

8-2-2016

## Elliott v. Young Appellant's Brief Dckt. 44068

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CANDACE "ANDI" W. ELLIOTT )  
Plaintiff, )  
vs. )  
KURT E. YOUNG, SR. )  
Defendant. )  
\_\_\_\_\_ )

Docket No. 44068

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APPELLANT'S BRIEF

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Appeal from the District Court of the Seventh Judicial District  
Of the State of Idaho, for Jefferson County

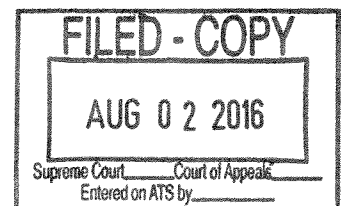
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Honorable Alan C. Stephens, District Judge, presiding  
\_\_\_\_\_

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

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| CANDACE “ANDI” W. ELLIOTT | ) | <b>SUPREME COURT NO. 44068</b>     |
| Plaintiff, Appellant      | ) |                                    |
| vs.                       | ) | <b>JEFFERSON COUNTY</b>            |
|                           | ) | <b>CASE NO. CV-2015-04</b>         |
|                           | ) |                                    |
| KURT E. YOUNG, SR.        | ) |                                    |
| Defendant, Respondent     | ) | <b>APPELLANT’S BRIEF ON APPEAL</b> |
| _____                     | ) |                                    |

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*Thomson v. Idaho Insurance Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1037

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*T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass'n*, 809 F. 2d 626 (9<sup>th</sup> Cir. 1987).

*United States v. Limone IV*, 497 F.Supp.2d at 220 (D.Mass.2007)

*Vavold v. State*, 148 Idaho 44, 45, 218 P.3d 388, 389 (2009)

## POINTS AND AUTHORITIES

1. Summary judgment shall be rendered when “the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. “I.R.C.P. 56(c). On appeal the Appellate Court liberally construes the entire record in favor of the nonmoving party and draws all reasonable inferences and conclusion in that party’s favor. *Clark v. Spokesman-Review*, 163 P.3d 216,219, 144 Idaho 427, 430 (Idaho 2007) *Steele v. Spokesman Review*, 138 Idaho 249, 251, 61 P.3d 606, 608 (2002). If the evidence reveals no disputed issues of material fact, summary judgment is proper. *Id.*

2. When a claim or part of a claim must be proved by clear and convincing evidence, generally on a motion for summary judgment the Idaho Appellate Courts do not consider whether a party has produced clear and convincing evidence, but only “whether the evidence is sufficient to create a triable issue of fact.” *Country Cove Dev., Inc. v. May*, 143 Idaho 595, 599, 150 P.3d 288, 292 (2006).

3. Idaho appellate courts review a grant of summary judgment de novo. *Clark v. Spokesman-Review*, 163 P.3d 216, 144 Idaho 427 (Idaho 2007), *Post Falls Trailer Park*, 131 Idaho at 636, 962 P.2d at 1020.” *Id.* at 222 and 433.

4. Regarding the issue of want of probable cause, *Allen v. Moyle*, 84 Idaho 18, 24-25, 367 P. 2d 579 (1961). It states that *The advice of counsel relied upon must come from an independent, disinterested attorney.* *Howard*, 85 Idaho 286, 291, 379) .2d 414, 417.

5. A plaintiff is entitled to prove the defendant’s state of mind through circumstantial evidence, *see Herbert v. Lando*, 441 U.S. 153, 160 (1979); *Tavoulaareas v. Piro*, 260 U.S. App.D.C. U.S. App.D.C.9, 66, 817 F. 2d 762, 789 (en banc), cert. denied, 484 U.S. 870 (1987), and it cannot be said that evidence concerning motive or care never bears any relation to the actual malice inquiry.” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 668, 109 S. Ct. 2997 (1989); *Clark v. Spokesman Review*, 144 Idaho 427, 163 P.3d 216 (Idaho 2007); *Gardner v. Hollifield*, 97 Idaho 607, at 610, 549 P.2d 266, at 269 (Idaho 1976).

