clothing were used as evidence at the trial, along with one of the guns made available by petitioner's wife. Following the overruling of pretrial motions to suppress that evidence, petitioner was convicted, and the State Supreme Court affirmed.

2. The basic constitutional rule is that

"searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well delineated exceptions. [Footnote 5]"

The exceptions are "jealously and carefully drawn," [Footnote 6] and there must be "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." [Footnote 7] "[T]he burden is on those seeking the exemption to show the need for it." [Footnote 8] In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or "extravagant" to some. But *the values were those of the authors of our fundamental constitutional concepts*. In times not altogether unlike our own they won -- by legal and constitutional means in England, [Footnote 9] and by revolution on this continent -- a right of personal security against arbitrary intrusions by official power. If times have changed, reducing everyman's scope to do as he pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important. [Footnote 10]

pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important. [Footnote 10] *pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important. [Footnote 10]*

The petitioner's first claim is that *the warrant authorizing the seizure and subsequent search of his 1951 Pontiac automobile was invalid because not issued by a "neutral and detached magistrate."* Since we agree with the petitioner that the warrant was invalid for this reason, we need not consider his further argument that the allegations under oath supporting the issuance of the warrant were so conclusory as to violate relevant constitutional standards. Cf. *Giordenello v. United States*, 357 U. S. 480; *Aguilar v. Texas*, 378 U. S. 108. The classic statement of the policy underlying the warrant requirement of the Fourth Amendment is that of Mr. Justice Jackson, writing for the Court in *Johnson v. United States*, 333 U. S. 10, 333 U. S. 13-14:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate, instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity, and leave the people's homes secure only in the discretion of police officers. ... When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."

Cf. *United States v. Lefkowitz*, 285 U. S. 452, 285 U. S. 464; *Giordenello v. United States*, supra, at 357 U. S. 486. *Wong Sun v. United States*, 376 U. S. 403 U. S. 450

Without disrespect to the state law enforcement agent here involved, the whole point of the basic rule so well expressed by Mr. Justice Jackson is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations -- the "competitive enterprise" that must rightly engage their single-minded attention. [Footnote 3] Cf. *Mancusi v. DeForte*, 392 U. S. 364, 392 U. S. 371. As for the proposition that the existence of probable cause renders noncompliance with the warrant procedure an irrelevance...pg 403 US 451

"The security of one's privacy against arbitrary intrusion by the police -- which is at the core of the Fourth Amendment -- is basic to a free society. It is therefore implicit in 'the concept of ordered liberty,' and, as such, enforceable against the States through the Due Process Clause. *The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned. . . .*" What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification -- whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused -- and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; *the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.*

Page 403 U. S. 467:

*"A search must be with a warrant, and describe the specific place to be searched and things to be seized, so as to prevent a general exploratory rummaging in a person's belongings"

U.S. Supreme Court

Cooper v. Aaron, 358 U.S. 1 (1958)

Cooper v. Aaron

No. 1

Argued September 11, 1958

Decided September 12, 1958*

Opinion announced September 29, 1958

358 U.S. 1

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Syllabus

Under a plan of gradual desegregation of the races in the public schools of Little Rock, Arkansas, adopted by petitioners and approved by the courts below, respondents, Negro children, were ordered admitted to a previously all-white high school at the beginning of the 1957-1958 school year. Due to actions by the Legislature and Governor of the State opposing desegregation, and to threats of mob violence resulting therefrom, respondents were unable to attend the school until troops were sent and maintained there by the Federal Government for their protection; but they

Page 358 U. S. 2

attended the school for the remainder of that school year. Finding that these events had resulted in tensions, bedlam, chaos and turmoil in the school, which disrupted the educational process, the District Court, in June, 1958, granted petitioners' request that operation of their plan of desegregation be suspended for two and one-half years, and that respondents be sent back to segregated schools. The Court of Appeals reversed.

Held: The judgment of the Court of Appeals is affirmed, and the orders of the District Court enforcing petitioners' plan of desegregation are reinstated, effective immediately. Pp. 358 U. S. 4-20.

1. This Court cannot countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution in *Brown v. Board of Education*, 347 U. S. 483. P. 358 U. S. 4.
2. This Court rejects the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the *Brown* case have been further challenged and tested in the courts. P. 358 U. S. 4.
3. In many locations, obedience to the duty of desegregation will require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes at particular schools. P. 358 U. S. 7.

4. If, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), a District Court concludes that justification exists for not requiring the present nonsegregated admission of all qualified Negro children to public schools, it should scrutinize the program of the school authorities to make sure that they have developed arrangements pointed toward the earliest practicable completion of desegregation, and have taken appropriate steps to put their program into effective operation. P. 358 U. S. 7.

5. The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 358 U. S. 15-16.

6. The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed

Page 358 U. S. 3

upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights. P. 358 U. S. 16.

7. The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." Pp. 358 U. S. 16-17.

8. The interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." P. 358 U. S. 18.

9. No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. P. 358 U. S. 18.

10. State support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws. P. 358 U. S. 19.

257 F. 2d 33, affirmed.

Page 358 U. S. 4

"A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that *no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws.* Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws violates the constitutional inhibition; and, as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Page 358 U. S. 17

U.S. Supreme Court

Davis v. Wechsler, 263 U.S. 22 (1923)

Davis v. Wechsler

No. 70

Argued October 12, 1923

Decided October 22, 1923

263 U.S. 22

Syllabus

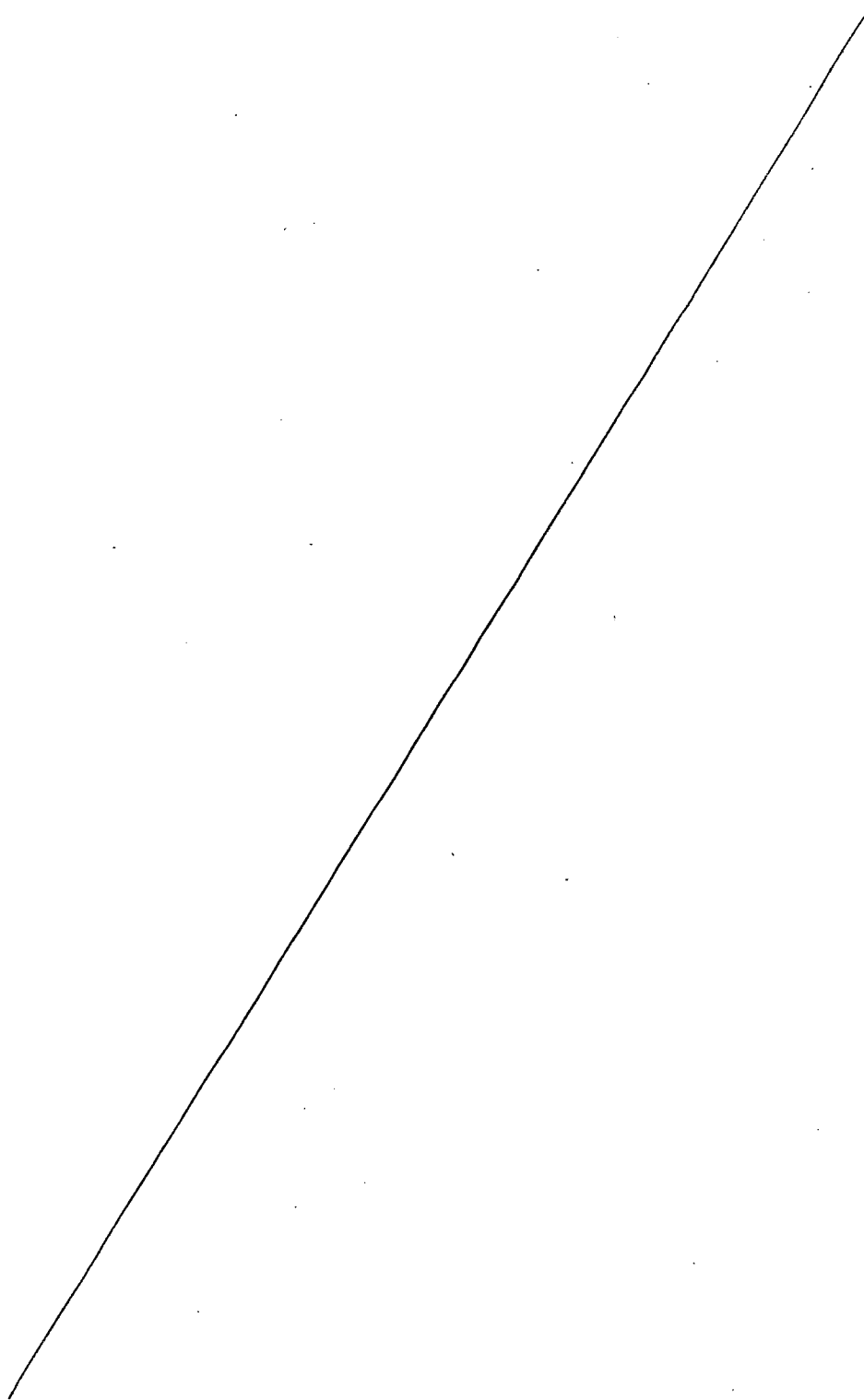
1. A decision of a state court denying an objection to jurisdiction based on a federal regulation, upon the ground that the objection was waived by the appearance of the party making it, is reexaminable by this Court. P. 263 U. S. 24.
2. Where the Director General of Railroads, being sued upon a cause of action for personal injuries in a state court whose practice permitted uniting a plea to the jurisdiction with a defense on the merits, pleaded a general denial and also that the court was without jurisdiction because the action was not brought in the proper county as required by a federal regulation governing the place for suits against carriers while under federal control, and his successors, designated by the President under the Transportation Act, 1920, successively entered appearance and adopted the answer theretofore filed, held that a decision of the state court, treating the objection to the jurisdiction as going to the venue of the cause and as waived by the appearances, could not be sustained as a decision disposing of the case on a local ground independent of the federal question raised. Id.
3. The Transportation Act, 1920, § 206, (a), (d), does not invalidate a defense good when it was passed. P. 263 U. S. 25.

209 Mo.App 570 reversed.

Certiorari to a judgment of the Kansas City Court of Appeals (the Supreme Court of Missouri having declined to review) awarding damages to the plaintiff Wechsler for personal injuries suffered upon a railroad while it was under federal control.

Page 263 U. S. 23

"The assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice"



226 Pa. Superior Ct. 381 (1973)

Eldridge et ux. v. Melcher et al., Appellants.

Superior Court of Pennsylvania.

Argued March 22, 1973.

December 11, 1973.

*382 Before WRIGHT, P.J., WATKINS, JACOBS, HOFFMAN, SPAULDING, CERCONE, and SPAETH, JJ.

Richard P. McBride, with him James C. Bowen, and Power, Bowen & Valimont, for appellants.

*383 Alan D. Williams, Jr., with him R. Kirkland McQuiddy, Roger N. Rosenberger, and Williams and Glantz, for appellees.

OPINION BY HOFFMAN, J., December 11, 1973:

The instant appeal from a denial of post-trial motions involves some unusual legal issues and tragic consequences of an automobile accident.

On August 1, 1963, at approximately 2:30 p.m., the wife-appellee, Delta N. Eldridge, accompanied by her two youngest children, was traveling in a northerly direction along U.S. Route 611. As she rounded a curve in the two-lane roadway, a truck proceeding in a southerly direction collided with her vehicle. The collision caused the vehicles to spin around, overturning the truck, virtually demolishing the automobile, and leaving both vehicles off their respective sides of the road. The two children, who were passengers in appellee's car, were thrown from the car and sustained fatal injuries. The wife-appellee suffered compound fractures in several portions of her body. As a further result of the accident, she suffered retrograde amnesia, and underwent protracted psychiatric and psychological treatment.

Wife-appellee and her husband instituted suit against the driver and owner of the truck on September 2, 1964.[1] At a deposition, taken in January of 1965, involving the same factual situation but in a separate action, the wife-appellee testified that her memory was a "blank". At a pre-trial conference before the Honorable Lawrence A. MONROE, on December 18, 1969, plaintiff's counsel stated that his client (who was not present at this conference) could not remember the facts *384 surrounding the accident. Undoubtedly basing a portion of his Pre-Trial Order on this oral statement by counsel, the trial judge stated that "the Plaintiff . . . no longer recalls circumstances of accident."

At time of trial, the only direct testimony concerning its occurrence was provided by the wife-appellee. There were no eyewitnesses to the accident. Mrs. Eldridge testified that it was raining and the roadway was wet. She stated that her visibility was unimpaired. She said that as she rounded the curve, staying on her side of the road, a truck, traveling at a speed of about 35 miles per hour, crossed over to the wrong side of the road and struck her car. On cross-examination, defense counsel asked the wife-appellee when it was that she began to remember. The colloquy was as follows: "Q. When did you tell your attorney that you started to remember things? A. Around '68. Q. It was 1968 that you told your attorney that you started to remember things; is that correct? A. Yes."

