

6-28-2016

## Elliott v. Olsen Appellant's Reply Brief Dckt. 43971

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

CANDACE (ANDI) W. ELLIOTT )

Plaintiff, )

vs. )

BLAIR OLSEN, individually, and in )

his capacity as Jefferson County )

Sheriff, ROBIN DUNN, individually )

and in his capacity as Jefferson )

County Prosecutor, JOHN )

CLEMENTS, individually, and in )

his capacity as a Jefferson County )

Deputy, AMELIA SHEETS, )

individually, and in her capacity )

as Jefferson County Deputy )

Prosecutor, JEFFERSON COUNTY )

SHERIFF'S DEPARTMENT, )

JEFFERSON COUNTY and )

COMMISSIONERS, )

Commissioner GERALD )

RAYMOND, Individually, )

Defendants \_\_\_\_\_)

**SUPREME COURT NO. 43911**

**JEFFERSON COUNTY**

**CASE NO. CV- 2014-680**

**APPELLANT'S REPLY BRIEF**

*Supreme Court No. 43971*

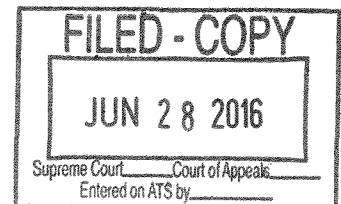
**APPELLANT'S RESPONSE TO RESPONDENT'S BRIEF**

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Appeal from the District Court of the Seventh Judicial District

Of the State of Idaho, for Jefferson County

\_\_\_\_\_  
Honorable Alan C. Stephens, District Judge, presiding



Candace (Andi) W. Elliott  
2498 E 2100 N  
Hamer, Idaho 83425

PRO SE LITIGANT  
PLAINTIFF-APPELLANT

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Idaho Falls, Idaho 83402

ATTORNEY FOR  
DEFENDANTS-RESPONDENTS

## STATEMENT OF CASE AND THE FACTS

The history of this case has been long and torturous beginning with the Appellant receiving multiple complaints about a Jefferson County Deputy's starved horses (2008). Appellant traveled down a dirt lane with a DEAD END prominently displayed and documented by the Jefferson County Sheriff's Office (JCSO) pictures. Appellant took pictures and sent them to the State Vet, Dr. Tom Williams. Dr. Williams found the horses to be in such poor condition that he sent nearly 20 of them to a local vet for care. It became a huge media event causing great embarrassment to the county. Appellant agreed to an Alford Plea at the request of the Prosecutor to prevent further embarrassment. Note: Deputy was not charged with animal cruelty even though the required veterinarian statement substantiated that the horses were in very poor condition.

In 2009 Appellant was sent out by the *JEFFERSON COUNTY SHERIFF'S OFFICE and acting under the color of law to offer assistance* to a dog hit by a car resulting in multiple broken legs and left in the owner's yard for three days in sub-freezing weather at the point. There were no No Trespassing signs and Plaintiff never returned to the property. However, the very next day Appellant was charged with trespass. (It was later proved in court that the Sheriff pressured the complainant into signing a citation against Appellant.)

After a six month court process, Respondents Prosecutor Robin Dunn and Sheriff Blair Olsen signed an order to "dismiss" the charge. Plaintiff objected to the dismissal as the reasons for dismissal were egregious. At a subsequent hearing, the prosecutors and sheriff were forced to delete all of the self-serving statements. Very embarrassing to the prosecutor and sheriff.

On 24 July 2011, Prosecutor Dunn's long time family friend signed a complaint against Appellant...a fact that Mr. Dunn kept hidden from the court until brought out in a subsequent matter before the court.

## POINT BY POINT REBUTTAL

**Point 4 Page 2** Counsel has stated on pg. 2 point #4 of his brief that Appellant “recounted that on July 24, 2011 she received a call from Bill Shurtliff (a resident of Jefferson County) indicating that there were horses located on the property of Dan Murdock and Kurt B. Young poor condition.” *This statement is FALSE. Nowhere in the court record or otherwise will one find that Appellant made a statement that horses in poor condition were located on the property of Kurt Young...as Appellant did not even know of Mr. Young until he filed a complaint against Appellant which would have been sometime in August of 2011.*

**Point 5 Page 3** Appellant was on the public roadway at all time as established by Kurt Young’s pictures and his testimony on 5 June 2013. Appellant was acquitted of the trespass charge.

**Point 6 Page 3** Appellant was unaware of any complaint made by Mr. Young on 20 April 2011 and the Deputy could not produce any evidence that he had trespassed me even though at trial there was an extensive review of phone records. The Deputy testified in February 2012 that he went back into his records after nearly a year and right before trial and documented that he had trespassed Appellant. The Prosecutor was forced to withdraw the Deputy’s testimony.