6. The standard of review of a trial court’s decision of issues involving the introduction of evidence, is under an abuse of discretion [281 P.3d 120] standard. *Clair v. Clair*, 281 P.3d 115, 153 Idaho 278 (Idaho 2012); *State v. Perry*, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003). The trial court has broad discretion to admit or exclude evidence. *Id.* at 521-22, 81 P.3d at 1231-32. “Error may not be predicated upon a ruling which admits or excludes evidence unless the ruling is a manifest abuse of the trial court’s discretion and a substantial right of the



party is affected.” *Burgess V. Salmon River Canal Co., Ltd.*, 127 Idaho 565, 574, 903 P.2d 730, 739 (1995).

7. The question of whether evidence is relevant is reviewed de novo, while the decision to admit relevant evidence is reviewed for an abuse of discretion. [1] *State v. Shutz*, 143 Idaho 200, 202, 141 p.3d 1069, 1071 (2006). A district court’s improper exclusion of evidence will be overturned on appeal if it affects a party’s substantial right. *Clair v. Clair*, 281 P.3d 115, 153 Idaho 278 (Idaho 2012); *Perception Const. Management, Inc. v. Bell*, 254 P.3d 1246, 1249, 1250 151 Idaho 250 (Idaho 2011); I.R.E. 103; I.R.C.P. 61(a); *Burgess v. Salmon River Canal Co., Ltd.*, 127 Idaho 565, 574, 903 P.2d 730, 739 (1995).

8. ***Evidence that is relevant to a material and disputed issue concerning the crime charged is generally admissible.*** *State v. Stevens*, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” I.R. E. 401: see also *Stevens*, 146 Idaho at 143, 191 P.3d at 221. Whether a fact is of consequence or material is determined by its relationship to the legal theories presented by the parties. *State v. Johnson*, 148 Idaho 664, 671, 227 P.3d 918, 925 (2910). We review questions of relevance de novo. *State v. Raudebaugh*, 124 Idaho 758, 764, 864 P.2d 596, 602 (1993); *State v. Houser*, 41540 (unpublished) (Idaho App. 2014).

9. Appeals from an order of summary judgment are reviewed de novo, and on appeal the standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R. C. P. 56(c). Under this standard, disputed facts are construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. Where the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review. *Huber v. Lightforce USA, Inc.*, 41887 (Idaho December 15, 2015); *Trotter v. Bank of N.Y. Mellon*, 152 Idaho 842, 845-46, 275 P.3d 857, 860-61 (2012) (footnotes, internal case citation, and internal quotation marks omitted).

10. When reviewing an order for summary judgment, the standard of review for the Appellate Court is the same standard as that used by the district court in ruling on the motion. Summary judgment is appropriate if “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). Disputed facts should be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. The Appellate Court exercises

free review over questions of law. *Huber v. Lightforce USA, Inc.*, 41887 (Idaho December 15, 2015); *Fuller v. Dave Callister*, 252 P.3d 1266, 1269, 150 Idaho 848, 851 (Idaho 2011); 149 Idaho 609, 613, 238 P.3d 209, 213 (2010) (quoting *Vavold v. State*, 148 Idaho 44, 45, 218 P.3d 388, 389 (2009)).

11. The standard of review on appeal from an order granting summary judgment is the same standard that is used by the district court in ruling on the summary judgment. Summary judgment is appropriate only when the pleadings, depositions, affidavits and admissions on file show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *McCann v. McCann*, 275 P.3d 824 (Idaho 2012).

12. When an Appellate Court reviews an order dismissing an action pursuant to summary judgment, after viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated. The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. 145 Idaho 670, 672-73, 183 P.3d 758, 760-61 (2008) (internal citations and quotations omitted). In addition, “the Court reviews an appeal from an order of summary judgment de novo, and the Court’s standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment.” *Taylor v. McNichols*, 243 P.3d 642, 648, 149 Idaho 826, 832 (Idaho 2010); *Curlee v. Kootenai Cnty. Fire and Rescue*, 148 Idaho 391, 394, 224 P.3d 458, 461 (2008).

13. An Appellate Court will not set aside the trial court’s findings of fact unless they are clearly erroneous. As to questions of law, the Court exercises free review. *Humberger v. Humberger*, 995 P.2d 809, 811, 134 Idaho 39, 41 (Idaho 2000); See *Jensen v. Jensen* 128 Idaho 600, 604, 917 P.2d 757, 761 (1996).