Defense counsel offered the testimony of Dr. Joseph Robinson, a physician specializing in psychiatry and neurology, who had examined the wife-appellee four days prior to trial. He stated that in his medical opinion a person suffering from retrograde amnesia would regain her memory within 30 days or not at all. In his examination of the wife-appellee, Dr. Robinson evoked a statement by Mrs. Eldridge that her mind was a "blank" with respect to the accident in question. He stated: "I asked her if she recalled the accident actually happening. She said she did not remember the accident happening, and that her last memory was that she was talking to her children minutes prior to the accident, and her

next memory is that she woke up at the Abington Hospital." When asked how it was that plaintiff could recall at trial the accident when four days prior thereto she could not remember those circumstances, Dr. Robinson replied: "Well, it is not actual recall. *385 What it is, is a matter of piecing together bits of information about the accident that come from a variety of sources . . . to create a story, especially if such a story helps her to absolve her own self or her own feeling of guilt."

In rebuttal, plaintiff's attorney called Dr. Albert M. Honig, a psychiatrist, who testified that amnesia suffered as a result of the kind of trauma which the plaintiff experienced could dissipate over a period of time. He further stated that there was no way to pinpoint a time period for recall, but that it could come at any time, and as a result of a number of emotional and psychological factors, including "domestic split-up" (as occurred between the parties, allegedly as a result of the death of the two children) or "expectancy of litigation" with regard to this accident.

At the conclusion of the defendants' case, defense counsel made the following request: "MR. BOWEN: I would like to offer into evidence, if the Court please, by a statement by the Court to the effect that the pre-trial order of December 1969 reveals that the plaintiff did not have a recollection as to the circumstances of the accident."

The trial judge, who was also the pre-trial conference judge, denied the offer of proof. On November 12, 1970, the jury returned a verdict in favor of the plaintiff in the amount of \$150,000 against both defendants. Motions for judgment n.o.v. and for a new trial were denied.

*389 It has long been recognized that the acts and declarations of an agent may bind the principal when made in the course of employment. So too, the client may be bound by the acts or statements of his attorney, when made within the scope of his authority. *McGarity v. New York Life Ins. Co.*, 359 Pa. 308, 59 A.2d 47 (1948). While distinct and formal admissions made by an attorney during the course of a trial when made for the purpose of dispensing with formal proof are binding upon a client, it is generally held that an attorney, "merely by reason of his employment in connection with litigation, pending or prospective, has no power to affect his client by admissions of fact made out of court, and not given for the specific purpose of dispensing with proof of the facts admitted." 7 Am. Jur. 2d, Attorneys at Law, § 122, pp. 121-122; in accord, *Mahler v. Singer*, 285 Pa. 540, 132 A. 718 (1926).

The rule has been expressed as barring the introduction of evidence of admissions made out of court and not in the presence of the client, unless authority to make them or knowledge or assent of the client thereto is affirmatively shown. *Malone v. Marano*, 326 Pa. 316, 320, 192 A. 254 (1937); *Douglass v. Mitchell*, 35 Pa. 440, 447 (1860).

United States Supreme Court

FROST v. RAILROAD COMMISSION OF STATE OF CALIFORNIA, (1926)

No. 828

Argued: Decided: June 7, 1926

[271 U.S. 583, 584] Mr. Max Thelen, of San Francisco, Cal., for plaintiffs in error.

[271 U.S. 583, 585] Mr. Carl I. Wheat, of San Francisco, Cal., for defendant in error.

[271 U.S. 583, 589]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

This case involves the constitutional validity of the Auto Stage and Truck Transportation Act of California (Statutes of California 1917, p. 330, c. 213), as construed and applied to plaintiffs in error by the state Supreme Court. The specific challenge is that, as so construed and applied, it takes their property for public use without just compensation, deprives them of their property without due process of law, and denies them the equal protection of the laws, in violation of the Fourteenth Amendment to the federal Constitution. The act provides for the supervision and regulation of transportation for compensation over public highways by automobiles, auto trucks, etc., by the Railroad Commission. The term 'transportation company' is defined to mean a common carrier for compensation over any public highway between fixed termini or over a regular route. By section 3(a) no corporation or person is permitted to operate any automobile, auto truck, etc., 'for the transportation of persons or property as a common carrier for compensation on any public highway in this state between any fixed termini ... unless a permit has first been secured as herein provided.' Permits are issued upon application by the incorporated city or town, city and county, or county within or through which the applicant intends to operate. By section 4, the Railroad Commission is empowered to supervise [271 U.S. 583, 590] and regulate such transportation companies, and to fix their rates, fares, charges, classifications, rules, and regulations, and generally, to regulate them in all matters affecting their relationship with the traveling and shipping public. Section 5 requires, in addition to the permit, that the applicant must obtain from the Railroad Commission a certificate declaring that public convenience and necessity require the exercise of such right or privilege, and it provides that the commission may attach to the exercise of the rights granted such terms and conditions as in its judgment the public convenience and necessity may require. Operation under a permit without such certificate is prohibited. In 1919, the act was amended (Statutes 1919, c. 280. p. 457), so as to bring under the regulative control of the commission automotive carriers of persons or property operating under private contracts of carriage, and the term 'transportation company' was enlarged so as to include such a carrier. It was further provided that no such transportation company shall operate for compensation over the highways without first having secured from the commission a certificate of public convenience and necessity so to do.

Plaintiffs in error were engaged under a single private contract in transporting, for single private contract in transporting, for stipulated compensation, citrus fruit over the were brought before the commission charged with violating the act, for the reason that they has not secured from the commission a certificate of public convenience and necessity. The commission, while agreeing that plaintiffs in error were, in fact, private carriers, held that they were subject to the provisions of the act and directed them to suspend their operations under their contract unless and until they should secure a certificate that public convenience and necessity required the resumption or continuance thereof. The commission's order was upheld by the state Supreme Court. 240 P. 26. [271 U.S. 583, 591] On behalf

of plaintiffs in error the contention is that, in its application to private carriers, the act has the effect of transforming them into public carriers by legislative fiat. Upon the other side it is said that the sole purpose of the legislation 'is to impress upon such private carriers certain regulations so long as they desire to use the publicly built and owned highways as the chief situs of their business of hauling goods for compensation,' and that 'they are not, and cannot be, forced, directly or indirectly, to become common carriers.'

It is unnecessary to inquire which view is correct, since the act has been authoritatively construed by the state Supreme Court. That court, while saying that the state was without power, by mere legislative fiat or even by constitutional enactment, to transmute a private carrier into a public carrier, declared that the state had the power to grant or altogether withhold from its citizens the privilege of using its public highways for the purpose of transacting private business thereon, and that therefore the Legislature might grant the right on such conditions as it saw fit to impose. In the light of this general statement of principle, it was held that the effect of the transportation act is to offer a special privilege of using the public highways to the private carrier for compensation upon condition that he shall dedicate his property to the quasi public use of public transportation; that the private carrier is not obliged to submit himself to the condition, but, if he does not, he is not entitled to the privilege of using the highways.

That, consistently with the due process clause of the Fourteenth Amendment, a private carrier cannot be converted against his will into a common carrier by mere legislative command, is a rule not open to doubt, and is not brought into question here. It was expressly so decided in *Michigan Commission v. Duke*, 266 U.S. 570, 577, 578 S., 45 also, *Hissem v. Guran*, 112 Ohio St. 59, 146 N. E. 808; *State v. Nelson*, 65 Utah, 457, 462, 238 P. 237. The naked question which we have to determine, therefore, is whether the state may bring about the same result by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which, without so deciding, we shall assume to be within the power of the state altogether to [271 U.S. 583, 593] withhold if it sees fit to do so.

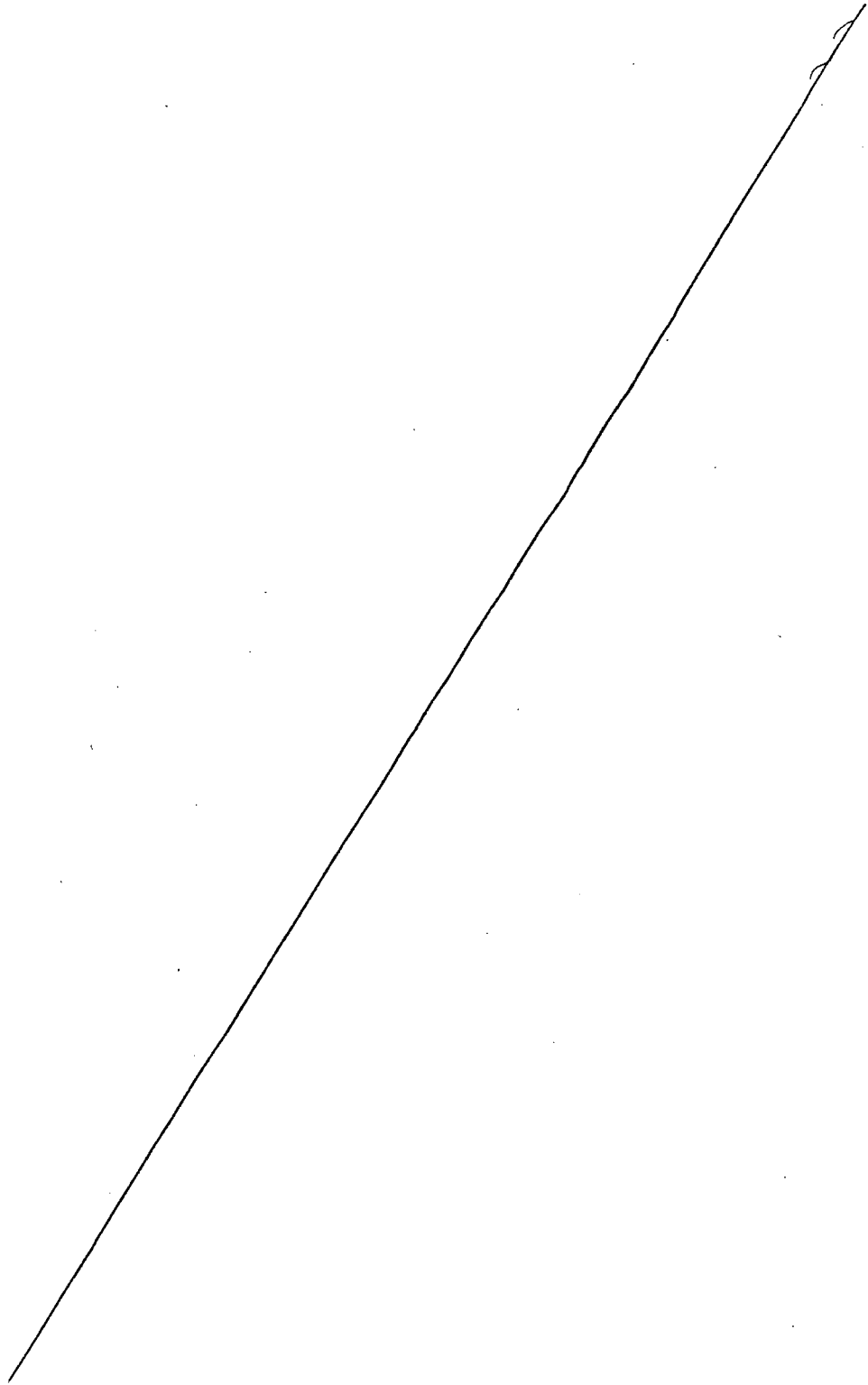
the power of the state in that respect is not [271 U.S. 583, 594] unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.

A Texas statute re- [271 U.S. 583, 595] quiring a foreign corporation desiring to do business in the state to agree that it would not remove any suit from a court of the state into the Circuit Court of the United States. This court held the statute invalid, saying: 'But that statute, requiring the corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and privilege secured to it by the Constitution and laws of the United States, was unconstitutional and void, and could give no validity or effect to any agreement or action of the Corporation in obedience to its provisions.'

For, conceding the right of a state to exclude foreign corporations, we must not overlook the limitation upon that right, now equally well settled in the jurisprudence of this court, that the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the federal

*Constitution. If this were otherwise, the state would be permitted to destroy a right created and protected by the federal Constitution under the guise of exercising a privilege belonging to the state, and as we have pointed out, the state might thus deprive business within its borders, except upon the condition that it strip itself of the protection given it by the federal Constitution. * **

"The State has no authority to unreasonably burden the exercise of fundamental rights such that the burden compels the relinquishment of such rights in exchange for privileges"



United States Supreme Court
GIGLIO v. UNITED STATES, (1972)

No. 70-29

Argued: October 12, 1971 Decided: February 24, 1972

Petitioner filed a motion for a new trial on the basis of newly discovered evidence contending that the Government failed to disclose an alleged promise of leniency made to its key witness in return for his testimony. At a hearing on this motion, the Assistant United States Attorney who presented the case to the grand jury admitted that he promised the witness that he would not be prosecuted if he testified before the grand jury and at trial. The Assistant who tried the case was unaware of the promise. Held: Neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling, and the prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process requiring a new trial. Pp. 153-155.