**Point 7 Page 3** Counsel writes “At approximately the same time, Appellant called in a complaint of animal abuse against Mr. Young and Mr. Murdoch.” This too is a FALSE STATEMENT. A review of the JCSO Dispatch recording of Appellant’s call will show that counsel is incorrect in his statement. Appellant did not know who Mr. Young was at this point and did not know he had any horses nor did or has Appellant make any complaint against Mr. Young at any time ever.

Deputy Clements had the witnesses fill out witness statements. Neither Mr. Young's written statement nor that of Dan or Brenda Murdock stated that Appellant trespassed. Mr. Young stated that Appellant was on the road in front of his house *which is public property*.

**Deputy Clements as documented by his DVD recording made a statement to Mr. Murdock indicating that the Jefferson County authorities were coordinating in an effort to "shut down" the Appellant and that he held a personal grudge against Appellant.**

The Deputy's DVD showed the following: Mr. Young showed the pictures he had taken of Appellant to the Deputy ALL OF WHICH SHOWED THAT Appellant was on the public roadway. Mr. Young even asked the deputy whether the public road was Young's property. Mr. Young showed the pictures one by one to the deputy. *The Deputy ignored the fact that the pictures showed Appellant and the car on the public roadway and proceeded to have Mr. Young sign a trespass citation against Appellant. Mr. Young testified eight times on 5 June 2011 that he never saw Appellant on his property.*

**Point 8 page 4** Counsel writes, "In his written witness statement, Mr. Young said that 'Appellant (Mr. Young would not have used that term.) exited the car with a camera walking in front of my house taking pictures of Dan Murdock's House and Horses, she then parked the car right in front of my house which is on my property.'" Another FALSE STATEMENT by Counsel. Appellant was not the driver of the car nor does Mr. Young's written witness statement state that she was. As noted at trial, Mr. Young's Warrant Deed explicitly states that the public roadway in front of his house is public property and is maintained by the State.

**Point 11 page 4** Counsel writes, "Mr. Dunn has explained that he assigned Ms. Sheets to handle the case, and that he was not personally involved in the day-to-day prosecution of the case.....Mr. Dunn explained that he did not hold any malice or ill-will toward the Appellant." This information too is FALSE.

Mr. Dunn has written an op-ed published in the Post Register, the local newspaper, detailing his dislike of Appellant( June 2010). Mr. Dunn called a radio talk show host (January of 2012) calling the Appellant a bigot, a racist, etc. Mr. Dunn during Appellant's court proceedings in the 2009 trespass case stated to the presiding judge and in front of Appellant's attorney that Appellant lied and therefore was not trustworthy. Appellant's statement was verified by Deputy John Clements' notes to be truthful. Appellant's attorney made the judge aware that the Appellant's statement was indeed accurate. Dunn's intense dislike of Appellant is widely known.

Mr. Dunn has intentionally misrepresented the facts to the court in his Affidavit. Court documents will show that Mr. Dunn signed multiple court documents during Appellant's trial; Court minutes record Mr. Dunn's presence representing the State during Appellant's trial; Court minutes will show that Mr. Dunn questioned witnesses during the course of the proceedings -19 March 2012 Mr. Dunn's name appears in the heading of the court minutes as appearing as prosecutor along with the Deputy Prosecutor Ms. Sheets. Mr. Dunn played an active role in the court proceedings as shown in the court minutes.

-11 April 2012 Court minutes of a status conference indicate that Mr. Dunn and Appellant's attorney were the only ones present. Mr. Dunn actively participated in the hearing.

-Mr. Dunn signed five subpoenas as the Jefferson County Prosecuting Attorney.

***Therefore, the records show that Mr. Dunn has lied to this court in his sworn affidavit which underscores the lengths that this prosecutor will go to in order to even his personal vendetta against the Appellant.***

**Point 12 Page 4** Counsel writes that "Ms. Sheets ( Deputy Prosecutor) reviewed the information provided by Deputy Clements...." Ms. Sheets stated in front of Appellant's attorney, Kent Whittington, and the Honorable Judge Robert Crowley in the judge's chambers at the end of the first day (day one of five trial days) that she had not reviewed the evidence and had not

seen the Deputy's video at this point.

Counsel is attempting to introduce new material here by stating that "The probable cause arose from the fact that Appellant had trespassed on Mr. Young's property earlier in the year...". Appellant did not know Mr. Young and there is no evidence that Appellant trespassed on Mr. Young's property...ever.

