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State v. Harmon Appellant's Reply Brief Dckt. 40858

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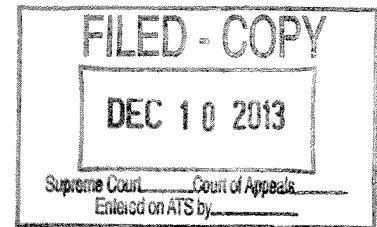
IN THE SUPREME COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

SUPREME COURT No. 40858-2013
DISTRICT COURT No. CR 12-5911

STATE OF IDAHO
Plaintiff/Respondent

vs

MARY K HARMON
Defendent/Appellant



Appeal from The Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE JOHN K. BUTLER
District Court Judge Division

APPELLANT REPLY BRIEF

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APPELLANT

RESPONDENT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

No. CR 12-5911

STATE OF IDAHO
Plaintiff/Respondent

vs

MARY K HARMON
Defendent/Appellant

Appeal from Magistrate Division in the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE THOMAS KERSHAW
District Judge Magistrate Division

APPEALANT BRIEF

Reply

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Twin Falls, ID 83301

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APPELLANT

RESPONDENT

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ISSUES

1. Was the hearing an Infraction hearing?
2. Was the Citizen Citation signed legally?
3. Should my Subpoenas have been disregarded?
4. Was my Mastiff regarded as a Pitbull because of Breed Misidentification?
5. Are the Stone Family Creditable witnesses?

ARGUMENT

The Attorney General's Brief labels my dog as a pitbull. The Memorandum Decision labels my dog as a pitbull. Through out the trial my dog was labeled as a Pitbull. I had Verification from my Veterinarian that my dog Sage is Mastiff, but I was not allowed to present it in court.(Tr., Vol. I, p. 38, L. 11-21) The Judge said okay, but it wasn't put into evidence. The Prosecutor finally acknowledged that my dog was a Mastiff and did inform the Judge that my dog was Mastiff at the end of the trial in the States Closing Argument.(Tr., Vol. I, p. 45, L. 3-4).

Idaho has Breed Specific Legislation,(BSL), concerning Pitbulls. Pitbulls are considered a "Vicious Animal". I wasn't afforded the Right to reasonable doubt in my Case, because my dog was misidentified as a Pitbull and referred to as a Pitbull through out the trial.

My dog Sage has been in the PETSMART training program for almost 3 years. Information from my dogs trainer and actual PETSMART training rules and regulations pamphlet, which states that Aggressive and or Vicious dogs are not allowed in their program, was also not allowed.(Tr., Vol. I, p. 38, L. 4-6)

The Attorney General and The Memorandum Decision states that I should have made objections. I obtained the Information for the process from the 5th District Court website for Court trials in Infraction Cases.

<http://5thjudicialdistrict.com>

My case did not follow the guidelines shown in that Information Packet.

It states that I could present evidence, but I was only allowed to present pictures.

The information that I received doesn't state that a defendant could or should object to anything during trial. It actually encourages you not to Argue.

There was not a prerequisite for any prior knowledge of Idaho law or courtroom procedure in order to represent ones self at an Infraction hearing.

The website did not state that in an Infraction hearing there would be:

1. Pretrial motions
2. Defenses and Objections based upon defects in complaint
3. Effects of Failure to Raise Defenses or Objections
4. Failing to raise non-jurisdictional challenges to the uniform citation in the Magistrate court.
5. Preserve Assertions of Trial Error for appeal
6. Support with authority
7. Alleging trial error

I had subpoenaed Kevan Stone and Kristine Stone, and requested documents relating to their family dog, yellow lab (chance).(Tr., Vol. I, p. 16, L. 4) The Stones ignored my request for documents on the Subpoenas, and stated that all papers had been given to the prosecuting attorney.(Tr., Vol. I, p. 14, L. 18-25),(Tr., Vol. I, p. 15, L. 3-20), (Tr., Vol. I, p. 23, L. 5-18), (I.C. § 19-3935)

I made the court aware of the fact that the Stones had ignored the subpoenas requested documents. The documents were to be included in my evidence.

The Judge stated that I could ask them about the documents, since they had not

supplied them per subpoena. (Tr., Vol. I, p. 15, L. 8)

The documents that I had subpoenaed from the stones, but did not receive, showed prior bad acts including a vicious dog citation from Jerome County.

The documents that I had subpoenaed showed that the yellow lab was not just a fat old dog, as the Judge described him. That dog has a past of being menacing and dangerous. Looks can be deceiving. (Tr., Vol. I, p. 48, L. 3-5)

I asked Judge Kershaw for the Definition of Perjury. (Tr., Vol. I, p. 17, L. 2-8),(I.C. § 18-5409)

Stones' misidentified the breed of my dog as Pitbull, consulted with the States Attorney to Prosecute me for something other than I was charged with, and exchanged unknown paperwork between their family and the Prosecutors office.(Tr., Vol. I, p. 15, L. 3),(Tr., Vol. I, p. 23, L. 7-8)

There was a conflict of interest and confusion at my hearing. At one point during the hearing the Judge left the courtroom. (Tr., Vol. I, p. 23, L. 20-23),(Tr., Vol. I, p. 48, L. 15-18). Mistakes damaged my rights to a fair trial, my presumption of innocence until proven guilty and reasonable doubt in my case.

The Stones' actions by letting their 2 small grandchildren play along the fence unsupervised for the last 2 years and feed bisquits to my dogs through the fence, shows that they didn't have concerns about either one of my dogs actions.(Tr., Vol. I, p. 7, L. 2-9) (Tr., Vol. I, p. 12, L. 1)

The Attorney General spoke to the creditability of the witnesses.