Reversed and remanded.

BURGER, C. J., delivered the opinion of the Court, in which all Members joined except POWELL and REHNQUIST, JJ., who took no part in the consideration or decision of the case.

James M. La Rossa argued the cause and filed a brief for petitioner.

Harry R. Sachse argued the cause for the United States. On the brief were Solicitor General Griswold, Assistant Attorney General Wilson, Jerome M. Feit, and Beatrice Rosenberg.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioner was convicted of passing forged money orders and sentenced to five years' imprisonment. *While appeal was pending in the Court of Appeals, defense counsel discovered new evidence indicating that the Government [405 U.S. 150, 151] had failed to disclose an alleged promise made to its key witness that he would not be prosecuted if he testified for the Government. We granted certiorari to determine whether the evidence not disclosed was such as to require a new trial under the due process criteria of Napue v. Illinois, 360 U.S. 264 (1959), and Brady v. Maryland, 373 U.S. 83 (1963).*

The controversy in this case centers around the testimony of Robert Taliento, petitioner's alleged coconspirator in the offense and the only witness linking petitioner with the crime. The Government's evidence at trial showed that in June 1966 officials at the Manufacturers Hanover Trust Co. discovered that Taliento, as teller at the bank, had cashed several forged money orders. Upon questioning by FBI agents, he confessed supplying petitioner with one of the bank's customer signature cards used by Giglio to forge \$2,300 in money orders; Taliento then processed these money orders through the regular channels of the bank. Taliento related this story to the grand jury and petitioner was indicted; thereafter, he was named as a coconspirator with petitioner but was not indicted.

As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213 (1942). In *Napue v. Illinois*, 360 U.S. 264 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269. Thereafter *Brady v. Maryland*, 373 U.S., at 87, held that suppression of material evidence justifies a new trial "irrespective

of the good faith or bad faith of the prosecution." See American [405 U.S. 150, 154] Bar Association, Project on Standards for Criminal Justice, Prosecution Function and the Defense Function 3.11 (a). When the "reliability of a given witness may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule. Napue, supra, at 269.

A finding of materiality of the evidence is required under Brady, supra, at 87. A new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury" Napue, supra, at 271.

Here the Government's case depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento's credibility as a witness was therefore [405 U.S. 150, 155] an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it.

"The prosecution's failure to inform the jury of certain agreements was a failure to fulfill the duty to present all material evidence to the jury"

GALBRAITH V. MONARCH GOLD CO

BAILEY, J.

The circuit court on May 24, 1938, upon the written consent of the attorney for defendant entered judgment in favor of the plaintiffs, John W. Galbraith and Eliza Ray Galbraith, and against the defendant, Monarch Gold Dredging Company, in the sum of \$4,751.73, together with interest thereon at 6 per cent per annum from December 3, 1936, and the further sum of \$474.41 as costs, being the full amount asked by the plaintiffs in their complaint. Thereafter, on June 24, 1938, the defendant filed a motion to have the judgment set aside on the ground that the defendant's attorney had no authority to consent to it. This motion was denied by the court, with permission to the defendant to file a motion to vacate said judgment pursuant to the provisions of § 1-907, Oregon Code 1930, on the ground that the said judgment was taken against the defendant through its mistake, inadvertence, surprise or excusable neglect.

Thereupon the defendant filed a new motion to have the judgment set aside, on two grounds, to-wit: that the attorney for the defendant had no authority to consent to the entry of such judgment, and that at the time of stipulating consent to the entry thereof the then attorney for the defendant was of the opinion that such consent did not preclude an appeal to the supreme court. This motion also was denied by the circuit court.

In its notice of appeal to this court the defendant recites that it is appealing from the original judgment and from the orders of the circuit court denying its motions to have the said judgment set aside.

In May, 1934, the plaintiffs and one Marian E. Galbraith, owners of land in Grant county, entered into a contract with Howard Investment Company for the sale by the plaintiffs to that company of certain described lands or so much thereof as the said investment company might desire to use for dredging purposes. Before any dredging operations by the investment company were commenced, that company sold and transferred its interest in the contract to the defendant in this case, and the plaintiffs herein succeeded to all interest that Marian E. Galbraith had in the contract.

The price to be paid for the lands taken for dredging purposes was \$300 an acre. According to the allegations of the complaint, the defendant dredged 43.411 acres of land, the purchase price of which as specified in the contract would amount to \$13,023.30, of which sum only \$8,271.57 had been paid. The amount awarded by the judgment represented the difference between the above amounts.

A copy of the contract is attached to the complaint as an exhibit. In it is a provision for arbitration in the event of "differences of opinion or construction arising" out of the said contract.

The defendant demurred to the complaint, claiming that the action should abate until the matters in dispute had been arbitrated, and on the further ground that the complaint failed to state facts constituting a cause of action. This demurrer was overruled.

Thereupon the defendant filed its answer, in which it denied that the defendant had dredged more than 39.073 acres of land and further denied that the total amount which the defendant was to pay plaintiffs was in excess of \$11,730. The answer affirmatively alleged that the defendant had paid to the plaintiffs the sum of \$9,271.59, leaving the defendant indebted to the plaintiffs in an amount not exceeding

\$2,458.41.

Two affirmative defenses are set forth in the defendant's answer, the first of which is a plea in abatement to the effect that the contract provided that any differences between the defendant and the plaintiffs should first be settled by arbitration, and that (1) the amount of acreage dredged by the defendant had not been determined by arbitration and (2) the defendant had deposited with plaintiffs \$1,000, which money was agreed to be applied toward the final payment to be made under the contract when the defendant completed its dredging operations, and that the question of whether defendant had completed such operations was, under the terms of the contract, to be settled by arbitration.

As a second further and separate answer "and as an alternative defense only in the event the plea in abatement should be denied," the defendant alleged that a settlement had been had between the defendant and the plaintiffs on or about October 29, 1935; that on that date the defendant had paid the plaintiffs the sum of \$702, "in full settlement and satisfaction of all controversies under such contract prior to such date"; and "that a large portion, if not all, of the said pretended claim of the plaintiffs" related to dredging done prior to the date of the said settlement.

The demurrer of the plaintiffs to the two affirmative defenses in the defendant's answer was sustained on May 10, 1938, and the defendant was granted three days to file an amended answer. The defendant, however, elected not to plead further.

The action had been instituted on March 11, 1937, and in order to avoid further delay the court on or about May 10, 1938, with the knowledge of counsel for both parties, set the case for trial for May 24 following.

After the commencement of this action certain personal property belonging to the defendant was attached and in order to discharge it from attachment a bond and undertaking were duly executed by Alton L. Collins and T.W. Collins as sureties, and on the entering of judgment against the defendant corporation for the amount prayed for in the complaint, judgment was also entered against the sureties, both of whom joined with the defendant in the notice of appeal.

The following facts from the affidavits in support of, and in opposition to, the motions to set aside the judgment, are not in dispute: On May 10, 1938, W.J. Noon, secretary of the defendant corporation, was notified that the case had been set for trial for May 24, 1938, at ten o'clock in the forenoon. During the week of May 16 Mr. Noon was called by telephone at Baker, Oregon, by Orval D. Yokom, who was then the only attorney representing the defendant. Mr. Yokom told him that the trial of the case was set for May 24 and requested him to be at John Day, where the attorney resided, on Sunday, May 22. Mr. Noon did not go to John Day on that date, but in the evening of May 22 Mr. Yokom received a letter from him stating that Mr. Noon was going to Olympia, Washington, and that if it was imperative for him to be present at the trial, Mr. Yokom could wire him at Olympia. Mr. Yokom did not again get in touch with Mr. Noon, for the reason that he thought it might be possible to compromise the matters in dispute between the parties, inasmuch as arrangement had been made for a meeting on the following day between Mr. Yokom and Mr. Hubbard, plaintiffs' attorney.

On Monday, May 23, attorneys for the litigants discussed the question of a settlement of not only the matters in dispute in the present action, but also other differences growing out of the contract. On that day or early the next morning the attorney for the defendant got in touch with Alton L. Collins, who was one of the principal stockholders of the defendant corporation, and advised him that the attorney could "settle the demands set forth in the plaintiffs' complaint and all damages which the plaintiffs claimed to have suffered on account of the dredging operations for \$6,130". Mr. Collins advised him that he did not know the facts concerning the litigation and asked Yokom to contact Mr. Noon. Mr. Collins did not authorize the attorney to settle the case, but did tell him that in the event the defendant

lost in the trial court he wanted the attorney to take an appeal.

The affidavits of W.A. Noon, president, and W.J. Noon, secretary, are to the effect that they at no time had authorized Yokom to enter into the stipulation consenting to judgment for the plaintiffs in the amount asked, nor had any other officer of the defendant corporation given such authorization.

Yokom's affidavit is to the effect that he was not authorized by the defendant or any of its officers to consent to a judgment in favor of plaintiffs, but he was of the opinion that it was "best under all circumstances to enter into said stipulation, and I thought that as a matter of law I had authority to enter into such stipulation without express authorization from my client and I entered into such stipulation in absolute good faith; that I intended to and thought I reserved the right of appeal".

According to the affidavit of Mr. Hubbard, attorney for the plaintiffs, he knew that Mr. Yokom was attempting throughout May 23 and until about nine-thirty o'clock in the morning of May 24 to reach Alton L. Collins. At nine-thirty in the morning of May 24 Mr. Yokom advised Mr. Hubbard that he had reached Mr. Collins by telephone but that the latter had neither accepted nor rejected the settlement of \$6,130 for all differences between the parties, which had tentatively been agreed upon by the attorneys. At ten o'clock in the morning of Tuesday, May 24, the plaintiffs and their witnesses and attorney appeared in court, fully prepared for the trial of the case, at which time Mr. Yokom, attorney for the defendant, "appeared and offered to confess judgment against the defendant . . . and stated as his reason therefor that he had been unable, although he had notified the officers and principal stockholders of this corporation in ample time, to secure attendance of any of the officers or stockholders of the defendant corporation and that he had no witnesses, nor testimony to offer."

The stipulation providing for entry of judgment in favor of the plaintiffs was signed with the names of the parties litigant by their respective attorneys of record. After reciting that the demurrer to the affirmative defenses in the answer had been sustained and that the defendant was not satisfied with the ruling on the said demurrer and did not wish to plead further but desired to reserve its right to appeal from the ruling of the trial court on the said demurrer, the stipulation provided that it was agreed by the parties to the litigation that "all the facts alleged in plaintiffs' complaint are hereby admitted by the defendant and the said plaintiffs may take judgment" for the amounts for which the judgment was later entered.

Although the defendant gave notice of appeal from the original judgment, its counsel admit that inasmuch as the judgment was entered with the consent of the attorney then representing the defendant, no appeal lies from that judgment.

The only question to be decided, therefore, is whether the attorney for the defendant had authority to consent to the judgment which was entered.

It is the contention of the plaintiffs that § 2-1204, Oregon Code 1930, authorizes an attorney to confess judgment against his client and that the judgment entered herein was one by confession. The section to which counsel for plaintiffs refer reads as follows:

"The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds; but such acknowledgment is not required when the parties or their attorneys shall appear in court when the judgment is given, or before the clerk in vacation by whom the judgment is entered. In all cases, the confession and assent thereto, and the acknowledgment, if any, shall be filed with the clerk."

The section on which *plaintiffs* rely must be read in connection with §§ 2-1201 and 2-1202, Oregon Code 1930. The former of these sections provides that upon the confession of the defendant with the

assent of the plaintiff or his attorney judgment may be given against the defendant in any action before or after answer for any amount or relief not exceeding or different from that demanded in the complaint. The next section, 2-1202, provides that when the action is against the state or public or private corporations or minors *the confession shall be made by the person upon whom service of summons may be had, and that "in all other cases the confession shall be made by the defendant in person [italics supplied]"*.

It is apparent, when these three sections of the code, §§ 2-1201, 2-1202 and 2-1204, are construed together, that the legislature did not intend that an attorney merely by virtue of his employment, without special authorization given therefor, should have authority to confess judgment against his client. In the first of these sections it is stated that upon the "confession of the defendant, with the assent of the plaintiff or his attorney," judgment may be given against the defendant. The statute expressly provides that the assent shall be given either by the plaintiff or his attorney, but does not refer to confession by the defendant's attorney.