Counsel writes, "...Mr. Young memorialized in his written statement that Appellant had parked her car 'on my property'". That's not what Mr. Young wrote. Appellant at no time was driving a car as indicated by Mr. Young in his written statement. Mr. Young stated that the car was on the road in front of his house which is public property as stated in his Warranty Deed.

Counsel writes that "Ms. Sheets has stated that she did not hold any malice or ill will toward Appellant, and that she did not act with malice in making her charging decision." The fact alone that Ms. Sheets has admitted in front of the judge that she had not seen the evidence prior to the close of the first day of trial indicates prejudice against the Appellant.

**Point 13 page 5** Counsel writes that "She (Ms. Sheets) was not influenced by any other Jefferson County official or employee in regard to her charging decision." Mr. Dunn (who has a long established and well-documented hatred of Appellant) is Ms. Sheets immediate supervisor both as the county prosecuting attorney and in his private law practice. It would be impossible for Ms. Sheets not to have been influenced by Mr. Dunn as he was intimately involved in the cases against Appellant as documented by court records.

**Point 15 page 5** Counsel writes that "Deputy Clements has testified that he did not hold any malice or ill-will toward Appellant." That statement is FALSE as it is debunked by the Deputy's own words in the DVD recording of 24 July 2011 in which he indicated that he held a grudge e held against Appellant because she wrote an article about the Deputy.



Counsel writes “He (Deputy Clements)...investigated the facts, gathered the evidence, and submitted the facts to the Prosecuting Attorney’s office.” Deputy Clements had in his possession pictures of the Appellant NOT TRESPASSING. He recorded the complainant as asking Deputy Clements is the public road was complainant’s property... as question he ignored. Deputy Clements produced no evidence that he had previously trespassed Appellant. Deputy Clements testified that he went back and documented that he had trespassed Appellant shortly before the trial and nearly ten months after the alleged “trespass”...testimony that Ms. Sheets was forced to withdraw. All and any of these incidences indicate that the Deputy held ill-will against the Appellant.

**Point 18 page 6** Counsel writes “Sheriff Olsen did not hold any personal ill will or malice toward Appellant.” That’s not true. In addition to the negative editorial Olsen wrote about Appellant appearing in the newspaper in 2009 after he charged Appellant with trespass for the second time...there was also court testimony (by the complainant) that Sheriff Olsen pressured him into signing a citation against Appellant. Judge Mark Rammel ruled in the Appellant’s favor and ordered a monetary award be made to Appellant.

**Point 21 page 7** Appellant has repeatedly made the circumstances of the Defendants’ actions against her made known to the Jefferson County Commissioners. Even though the Commissioners are primarily tasked with the budget concerns of the Prosecutor and Sheriff’s office, they do have oversight (as stated by on the former Commissioners in an inquiry made by the Office of the Attorney General) and are to make sure that other county employees (including elected officials) are performing their jobs correctly.

*Counsel seems intent upon leading the court to believe things that did not occur nor can he document and is willing to bend the truth in order to prevail in this case. Counsel says that Appellant is attempting to introduce new material into the record. All of the information introduced was included in the Appellant's original complaint against Respondents.*

### SUMMARY

There are so many facets to this case that Counsel is desperately trying to prevent from being presented to a jury. The continual and coordinated efforts by the Defendants are well documented. And the fact that the Prosecutor is willing to perjure himself and that the Sheriff was willing to pressure a complainant into signing a false complaint against Appellant is egregious and illegal behavior by law enforcement and indicates the heightened degree of animosity they have towards Appellant. The actions of these Respondents should be an abomination to our legal system. Nothing with subvert the public confidence as having rogue law enforcement in positions of power and supervisors unwilling to hold them accountable.

Prosecutorial immunity is not a license for tyranny. Mr. Dunn failed to reveal that he and the complaining witness were long time family friends which is a violation of ISB rules of professional conduct. The Respondents acted far outside the scope of their traditional functions. The Commissioners failed to adequately supervise county employees. Counsel has provide misleading information to the Court.

There have been few instances before the court in which the resources of a county's law enforcement has been brought to bear against a citizen as they have been in this case for going on

nearly eight years now with repeated failures by Respondents to find Appellant guilty. This has only served to fuel their coordinated efforts against Appellant.

The District Court arbitrarily and prematurely denied Appellant her right to present all the facts of this matter to a jury. Appellant can document each point of her original Complaint pointing to a long (since 2008) and coordinated effort by the Respondents to harass and attempt to intimidate the Appellant for exercising her Constitutional rights.

Therefore Appellant respectfully requests that the summary judgment be overturned and that the facts of this matter be allowed to be presented to a jury.

DATED this 23 day of June, 2016.



#### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 23 day of June, 2016 by hand delivery.



ANDI ELLIOTT