Attorney Generals brief states that Kevan Stone testified that his familys lab is not aggressive.(Tr., Vol. I, p. 22, L. 23-24).

Attorney Generals brief states that Kristine Stone testified that fence was bent up.(Tr., Vol. I, p. 9, L. 8-9)

Deputy Sheriff Neil Schulz testified that there was not an obvious access point.(Tr., Vol. I, p. 32, L. 16)

Kristine Stone testified that her yellow lab had not had previous vicious tendencies.(Tr., Vol. I, p. 8, L. 11-13)

The documents that I had subpoenaed from the stones, but did not receive, showed prior bad acts including agressiveness, a vicious dog citation from Jerome County and various other reports concerning the yellow lab(chance).

Kristine Stone then testified to previous menacing and or vicious tendencies by her yellow lab.(Tr., Vol. I, p. 15, L. 12-20)

I have 2 dogs. A 5 year old female Mastiff named Sage and a 4 year old male Cheweinie named Sandy. I believe that my dog Sage, the Mastiff, was provoked into the incident.

The fact remains that the Stone family members that were home at the time of the

incident and allegedly interacted in the incident with the dogs,(Tr., Vol. I, p. 10, L. 3-7), (Tr., Vol. I, p. 19, L. 7-9),(Tr., Vol. I, p. 19, L. 22-25),(Tr., Vol. I, p. 20, L. 1),(Tr., Vol. I, p. 20, L. 21-23), did not sign the Citizen Citation.

Kristine Stone and Kevan Stone are listed on Vet records as owners of the yellow lab. (Tr., Vol. I, p. 16, L. 10-11)(Tr., Vol. I, p.23, L. 16-18)

Kristine Stone and Kevan Stone have both testified that the yellow lab is a family dog. Kristine Stone and Kevan Stone have both testified that they witnessed an incident that had begun before they arrived in the backyard. Noone can testify to why it began.

Amanda Stone, who was not at home at the time of the incident, and was not a witness to the occurance, signed the Citizen Citation.

(Tr., Vol. I, p. 34, L. 19-25),(Tr., Vol. I, p. 35, L. 1).

Pursuant to Rule 5(b) I.I.R. and Rule 5(c) I.M.C.R. requirements for a Citizen Citation to be issued are clear. A penalty is implied if you sign a Citizen Citation against someone and have the Sheriff issue it, without personally witnessing an incident. (I.C.§ 18-5408), (I.C.§ 18-5410),(I.C.§ 18-5413)

Something Provoked my dog into this incident.

Considering the fact that during the altercation with the yellow lab, several people testified that they allegedly got physically involved. The Stones testified that they had hands on contact with my Dog. (Tr., Vol. I, p. 10, L. 3-7),(Tr., Vol. I, p. 19, L. 7-9),(Tr., Vol. I, p. 19, L. 22-25),(Tr., Vol. I, p. 20, L. 1),(Tr., Vol. I, p. 20, L. 21-23)

My dog did not attempt to harm them. Not a scratch.

My dog is not vicious and she was provoked into this incident.

The definition of the law that I was found guilty of is unclear.(Tr., Vol. I, p. 45, L. 16-25), (Tr., Vol. I, p. 46, L. 1-7)

6-4-1 definition of a vicious dog is conflicting as it states that to provoke a dog, a person or animal must harm or torment that dog. So, if a dog personally torments or harms another dog, its ok for an altercation to happen between them. In that same line of unclear meaning, Is it actually stating that it is ok for a dog to have an altercation with 2 children if they personally provoked it? Of course it isnt ok for that to happen, but the definition makes it seem like it would be. My dog never touched the kids. It was between the 2 dogs.

CONCLUSION

The Defendent respectfully requests this Court to set aside the judgement of conviction for harboring a vicious dog.

DATED this 9th day of December, 2013

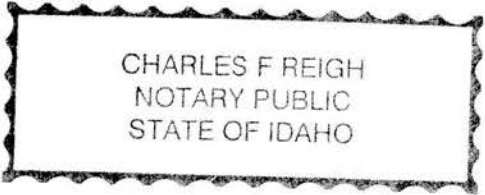


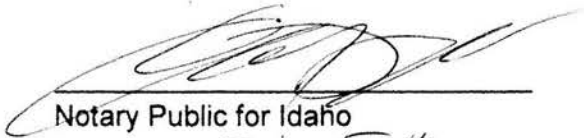
MARY K. HARMON

APPELLANT PRO SE

STATE OF IDAHO)
County of Twin Falls) ss.

SUBSCRIBED AND SWORN before me on this 9th day of December 2013




Notary Public for Idaho
Residing at Twin Falls
Commission expires 01/09/2018

CERTIFICATE OF SERVICE

I certify that on 12/09/2013 served
(2) copies of Appellant Reply Brief

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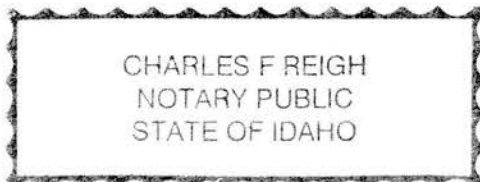
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Tia Bacon
Typed/printed name

[Signature]
Signature

STATE OF IDAHO)
) ss.
County of Twin Falls)

SUBSCRIBED AND SWORN before me on this 9th day of December ~~2012~~ ²⁰¹³



[Signature]
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