← "When the attorney undertakes to bind his client by an agreement to compromise his client's substantial rights, the opposing party must ascertain at his peril whether the attorney has authority to make the settlement. Gibson v. Nelson, 111 Minn. 183, 126 N.W. 731, 31 L.R.A. (N.S.) 523, 137 Am. St. Rep. 549. Upon the facts stated in the record the agreement made was not binding on the plaintiff either when made or when approved by the court and filed in the case as the basis for judgment." →

← "According to the great weight of American Authority, only after gaining express authority in the form of his client's consent may the attorney compromise his client's cause of action" →

Gran v. City of St. Paul

143 N.W.2d 246 (1966)

Teresa E. GRAN, widow of John M. Gran, deceased, Respondent, v. CITY OF ST. PAUL, Board of Education, Relators.

No. 40005.

Supreme Court of Minnesota.

May 27, 1966.

Certiorari to review an order of the Industrial Commission denying employer's application to reinstate and set for hearing the claim petition of employee's widow.

The employee, John M. Gran, died on April 16, 1963. He was then employed as assistant superintendent of the public schools of the city of St. Paul. The cause of death was coronary thrombosis. A petition for compensation was filed on the theory that the death was employment-related.

On August 25, 1964, the employer's assistant corporation counsel submitted to the Industrial Commission a stipulation for settlement of the claim executed in behalf of the parties by their attorneys. This stipulation embodied a compromise whereby the employer agreed to pay to Mrs. Gran a lump sum of \$12,000 and an additional amount for funeral and medical expenses. It contained a provision which has generated the present controversy, reading as follows:

"It is specifically agreed and understood as well as stipulated herein that the proposed stipulation of settlement is subject *248 to the approval of the Industrial Commission, the Board of Education of the City of Saint Paul, and the Council of the City of Saint Paul."

Although the stipulation submitted to the commission requested its approval of the settlement, ***neither the Board of Education nor the Council of the city of St. Paul had as of that time given the approval contemplated by the quoted clause of the stipulation.***

A stipulation with respect to the conduct of pending litigation cannot ordinarily be repudiated or withdrawn from by one party without the consent of the other, except by leave of the court for cause shown.[3]

Even an unauthorized compromise of an action by an attorney may be ratified, either impliedly or expressly, by the client, who is thereafter bound by it despite the initial defect.[4]

The employer contends, however, that ***in this case there has been no ratification because (a) its counsel assumed no authority to act in its behalf, and (b) the subsequent approval was made without knowledge of all material facts***

The fact that *counsel did not have authority to bind the employer for which he purported to act* and did not represent that he had such authority *does not deprive the employer of the power to ratify or relieve it from an obligation* once ratified.

[3] See, 83 C.J.S., Stipulations, § 30; 50 Am.Jur., Stipulations, § 11; National Council of Knights & Ladies of Security v. Scheiber, 141 Minn. 41, 169 N.W. 272; Burnett v. Poage, 239 Iowa 31, 29 N.W.2d 431.

[4] Numerous cases are collected in Annotations, 66 A.L.R. 130 and 30 A.L.R.2d 955. In addition, see Palm Beach Royal Hotel, Inc. v. Breese (Fla.App.) 154 So. 2d 698; Brumberg v. Chunghai Chan, 25 Misc.2d 312, 204 N.Y.S.2d 315; Yahola Sand & Gravel Co. v. Marx (Okl.) 358 P.2d 366.

Mr. Sapp's authority related **ONLY** to the *return* of my animals; and his decision to extend that implied authority to include the *surrender* of all of them without my knowledge or consent was an extreme overreach of authority, and Appellant should be relieved of all obligation to that action.

The sole issue we address is whether Graves was bound as a matter of law by the alleged agreement by his attorney with Sexton's attorney in the previous action. In Hall v. Benefit Association of Railway Employees, 164 S.C. 80, 161 S.E. 867 (1932) our Supreme Court set forth the following rule:

The parties to a suit are bound by admissions, and by their attorneys of record, in open Court, or elsewhere, touching matters looking to the progress of the trial. Such practice is almost of everyday occurrence; and this statement is so elementary and understood so thoroughly by the profession as to need no citation of authority.

But even in cases where actions are pending, and attorneys are of record, there is a border line beyond which they cannot go and bind their clients. Attorneys, as such, without express authority, have no right to compromise or settle their clients' rights, to release a lien, or substitute one security for another, in matters not in court.

164 S.C. at 83, 161 S.E. at 868 (citations omitted) (emphasis added).

GRAVES v. SERBIN FARMS, INC.

295 S.C. 391 (1988)

368 S.E.2d 682

Daniel M. GRAVES, Appellant v. SERBIN FARMS, INC., and James R. Sexton, Defendants, of whom James R. Sexton is Respondent.

Court of Appeals of South Carolina.

Heard March 15, 1988.

Decided May 9, 1988.

Attorney(s) appearing for the Case

Amos A. Workman and William L. Duncan of Butler, Means, Evins & Browne, Spartanburg, for appellant.

John A. Hagins, Jr., Greenville, for respondent.

Heard March 15, 1988.

Decided May 9, 1988.

GARDNER, Judge:

Daniel M. Graves (Graves) sued James R. Sexton (Sexton) and Serbin Farms, Inc., (Serbin Farms) for conversion of a large quantity of corn which had been entrusted by Graves to Sexton and Serbin Farms. Graves and his brother, by separate and previous actions, had sued Sexton; these suits, of which Graves' complaint is of record in this case, did not involve the corn which is the subject matter of the case before us; these suits were purportedly settled by the parties' then attorneys. Sexton alleges that the settlement negotiations

[295 S.C. 392]

and the agreement of the attorneys for both parties in the prior suit encompassed the corn claim. Although a written agreement providing for disposition of all claims then existing between the parties, which would have encompassed the corn claim, was prepared, Graves refused to sign the written agreement. Sexton's motion for summary judgment was granted by the appealed order on the basis that the agreement entered into by Graves' attorney in the prior action was binding on Graves. We reverse and remand.

The record discloses that the corn dispute was discussed by the attorneys of the prior suit, and we assume for purposes of this decision that Graves was present during three of the four conferences involving the settlement negotiations. The evidence, however, is conflicting as to whether Graves, in the prior suit, authorized his attorney to settle the corn claim; therefore, a material issue of fact exists.

The sole issue we address is whether Graves was bound as a matter of law by the alleged agreement by his attorney with Sexton's attorney in the previous action. In *Hall v. Benefit Association of Railway Employees*, 164 S.C. 80, 161 S.E. 867 (1932) our Supreme Court set forth the following rule:

The parties to a suit are bound by admissions, and by their attorneys of record, in open Court, or elsewhere, touching matters looking to the progress of the trial. Such practice is almost of everyday occurrence; and this statement is so elementary and understood so thoroughly by the profession as to need no citation of authority.

But even in cases where actions are pending, and attorneys are of record, there is a border line beyond which they cannot go and bind their clients. Attorneys, as such, without express authority, have no right to compromise or settle their clients' rights, to release a lien, or substitute one security for another, in matters not in court.

164 S.C. at 83, 161 S.E. at 868 (citations omitted) (emphasis added).

[295 S.C. 393]

It, then is the well-settled law of this state that the authority of an attorney of record to settle claims is limited to the claims presented by the pleadings in a given case and that any settlement that goes beyond these matters must be expressly agreed to by the client. And we so hold.

Sexton, in this appeal, appears to argue that Graves' attorney had apparent authority to settle the corn controversy, but he does not present an additional sustaining ground raising this possibility; we, therefore, do not address this issue.

For the above reasons, we hold that the appealed order erroneously granted summary judgment and reverse and remand the appealed order.

Reversed and remanded.

SANDERS, C.J., and BELL, J., concur.

Eugene HAYES and Judy Hayes, Plaintiffs-Appellants,
v.
EAGLE-PICHER INDUSTRIES, INC., Defendant-Appellee.

No. 74-1331.

**United States Court of Appeals,
Tenth Circuit.**

Argued Jan. 21, 1975.

Decided April 4, 1975.

David J. Waxse, Payne & Jones, Chartered, Olathe, Kan. (J. Eugene Balloun, Payne & Jones, Chartered, Olathe, Kan., on the brief), for plaintiffs-appellants.

Bill E. Fabian, McAnany, Van Cleave & Phillips, Kansas City, Kan., for defendant-appellee.

Before BREITENSTEIN, HILL and DOYLE, Circuit Judges.

WILLIAM E. DOYLE, Circuit Judge.

1-The controversy with which we are here concerned is *whether the plaintiffs'-appellants' repudiation of a settlement agreement entered into by their attorney on the eve of trial was justified*. The attorney represented not only the appellants but also was the attorney for 16 others. In addition to the appellants, Eugene and Judy Hayes, three other members of the group voted against acceptance. The clients and the attorney had entered into a prior agreement that the majority rule would govern acceptance of a settlement, but the appellants and two other plaintiffs testified that they had never agreed to be bound by the majority.

2-The cause was set for trial on July 10, 1973. On the evening prior to this date, extensive settlement negotiations were carried on. Defendant-appellee offered a total of \$155,000 for distribution to the entire group. When on the morning of the trial this offer was presented to the plaintiffs, there was a vigorous debate. At last, 13 voted for acceptance and five voted against it. Following the taking of the vote, an announcement was made in open court that the majority had agreed to settle. Thereupon, the trial judge inquired if any of the plaintiffs were opposed to the settlement; he received no answer. The two Hayes', who are the only members of the group who are now before the court, said that they did not hear what the judge said. The court then reduced the settlement to judgment. *The appellants protested the settlement immediately and continued to do so on several occasions with considerable vigor, so much so that on July 23, 1973, the trial court held a hearing and set aside the judgment it had entered July 10. The appellants discharged their attorney on that occasion.*

3-Next, on September 24, 1973, the trial court held a hearing on the defendant's-appellee's motion to reinstate the judgment. On December 14, 1973, the court did reinstate the judgment,¹ and that is the posture of the present submission.

4-The Hayes' contentions are that they at no time gave their attorney authority to enter into a settlement on their behalf. Secondly, they say that they repudiated his effort immediately after becoming aware of it. Appellee's position is, of course, that a consent to be governed by the vote of the majority was given and since the majority approved, the settlement is binding.

5-It is fundamental that an attorney does not by reason of his employment have authority to compromise his client's cause of action absent an emergency requiring prompt action. Numerous cases enunciating this are noted in Annotations 30 A.L.R.2d 944, 945 (1953) and 56 A.L.R.2d 1290, 1291-92 (1957). Our court has recognized and applied this well recognized rule in the relatively recent decision in *Thomas v. Colorado Trust Deed Funds, Inc.*, 366 F.2d 136 (10th Cir. 1966). While there are some cases which say that a presumption exists that the attorney of record has authority to settle his client's claim, if such a presumption exists it is rebutted easily and it has no application here because the questions are, first, whether the "majority rule" agreement was entered into and, second (if so), whether it is enforceable.²

6-It is not to be denied that the appellants were at all times opposed to the compromise of the cause and communicated this to the lawyer, and indeed Mr. O'Keefe, the attorney, announced in open court that the settlement was a result of "majority rule." So the court as well as defendant-appellee was fully aware that some of the plaintiffs had not consented to the terms of the settlement.

7-In *Thomas*, supra, there was a James Thomas and a Boyd Thomas who were parties defendant. The attorney representing them had the express approval of James Thomas to make the proposed settlement. He did not have the authority of Boyd Thomas. The trial court after entering judgment refused the petition of Boyd Thomas to reopen the judgment. We held that the trial court abused its discretion in holding that the lawyer had authority to settle a case without express authority from Boyd Thomas.

8-In our case the relationship between the clients and the attorney involved was somewhat different and more complicated since it did allow the attorney to settle the case over the express objection of his clients. In our view, however, this arrangement is contrary to the plain duties owed by an attorney to a client. An agreement such as the present one which allows a case to be settled contrary to the wishes of the client and without his approving the terms of the settlement is opposed to the basic fundamentals of the attorney-client relationship. Inasmuch as the attorney is merely an agent for the client in negotiation and settlement, the approval of the client is an all important essential to a settlement which is to be binding, and if this approval is not present the court is placed in a most unfavorable position in enforcing it.

9-One other aspect which complicates the problem is the fact that the agreement calling for the majority governing the decision to settle was entered into some time prior to the date of negotiations. It is difficult to see how this could be binding on non-consenting plaintiffs as of the time of the proposed settlement and in the light of the terms agreed on. In other words, it would seem that plaintiffs would have the right to agree or refuse to agree once the terms of the settlement were made known to them.)

10-A further difficult aspect in the enforcement of such an agreement is the ethical problem which is posed for the attorney who is bound by Rule 5-106 of the Code of Ethics promulgated by the Kansas Supreme Court which requires the attorney to refrain from participating in a settlement on behalf of two or more clients unless each of them consents to it. In view of this, it was untenable for the

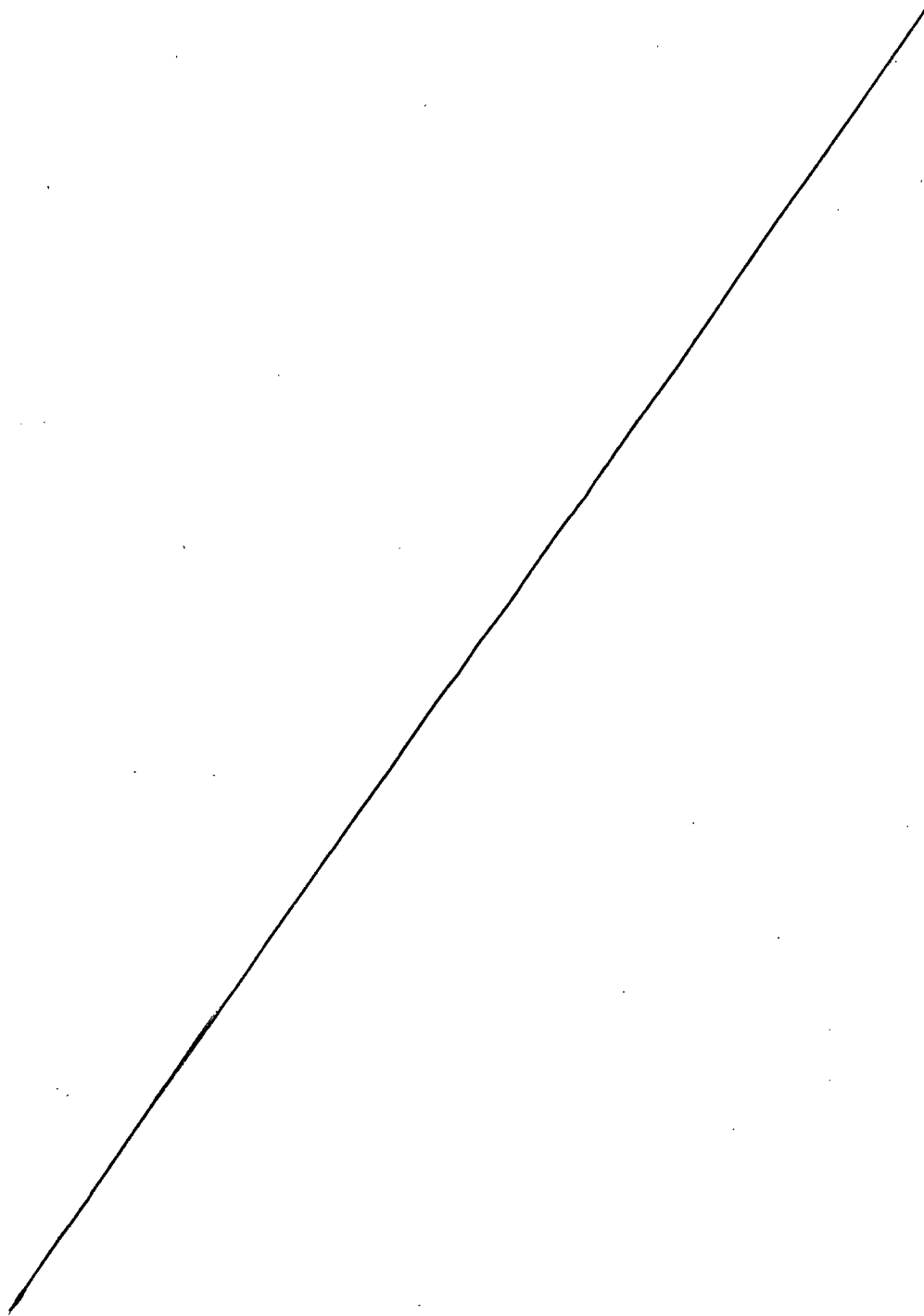
lawyer to seek to represent both the clients who favored the settlement and those who opposed it. Cf. *State Farm Mutual Auto Ins. Co. v. Walker*, 382 F.2d 548 (7th Cir. 1967); *State v. Kopke*, 210 Kan. 330, 502 P.2d 813 (1972); *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

11-Appellee's final contention in support of the agreement is that the appellants failed to speak out when the court made an inquiry as to whether there were any objections to the settlement. It is said that this was a ratification. However, the cases recognize the right of litigants to set aside a compromise to which they do not agree. *The cases hold that where clients unequivocally repudiate an unauthorized agreement immediately after learning of it (and this means a few days or reasonable time), the compromises are to be set aside.* See Annot., 30 A.L.R.2d 957; see also *Harris v. Diamond Constr. Co.*, 184 Va. 711, 36 S.E.2d 573 (1946) (within 60 days); and *Baumgartner v. Whinney*, 156 Pa.Super. 167, 39 A.2d 738 (1944). Four years has been held unreasonable. See *Baumgartner v. Whinney*, supra. See also *Dunlap v. Villareal*, 91 S.W.2d 1124 (Tex.Civ.App.1936); *National Bread Co. v. Bird*, 226 Ala. 40, 145 So. 462 (1933); *Fillhardt v. Schmidt*, 291 Ky. 668, 165 S.W.2d 155 (1942).

12-In sum, then, we conclude that the trial court erred in reinstating its judgment. We hold that the arrangement presented allowing the majority to govern the rights of the minority is violative of the basic tenets of the attorney-client relationship in that it delegates to the attorney powers which allow him to act not only contrary to the wishes of his client, but to act in a manner disloyal to his client and to his client's interests. Because of this, it is essential that the final settlement be subject to the client's ratification particularly in a non-class action case such as the present one.

13-Accordingly, then, the judgment of the district court must be reversed and the cause remanded to the district court for further proceedings consistent with the views expressed herein. It is so ordered. 3

"So long as the client unequivocally repudiates an unauthorized agreement immediately upon learning of it...there will be no ratification"



232

The Journal of the Legal Profession

King Constr. Co. v. Mary Helen Coal Corp., 194 Ky. 435, 239 S.W. 799 (1922).

There, plaintiff company, which was being sued by a group of landowners for damages to their property on which plaintiff began construction of a railroad spur for defendant, crossclaimed against defendant corporation alleging that it was liable on any damage claims arising under their contract. Defendant's attorney, who was also one of the landowners involved in the suit against plaintiff, waived service of summons and put on no case resulting in a directed verdict for plaintiff on its cross petition.

The court said that there was a universal rule:

[Neither acts of an attorney nor any other agent will bind the client or principal, without ratification where the attorney or agent is personally interested in the subject matter involved, or where there exists a conflict between the interests of the client or principal and that of the attorney. Id. at 438, 239 S.W. at 801.]

PERRY V. SCHWARZENEGGER

Perry v. Schwarzenegger 10-16696, 9th circuit, (2011)

Perry v. Schwarzenegger: The Background

The Perry v. Schwarzenegger case put one of the world's biggest movie stars in the courtroom. The case started in May of 2009 when the County Court of Alameda, California refused to allow a same sex couple to receive a marriage license. The couple, Kristin Perry and Sandra Steir, was denied the right to legally marry in the country. The denial of a marriage license meant that the couple could not legally be viewed as a married couple in the United States.

Incensed by the blocking, Kristin Perry filed a case with the State Court of California to dispute the fact that she was not awarded a marriage license. The ruling of Perry's case led to a verdict in favor of the woman; the state court found that Proposition 8 (the law that initially blocked the couple from receiving a marriage license) was a direct violation of her 14th Amendment Rights.

In Perry v. Schwarzenegger, Kristin Perry filed the suit against governor Arnold Schwarzenegger for signing a bill that outlawed same sex couples from receiving marriage licenses. The state of California did allow same sex couples to become partners and join civil unions, but the new law forbids these couples from receiving marriage licenses. This blockage hit same sex couples to the core; these couples simply wanted to be accepted and to affirm their love through the formation of a legal marriage. Thankfully, they had Kristin Perry on their side.

After Perry won the case in the state court, Schwarzenegger and the state of California appealed the decision. They wanted the law to be upheld by the higher courts. The appeal filed by the State of California is still active; it has not been decided yet.

Perry v. Schwarzenegger: The Case Profile

The Perry v. Schwarzenegger case took place on August 4th of 2010. The original case of Perry v. Schwarzenegger began when Perry claimed that Proposition 8 was a direct violation of her civil rights outlined in the United States Constitution. The original case was decided on the same day it was filed: August 4th of 2010. Perry v. Schwarzenegger was tried in the United States District Court for the Northern District of California.

Perry v. Schwarzenegger: The Verdict

The case of Perry v. Schwarzenegger, which was originally decided by the lower courts, was a big victory for same sex couples in the state. The lower court viewed Proposition 8 as a direct violation of an individual's 14th Amendment rights.

The 14th Amendment disallows any government of the United States from infringing on an American citizen's right to pursue 'Life, Liberty and happiness.'

"Moral disapproval is not an adequate basis to deprive men and women of their constitutional rights"

KYLES V. WHITLEY

Curtis Lee Kyles, an inmate sentenced to capital punishment, appeals the judgment of the district court, denying him the writ of habeas corpus. In 1984, a Louisiana court convicted Kyles of shooting and killing Mrs. Dolores Dye during a daylight armed robbery before many witnesses. As he did before the jury that convicted and condemned him, Kyles asserts innocence and maintains that he was framed by a now-deceased acquaintance. Although phrasing his claims in constitutional terms, Kyles essentially asks this court to reconsider the defensive theory rejected by the jury nine years ago. We affirm.

Kyles alleged numerous constitutional violations in his petition for writ of habeas corpus. In a thorough, forty-six page opinion and order, the district court rejected all of them. On appeal, Kyles narrowed his focus by briefing only two claims, under *Brady* and *Strickland*. As a habeas court, we do not sit to rehear Kyles' trial.

Nevertheless, because both *Brady* and *Strickland* analyses inquire into probable effects on trial outcomes, we begin by emphasizing this conclusion: a complete reading of the record demonstrates that Kyles faced overwhelming evidence of guilt. In particular, three eyewitnesses positively identified Kyles among a photographic lineup within 96 hours of the murder. Those three, joined by a fourth eyewitness, testified at trial that Kyles was definitely the gunman, even after comparing him with the man that Kyles contends framed him. None of the evidence offered by Kyles — or that he alleges he was prevented from offering — effectively undermined the powerful weight of this eyewitness testimony.

I. "Holding that in habeas proceedings Brecht standard "controls all trial, as distinguished from structural, errors"" **JORDAN v. HARGETT**, 34 F.3d 310 (5th Cir. 1994)

II. "Basing its rejection of petitioner's claim on "a complete reading of the record"" **KYLES v. WHITLEY**, 514 U.S. 419 (1995)

KEY PASSAGES FROM THIS CASE (23)

- I. "We must bear this weighty evidence of guilt in mind while assessing the probable effect of other undisclosed information on the jury's verdict."
- II. "The nondisclosure of this much of the transcript was insignificant."
- III. "Kyles has not shown on this basis that the three statements were material."
- IV. "We are not persuaded that these notes were material."
- V. "The more likely inference, apparently chosen by the jury, is that Kyles possessed .32 caliber ammunition because he possessed a .32 caliber firearm."
- VI. "As the district court put it, any reasonable attorney would perceive Beanie as a "loose cannon.""

VII. "Beanie's testimony almost certainly would have inculpated Kyles."

VIII. "First the only "garbage" statement contained in the transcript of the tape is Sergeant Eaton's recital that Beanie said, "his garbage goes out tomorrow said if he's smart he'll put it in garbage."

IX. "The court examined all of the pictures used in the photographic line-up and compared Kyles' and Beanie's pictures; it finds that they did not resemble one another."

X. *"For the first time in my fourteen years on this court — during which I have participated in the decision of literally dozens of capital habeas cases — I have serious reservations about whether the State has sentenced to death the right man."*

XI. "Kyles points to Isaac Smallwood's statement, in which Smallwood described what he saw as follows: "I was standing near the old gas pumps, with my back facing the Chef Hwy. and facing old Gentilly Rd. I heard a loud pop. When I looked around I saw a lady laying on the ground, and there was a red car coming toward me.""

XII. "When a police investigator specifically asked him, "[w]hen you first heard the shot, and looked at the lady on the ground, was the black male standing near her?," Smallwood responded " [n]o. He was already in the car and coming toward me."

XIII. "[with] like a small .32, a small black gun that he took out of his right pocket."

XIV. "A second of the four eyewitnesses who testified at trial, Henry Williams, told police shortly after the murder that the assailant was "a black male, about 19 or 20 years old, about 5'4" or 5'5", 140 to 150 lbs., medium build, dark complexion, his hair looked like it was platted, it was short."

XV. "The prices were revealed as in fact being "two for 77 cents" and "three for 89 cents."

XVI. "It wasn't big. It was a little bitty piece of slip like they had on the shelf."

PATRICK E. HIGGINBOTHAM, Circuit Judge:

pg. 485 "Prosecutors must disclose such evidence when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different"

Pg. 486 "The evidence...could not be replaced by reasonably comparable evidence."

Pg. 570 CONCLUSION: "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or the bad faith of the prosecution"

"The Brady rule is not limited to evidence known only to the prosecutor, but applies to evidence known to other agents on the prosecution team, E.G. the police, etc."

486 P.2d 981 (1971)

Phillip Ray LANIER, Appellant,

v.

STATE of Alaska, Appellee.

No. 1219.

Supreme Court of Alaska.

June 29, 1971.

*983 Victor D. Carlson, Public Defender, Michael L. Rubinstein, Asst. Public Defender, Anchorage, R. Collin Middleton, Asst. Public Defender, Ketchikan, for appellant.

G. Kent Edwards, Atty. Gen., Juneau, Harold W. Tobey, Dist. Atty., Robert L. Eastaugh and Keith E. Brown, Asst. Dist. Attys., Anchorage, for appellee.

Before BONEY, C.J., and DIMOND, RABINOWITZ, CONNOR and ERWIN, JJ.

OPINION

DIMOND, Justice.

This is an appeal from the summary denial of appellant's motion for post-conviction relief.[1]

Appellant was convicted by a jury on 60 separate counts of false pretenses in soliciting for organizations.[2] He was sentenced to the maximum punishment on 60 counts, with the terms of imprisonment on the first 20 counts to run consecutively and those on the remaining two groups of 20 to run concurrently with the first group of 20. The overall punishment imposed amounted to five years in jail and a \$6,000 fine. The judgment of conviction was affirmed on appeal to this court.[3]

Appellant next sought post-conviction relief in the superior court. The request for relief was predicated on three grounds: (1) that the sentence constituted cruel and unusual punishment; (2) that appellant was not advised of his right to a severance of the 60 counts; and (3) that the appellant was denied his right of confrontation. Finding that the petitioner had raised no genuine issue of material fact, and that the arguments asserted were without merit, the superior court summarily denied the petition.[4]

Appellant now appeals this denial.[5] Since the second ground urged before the superior court has not been briefed on appeal, it is deemed waived.[6] Because of the relative importance we attach to appellant's two remaining arguments, we consider them here in reverse order.

Right to Confrontation

At the trial, appellant's counsel waived cross-examination of the state's witnesses on 52 of the 60 counts charged. A stipulation as to what these witnesses would have testified was made, and the jury was instructed to consider the stipulation as evidence.

Appellant alleges that his trial counsel did not consult him regarding this action. In an affidavit filed in the superior court, trial counsel controverted appellant's assertion. He claimed that he did discuss the matter with appellant and that the latter had agreed to the action taken.

*The discrepancy between the conflicting assertions was not resolved by the superior court, and we make no attempt to resolve it here. We shall assume, however, for the purposes of this opinion, that appellant was not consulted and did not consent to counsel's action in waiving cross-examination of a number of the state's witnesses, in order that we might pass upon the important question raised by appellant *i.e.*, whether and to what extent trial counsel *984 may waive a basic right of his client at the trial.*

Appellant argues that what counsel did was to waive appellant's constitutional right to confront, through cross-examination, the witnesses against him.[7] Since appellant claims he neither knew of nor consented to this waiver, he claims there was no intentional relinquishment by him of a known right or privilege[8] as to being confronted with the witnesses against him, and therefore counsel's action in waiving cross-examination was ineffective.

The issue presented concerns serious questions regarding the effectiveness of a purported waiver of constitutional rights. In Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938), which involved a federal habeas corpus attack on a conviction obtained against a defendant who did not have counsel during his trial, the Court noted that "[a] waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege," 304 U.S. at 464, 58 S.Ct. at 1023, 82 L.Ed. at 1466, and held that the right had not been effectively waived by the defendant.

However, while the above cases are instructive on waiver generally, none of them deals with the precise case now before us: a purported waiver made by an attorney acting on behalf of his client. In addition, the Court felt the need to set a standard to govern the situation where, for "strategic" or "tactical" reasons, a defendant or his counsel might deliberately bypass a state procedure and later seek federal habeas corpus relief. On the issue of whether counsel could effectively waive the right, the Court said:

*The classic definition of waiver enunciated in Johnson v. Zerbst [citation omitted] "an intentional relinquishment or abandonment of a known right or privilege" furnishes the controlling standard. If a habeas applicant, after consultation with competent counsel or otherwise, understandingly and knowingly [waived his rights], then it is open to the federal courts on habeas to deny him all relief. * * * At all events we wish it clearly understood that the standard here put forth depends on the considered choice of the petitioner. [Citations omitted] A choice made by counsel not participated in by the petitioner does not automatically bar relief.*

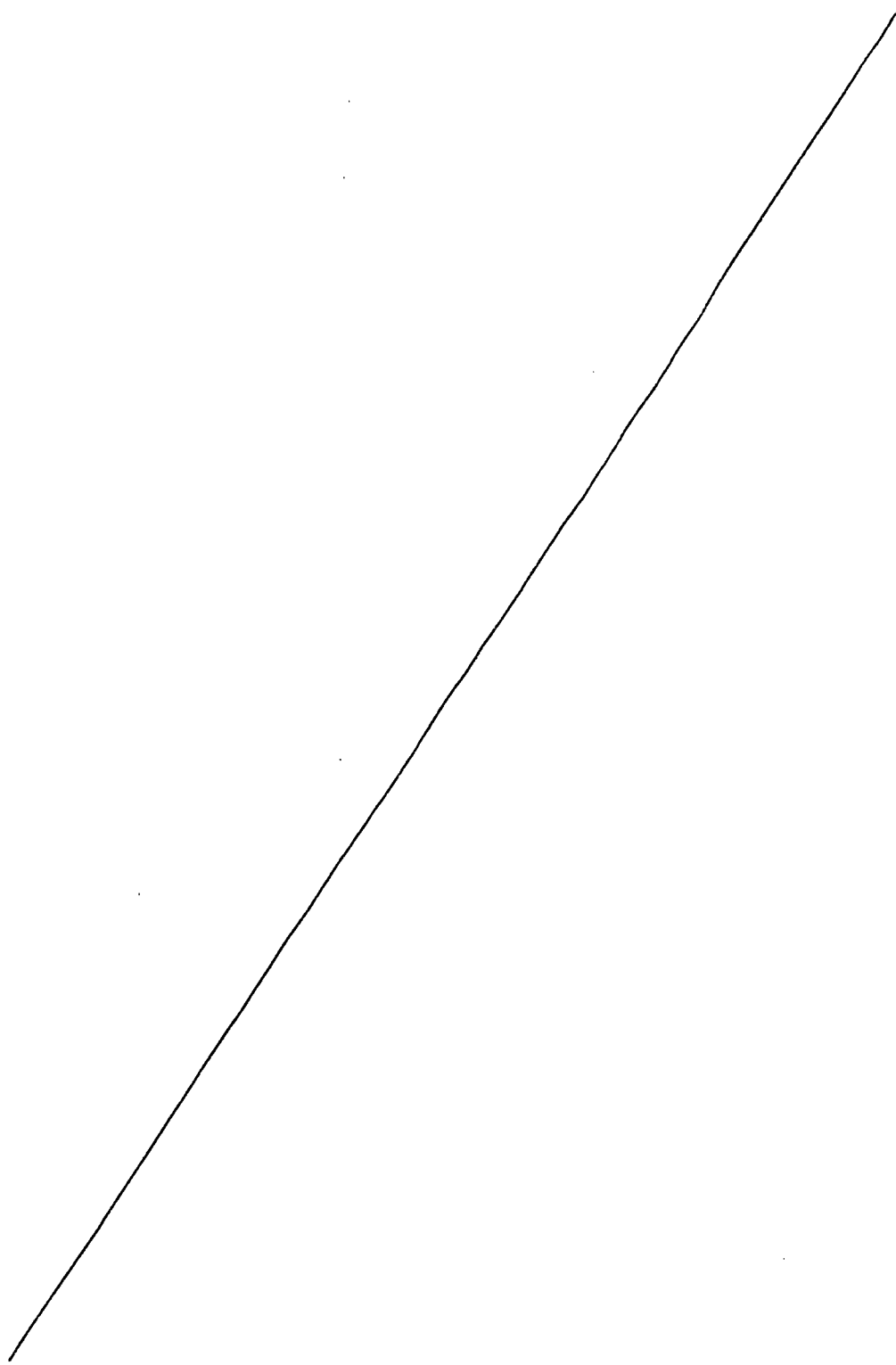
372 U.S. at 439, 83 S.Ct. at 849, 9 L.Ed.2d at 869 (emphasis added). The implication is quite strong that, as between the attorney and the client, the client must understandingly and knowingly waive the right involved.

*the client has an undeniable interest in securing the protections guaranteed by the federal and state constitutions. These protections belong to the client *i*n the words of the constitution, to "the accused" *not to the attorney*. They are meant to insure that the accused will receive a fair trial. This interest is extremely strong, as decisions of the United States Supreme Court and this court have made clear. See, e.g., Powell v. Alabama, 287 U.S. 45, 58 S. Ct. 55, 77 L. Ed. 158 (1932).*

*The distinction which we note between trial on the one hand and pre- and post-trial on the other, for purposes of deciding when an attorney must consult with his client before the client's constitutional rights may validly be waived, finds support in the cases.[15] We believe it also finds support *988 in reason and good judicial sense, and we adopt it for the courts of this state.*

We hold that an attorney's waiver of his client's constitutional rights will be binding on the client $\square$ subject to established limitations[16] $\square$ when it occurs during the trial and results from decisions made during the trial.[17]

Conversely, "an attorney's waiver of his client's constitutional rights without his client's consent will not be binding on the client if the waiver occurs before or after the trial[18] or is the result of a decision made during the pretrial period."



240

The Louisville Kennel Club, Inc. et al v. Louisville/Jefferson County Metro Government, No. 3:2007cv00230 - Document 57 (W.D. Ky. 2009)

RECOMMENDED FOR FULL-TEXT PUBLICATION Pursuant to Sixth Circuit Rule 206 File Name: 11a0287p.06 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JAMES O'NEILL and ANGELA O'NEILL, Plaintiffs-Appellants, v. LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT; LOUISVILLE METRO ANIMAL SERVICES; GILLES MELOCHE, in his individual and official capacities; WAYNE ZELINSKY, in his individual and official capacities; TERRY PENDLETON, in her individual and official capacities; and UNKNOWN DEFENDANTS, John and/or Jane Does, in his/her/their individual capacities, Defendants-Appellees. X - - - - > , - - - - - N No. 10-5699 Appeal from the United States District Court for the Western District of Kentucky at Louisville. No. 09-00871—John G. Heyburn II, District Judge. Argued: October 14, 2011 Decided and Filed: November 8, 2011 Before: GILMAN and KETHLEDGE, Circuit Judges; LUDINGTON, District Judge.* COUNSEL ARGUED: Michael C. Merrick, DINSMORE & SHOHL LLP, Louisville, Kentucky, for Appellants. Lisa A. Schweickart, JEFFERSON COUNTY ATTORNEY'S OFFICE, Louisville, Kentucky, for Appellees. ON BRIEF: Michael C. Merrick, Jon L. Fleischaker, R. Kenyon Meyer, DINSMORE & SHOHL LLP, Louisville, Kentucky, for Appellants. William T. Warner, JEFFERSON COUNTY ATTORNEY'S OFFICE, Louisville, Kentucky, for Appellees. 1 No. 10-5699
O'Neill et al. v. Louisville/Jefferson Cnty. Metro Gov't et al.

OPINION: RONALD LEE GILMAN, Circuit Judge. This is perhaps the dog-gonest case ever to reach a federal appellate court. *In October 2008, several uniformed officers of the Louisville Metro Animal Services (LMAS) intruded into the O'Neills' home without a warrant and without consent, confiscated the O'Neills' two adult dogs and the dogs' litter of seven puppies, neutered and spayed the adult dogs and implanted microchips in all nine animals, and then required the O'Neills to pay over \$1,000 to retrieve them, all without any formal charges ever being lodged against the O'Neills.* The district court dismissed all of the O'Neills' constitutional and state-law claims arising out of this incident, concluding that the O'Neills were operating an unlicensed Class A kennel in violation of the City's animal-control ordinance, and that none of their constitutional or state-law claims had merit. *For the reasons set forth below, we reinstate the majority of the O'Neills' claims and remand the case for further proceedings consistent with this opinion.*

I. BACKGROUND A. Factual background The facts set forth below are based solely on the allegations in the O'Neills' complaint because the case never proceeded beyond the pleadings stage. These facts reveal that the O'Neills, after breeding their adult American bulldogs to each other for the first and only time, welcomed eleven puppies into their home on September 4, 2008. The O'Neills advertised these puppies for sale in the Louisville Courier-Journal. By October 30, 2008, they had sold four of the puppies and were scheduled to meet a pair of potential buyers that day who, unbeknownst to the O'Neills, were two female undercover LMAS officers. When the undercover officers arrived, the O'Neills invited the officers into their home and allowed them to look at the puppies. The women then stepped outside after No. 10-5699 O'Neill et al. v. Louisville/Jefferson Cnty. Metro Gov't et al.

Telling the O'Neills that they were going to discuss whether they wanted to purchase a puppy. A moment later, upon hearing a knock, James O'Neill opened the door to find several uniformed LMAS officers on his front step accompanying the purported buyers. The LMAS officers demanded to see the

O'Neills' "breeder's license." James informed them that he did not have a breeder's license, nor did he think that one was required. The LMAS officers told him that they could confiscate all the dogs because the O'Neills did not have a breeder's license and, further, that if more than one dog were unlicensed, then LMAS could seize all the animals on the premises. Neither of the O'Neills' adult dogs were in fact licensed. Without a warrant or the consent of the O'Neills (in fact, over their specific objection), the LMAS officers immediately entered the O'Neills' home and took all the dogs to the LMAS facility.

The next morning, the O'Neills went to the LMAS facility to retrieve their two adult dogs and seven remaining puppies. LMAS staff informed the O'Neills that before the nine dogs could go home, the adult dogs had to be altered (i.e., spayed or neutered), all nine had to have identification microchips inserted under their skin, and the O'Neills had to purchase a breeder's license. The O'Neills objected, arguing that the adult dogs should not be altered because they had been unlawfully impounded. LMAS Director Gilles Meloche asserted in response that he had "created" the animal-control ordinance in the Louisville/Jefferson County Metro Government Code of Ordinances, and the ordinance gave him the right to impound the dogs and alter them prior to release.

Meloche then proposed a deal. Instead of fining the O'Neills up to \$3,000 and/or arresting them, Meloche told the O'Neills that if they paid \$1,020.95 on the spot, then they could take their animals home. The O'Neills paid the \$1,020.95 for the immediate release of their dogs. But they were never provided with written notice of any alleged violations of the animal control ordinance in connection with the impoundment. All nine dogs were released to the O'Neills after receiving microchips and unnecessary vaccinations, and the two adult dogs were altered. Moreover, during their short stay at the LMAS facility, the dogs contracted various infections that required expensive veterinary treatment. After the return of the dogs, the O'Neills sold the remaining seven puppies for less than their normal market value.

II. The O'Neills have sufficiently pleaded a Fourth Amendment violation based on the second warrantless entry.

Procedural due process claim In their second § 1983 claim, the O'Neills allege that they were never "provided with proper notice of any alleged violation of law or of any legal process for challenging the seizure and alteration of their animals by LMAS." We have concluded in Part II.B. above that the LMAS officers had no legitimate basis for impounding the dogs. We are also of the opinion that even if the impoundment had been legal, the O'Neills would still have properly alleged a violation of their right to procedural due process. "In order to establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest." *Waeschle v. Dragovic*, 576 F.3d 539, 544 (6th Cir. 2009) (internal quotation marks omitted). The O'Neills assert that they have satisfied the first two elements of their procedural due process claim because they were deprived of their money and the ability to breed their dogs in the future (due to their pets having been altered during the impoundment) without the due process of law. The defendants do not dispute that the O'Neills have a protected property interest at stake or that they were deprived of that interest. "[T]here can be no dispute that an animal owner has a substantial interest in maintaining his rights in a seized animal. . . . Animal owners [] have a substantial interest in their 'mere' pets." *Siebert v. Severino*, 256 F.3d 648, 660 (7th Cir. 2001) (internal quotation marks omitted); see also *Louisville Kennel Club, Inc.*

v. Louisville/Jefferson Cnty. Metro Gov't, No. 3:07-CV-230-S, 2009 WL 3210690, at *10 (W.D. Ky. Oct. 2, 2009) (unpublished No. 10-5699 O'Neill et al. v. Louisville/Jefferson Cnty. Metro Gov't et al. Page 13 opinion) (interpreting other sections of the LMCO chapter on animals to hold that "pet owners clearly have a property interest in their animals" and that "the government is not permitted to deprive an animal owner of his property without due process of law"). The only element of the due process claim that remains at issue on appeal is whether, given the property interest at stake, the O'Neills were afforded the procedural process that they were due.

They argue that, at a minimum, they were entitled to receive written notice of their purported violations of the LMCO animal-control ordinance. We agree. "Due process requires notice of the charges and a meaningful opportunity to contest the evidence." *Morrison v. Warren*, 375 F.3d 468, 473 (6th Cir. 2004). "Notice, of course, is one of the most fundamental aspects of due process." *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 638 (6th Cir. 2005). Yet the only notice that the O'Neills were given of the charges or evidence against them was the brief conversation that they had with LMAS Director Gilles Meloche. At that time Meloche offered his proposed deal, but he never informed the O'Neills of the sections of the ordinance that they had allegedly violated. The defendants now assert that the puppies were impounded pursuant to LMCO § 91.027(E) and the adult dogs pursuant to LMCO § 91.070(D). LMCO § 91.027(E) provides that, "[i]n addition to a citation issued to the owner, any animal sold or offered for sale in violation of this section may be impounded by [L]MAS." *Id.*

This language necessarily implies that a citation is required to impound the puppies, but none was in fact issued. As for the adult dogs, LMCO § 91.070(D) provides that "[a]ny animal deliberately used to facilitate an act that is illegal under federal, state, or metro law shall be impounded," but is silent as to any citation requirements. *Id.* Such citation shall impose upon the owner the obligation of appearance to answer the charges specified in the citation . . . at the time and place indicated on the citation. LMCO § 91.073(A).

LMCO § 91.074(D) further provides that a violation notice must (1) Be in writing; (2) Include a statement of the violation or violations and why the notice is being issued; (3) Inform the offender of the right to appeal; (4) Include a statement that a determination of violation shall be final unless appealed in accordance with this chapter; and (5) Include a statement of penalties provided for the violation(s). *Id.*

Meloche's confrontation with the O'Neills lacked all the elements required by LMCO §§ 91.073(A)-(B) and 91.074(D)—sections of an ordinance that Meloche claims he created—and was not reasonably calculated to apprise the O'Neills of the allegations against them or of the procedures available to present their objections. See *United States v. Baker*, 807 F.2d 1315, 1323-24 (6th Cir. 1986) (holding that notice was not constitutionally adequate where the clear-cut statutory procedures for notification were not followed); cf. *Herrada v. City of Detroit*, 275 F.3d 553, 557 (6th Cir. 2001) (holding that a parking citation provided adequate notice where it was "reasonably calculated to inform the vehicle owners of the allegations against them and the procedures available to obtain a hearing to contest the allegations").

Furthermore, the circumstances as here alleged have an under-the-table, improper air about them. No one is accusing Meloche of personally pocketing the money for his own gain, but his confrontation with the O'Neills has the feel of a pseudo-shakedown that is not at all akin to a plea agreement, as the defendants would have us believe. If it were a plea agreement, what charges were the O'Neills pleading guilty to? At least as alleged, no notification was provided to the O'Neills and no record of this transaction, or of the alleged violations, was made under which this "deal" allegedly

occurred, we conclude that the lack of notice was unconstitutional. The O'Neills, therefore, have adequately pleaded a procedural due process violation. CONCLUSIONS:

We AFFIRM the dismissal of the portion of the Fourth Amendment claim that arises out of the undercover LMAS agents' initial entry into the O'Neills' home; AFFIRM the dismissal of the O'Neills' substantive due process and equal protection claims; REVERSE the application of the Class A kennel designation to the O'Neills' home; . REVERSE the dismissal of the portion of the Fourth Amendment claim that arises out of the LMAS officers' second entry into the O'Neills' home; REVERSE the dismissal of the procedural due process claim; VACATE the dismissal of the O'Neills' state-law claims and the district court's dicta regarding the grant of qualified immunity to the individual defendants; and REMAND the case for further proceedings on items D, E, and F in a manner consistent with this opinion.

“Owners have a protected property interest at stake or that they were deprived of that interest. “[T]here can be no dispute that an animal owner has a su with any court. Meloche also threatened the O'Neills with the possibility of arrest if they did not accept his “deal.”

This threat suggests that the O'Neills were facing not only civil offenses, but criminal charges as well. But the procedural due process required in the context of a criminal proceeding is “considerably greater” than in a civil proceeding. *Herrada*, 275 F.3d at 559. “[A] guilty plea [to a crime] occurs after a formal charge has been issued, whereas a citation is only the allegation of a civil infraction,” *id.* at 559-60, and “is involuntary where the defendant lacks knowledge of an element of the offense required for conviction and therefore does not understand the nature of the charge against him . . . ,” *United States v. Layne*, 192 F.3d 556, 577 (6th Cir. 1999). Clearly, the O'Neills were not made aware of the charges and/or violations that they were purportedly subject to, much less the elements of any of those offenses.

The O'Neills should at the very least have had some document memorializing the agreement with Meloche so that, in the event charges were later brought against them, they would have the ability to plead *res judicata*. (Because of the confluence of the questionable circumstantial interest in maintaining his rights in a seized animal. . . . Animal owners [] have a substantial interest in their ‘mere’ pets.”)

2. “Owners have a protected property interest at stake or that they were deprived of that interest. “[T]here can be no dispute that an animal owner has a substantial interest in maintaining his rights in a seized animal. . . . Animal owners [] have a substantial interest in their ‘mere’ pets.”

Court of Appeal, First District, Division 3, California.

Mollie MANNING, Plaintiff and Appellant, v. Thomas O. WYMER, Defendant and Respondent.

Civ. 24704.

Decided: May 29, 1969

In this appeal there are two issues: The first relates to the propriety of the grant of the summary judgment to defendant Wymer, and the second to whether the trial court erred in refusing to set aside its order for summary judgment under section 473 of the Code of Civil Procedure after additional facts were made a matter of record.

The Facts: The appellants, Mollie Manning (hereafter referred to as Manning), and the respondent, Thomas O. Wymer (hereafter referred to as Wymer), collided in an automobile accident in San Francisco on October 3, 1965. Each filed suit claiming damages for personal injuries as the result of the other's negligent driving.

Manning and Wymer, as plaintiffs in their respective actions for personal injuries, were represented by their personal attorneys. These attorneys were not associated with attorneys who were selected by their insurance companies to represent them in the actions where they were named defendants.

Wymer, as plaintiff in his personal injury action, No. 560945, was represented by John Peterson; and Manning was represented by a firm selected by her insurance carrier. John Schuyler, acting for that firm, effected a settlement whereby the sum of \$800 was paid to Wymer in exchange for a dismissal of action No. 560945.

At the time of this settlement, Manning's insurance representative had not filed an answer to the complaint in action No. 560945, and Wymer had not filed an answer as defendant in action No. 560186.

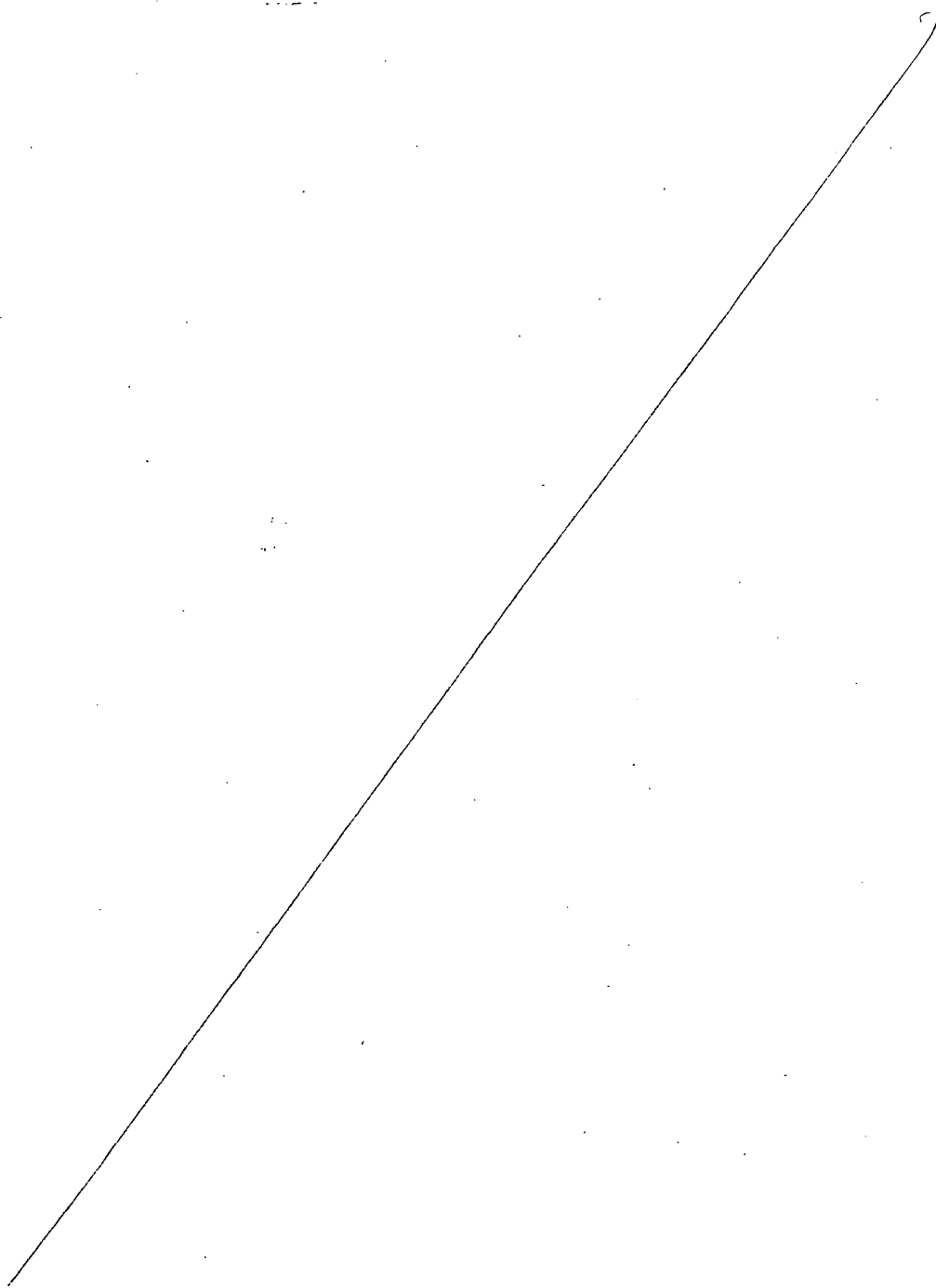
Here appellant contends that by reason of the excusable mistake of his attorney he failed to inform the court that a condition of the Wymer settlement was that it was *not* to prejudice Manning's action.

Manning's motion was based on the contention that through inadvertence and excusable mistake the fact that she had consented to the settlement of Wymer's suit Only on condition that it would not prejudice her action (No. 560186 against Wymer was not presented to the court.

Code of Civil Procedure section 473 states in part: ***“ * * * The court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. * * **”**

The error of counsel is within the meaning of excusable mistake as provided in Code of Civil Procedure section 473. It is the policy of the law that every case should be tried on its merits.

“The court in *Berri v. Rogero*, 168 Cal. 736, 740, 145 P. 95, 97, stated: ***‘The policy of the law is to have every litigated case tried upon its merits, * * * Where a party in default makes seasonable application to be relieved therefrom, * * * and the plaintiff (defendant here) files no counter affidavit and makes no showing that he has suffered any prejudice or that injustice will result from the trial of the case upon its merits, very slight evidence will be required to justify a court in setting aside the default. * * ****”



246

Marbury v. Madison

5th US 137, (1803)

The legal case in which, on February 24, 1803, the U.S. Supreme Court first declared an act of Congress unconstitutional, thus establishing the doctrine of judicial review. The court's opinion, written by Chief Justice John Marshall, is considered one of the foundations of U.S. constitutional law.

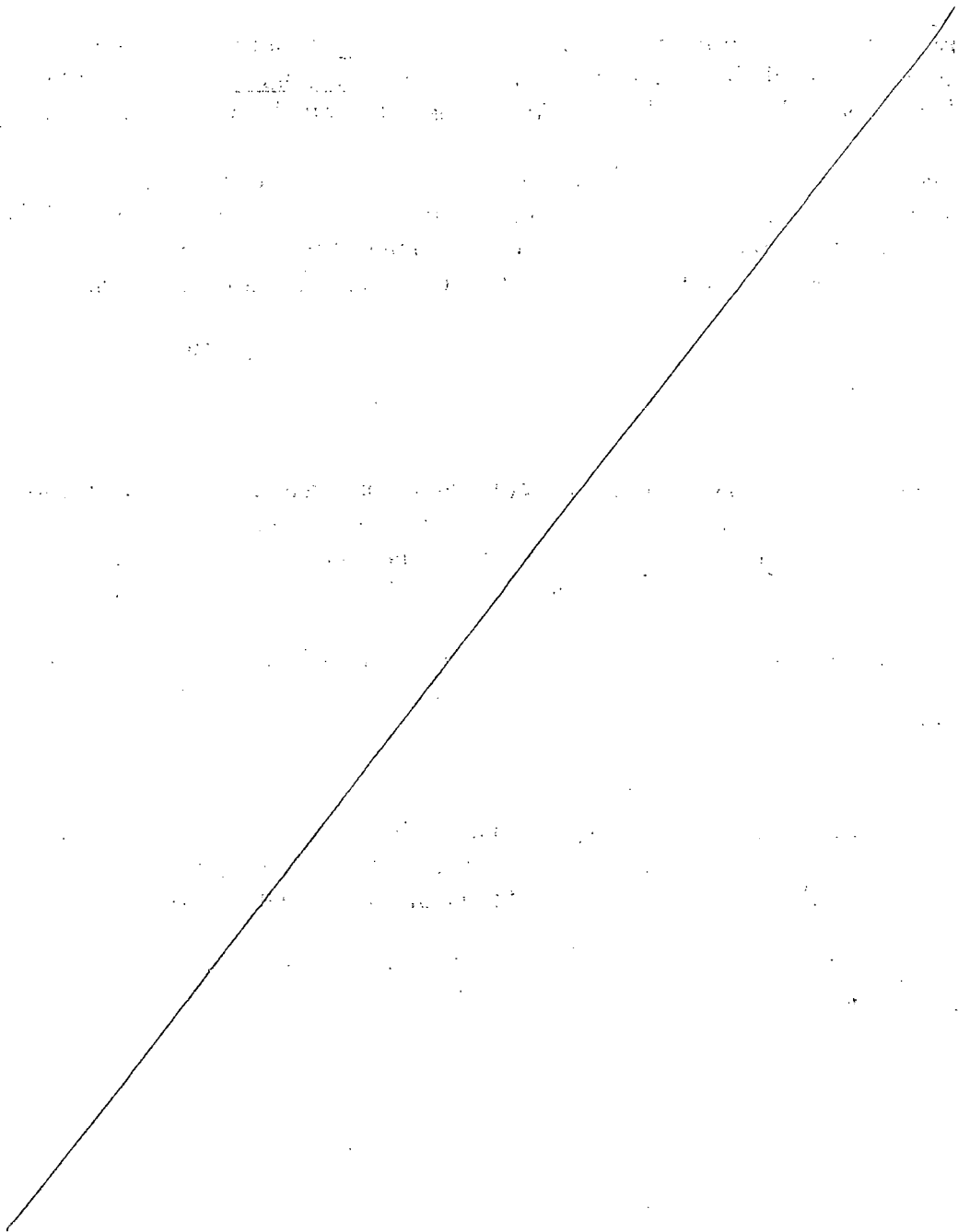
Marshall, adopting a style that would mark all his major opinions, reduced the case to a few basic issues. He asked three questions: (1) Did Marbury have the right to the commission? (2) If he did, and his right had been violated, did the law provide him with a remedy? (3) If it did, would the proper remedy be a writ of mandamus from the Supreme Court? The last question, the crucial one, dealt with the jurisdiction of the court, and in normal circumstances it would have been answered first, since a negative response would have obviated the need to decide the other issues. But that would have denied Marshall the opportunity to criticize Jefferson for what the chief justice saw as the president's flouting of the law.

Although he could have held that the proper remedy was a writ of mandamus from the Supreme Court—because the law that had granted the court the power of mandamus in original (rather than appellate) jurisdiction, the Judiciary Act of 1789, was still in effect—he instead declared that the court had no power to issue such a writ, because the relevant provision of the act was unconstitutional.

By asserting the power to declare acts of Congress unconstitutional (which the court would not exercise again for more than half a century), Marshall claimed for the court a paramount position as interpreter of the Constitution.

But the fact remains that the court has claimed and exercised the power of judicial review through most of U.S. history—and, as Judge Learned Hand noted more than a century later, the country is used to it by now. Moreover, the principle fits well with the government's commitment to checks and balances. Few jurists can argue with Marshall's statement of principle near the end of his opinion,

“that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.”



MASSACHUSETTS CASUALTY INSURANCE COMPANY, Plaintiff-Appellant,

v.

Kenneth B. FORMAN, Defendant-Appellee.

No. 72-2451 Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Nov. 14, 1972.

S. E. Cushman, L. J. Cushman, Miami, Fla., for plaintiff-appellant.

Burton Young, North Miami Beach, Fla., for defendant-appellee.

Before BELL, DYER and CLARK, Circuit Judges.

PER CURIAM:

1

The Massachusetts Casualty Insurance Company (Insurer) sued to rescind and cancel an accident and health insurance policy alleging it was obtained by false representations. Kenneth B. Forman, asserting total disability, counterclaimed for specific performance of the contract to provide a monthly indemnity of 1,100 dollars.

2

Subsequent to the initial pretrial conference, Insurer moved for a default judgment on the ground that Forman had refused to appear for the taking of a supplemental deposition. Forman countered with a motion to compel settlement in accordance with an agreement between counsel. After a brief hearing the District Judge denied Insurer's motion and entered an order enforcing the alleged settlement. Insurer appeals from this order and from the denial of its subsequent motion for rehearing.

3

Forman contends that this appeal should be dismissed because the underlying order is not final within the meaning of 28 U.S.C. Sec. 1291. While this order was conditioned on surrender of the policy and delivery of the check, it amounted to a final disposition of the primary issue then existing between the parties—the claim by the insured that a settlement had been reached. In practical effect, this was a final judgment within the meaning of Sec. 1291. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949); *Forgay v. Conrad*, 47 U.S. (6 How.) 201, 12 L.Ed.2d 404 (1848); *Fox v. City of West Palm Beach*, 383 F.2d 189 (5th Cir. 1967).¹

4

A trial court has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it. *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33 (5th Cir. 1967). However, where material facts concerning the existence of an agreement to settle are in dispute, the entry of an order enforcing an alleged settlement agreement without a plenary

hearing is improper. *Autera v. Robinson*, 136 U.S.App.D.C. 216, 419 F.2d 1197 (1969). *Theatre Time Clock Co., Inc. v. Motion Picture Advertising Corp.*, 323 F.Supp. 172, 174 (E.D.La.1971).

5

From the meager record before the district court, consisting primarily of unsworn statements by opposing counsel, it is clear that a material dispute of fact existed as to whether a settlement had been reached. Counsel for Forman, Young, stated that he and counsel for the Insurer, Cushman, had discussed a settlement, that the discussion ended in an offer to settle for 30,000 dollars and that this offer had been accepted eleven days later after Cushman informed him that the Insurer was unlikely to offer more. Cushman denied that a firm offer had been made or that he had represented that he had authority to settle the claim without approval by his client. At most, Cushman conceded he had agreed to recommend a settlement of 30,000 dollars to the home office of the Insurer. Subsequent to the hearing, affidavits were filed denying that Insurer had agreed to a settlement or that Cushman had been authorized to settle the suit.

6

Under Florida law, which we hold should control whether a contract of settlement was formed, *"a party seeking judgment on compromise and settlement has the burden of establishing assent by the opposing party. Unauthorized assent manifested by a party's attorney is insufficient."* *Goff v. Indian Lake Estates, Inc.*, 178 So.2d 910, 912 (Fla.App.1965); *Palm Beach Royal Hotel, Inc. v. Breese*, 154 So.2d 698 (Fla. App.1963). *Authority to compromise a disputed claim cannot be assumed from employment of counsel to handle the litigation: "special or express authority to compromise or settle . . . must be clear and unequivocal."* *Bursten v. Green*, 172 So.2d 472, 474 (Fla.App. 1965); *Kramer v. City of Lakeland*, 38 So.2d 126, 131 (Fla.1948). An evidentiary hearing will allow Forman to meet his burden of proving the existence of a valid contract to settle, subject to right to Insurer to cross-examine and to present evidence in its behalf.

"According to the greatweight of American Authority, only after acquiring express authority in the form of his client's consent, may an attorney compromise his client's claim or cause of action"