14. In ruling on a motion for summary judgment the trial court is to liberally construe the entire record in favor of the nonmoving party and draw all reasonable inferences and conclusions in that party’s favor. *Steele v. Spokesman-Review*, 138 Idaho 249, 251, 61 P.3d 606, 608 (2002). *Clark v. Spokesman-Review*, 144 Idaho 427, 163 P.3d 216, (Idaho 2007).

15. ***A party responding to a summary judgment motion is not required to present evidence on every element of his or her case at that time, but must rather establish a genuine issue of material fact regarding the element or elements challenged by the moving party.*** *Thomson v. Idaho Insurance Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1037; *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1368 (1994).

16. In *Manganiello v. City of New York*, 612 F.3d 149 (2d Cir. 2010), the Second Circuit upheld a jury’s verdict and judgment (including \$1.426 million in compensatory

damages) against the defendant former detective charged with § 1983 Fourth Amendment malicious prosecution of the plaintiff who was prosecuted for murder but acquitted. The defendant argued that he should have been granted judgment as a matter of law because probable cause existed, or should be presumed to have existed by virtue of a grand jury indictment of the plaintiff for murder. Rejecting the argument, the Second Circuit observed that the presumption of probable cause from a grand jury indictment could be rebutted by evidence that the indictment was procured by fraud, perjury or the suppression of evidence by the police officer. ***In this case there was ample evidence to support the jury's findings that the defendant engaged in at least one of these kinds of misconduct: the defendant refrained from making inquiries into other possible suspects, ignored evidence that the plaintiff was not guilty, declined to inform the prosecutor of possibly exculpatory evidence, secured an inculpatory statement from a witness by promising not to disclose that witness's known criminal activities and included in some of his own reports statements adverse to the plaintiff that were contradicted by persons with first-hand knowledge of the facts. Furthermore, it was clear that the defendant caused the initiation or continuation of the criminal proceedings against the plaintiff. Finally, there was sufficient evidence of malice in the sense that the defendant acted with "something other than a desire to see the ends of justice served."*** 612 F.3d at 164.

17. Malice as defined by Idaho Statue 18-101 (4). The words "malice," and "maliciously," import a wish to vex, annoy, or injure another person. For a malicious prosecution action, the standard for proving "malice" is less rigorous than the standard for proving "actual malice". *Malice may be proved by extrinsic evidence such as the defendant bore a grudge against the offended party or there was rivalry or ill-feeling between them.* [from Luis B Reyes, *Revised Penal code, Book II*, 15<sup>th</sup> ed., p. 951, citing *People vs. Hogan, CA*, 55 OG 1597.]

18. **Regarding Probable Cause: The advice of counsel relied upon must come from an independent, disinterested attorney.** *Howard*, 85 Idaho 286, 291, 379) .2d 414, 417.

19. The malice element is usually not difficult for the plaintiff to prove where there is an absence of probable cause, *Seelig v. Harvard Coop. Soc'y.*, 246 N.E.2d 642, 646 (Mass. 1969) (lack of probable cause is a sufficient basis for an inference of malice).and it does not require evidence of subjective ill will. ***If the defendant's actions are willful and done purposely, and known to him to be wrong and unlawful, malice is established.*** *United States v. Limone IV* , 497 F.Supp.2d at 220 (D.Mass.2007).

20. The standard of review of a trial court's decision of issues involving the introduction of evidence, is under an abuse of discretion [281 P.3d 120] standard. *Clair v. Clair* 281 P.3d 115, 153 Idaho 278 (Idaho 2012); *State v. Perry*, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003). The trial court has broad discretion to admit or exclude evidence, *Id.* at 521-22, 81 P.3d at 1221-32. "Error may not be predicated upon a ruling which admits or excludes evidence unless the ruling is a manifest abuse of the trial court's discretion and a substantial right of the party is affected." *Burgess v. Salmon River Canal Co.*, 127 Idaho 565, 574, 903 P.2d 730, 739 (1995).

21. The question of whether evidence is relevant is reviewed de novo, while the decision to admit relevant evidence is reviewed for an abuse of discretion. [1] *State v. Shutz*, 143 Idaho 200, 202, 141 P.3d 1069, 1071 (2006). A district court's improper exclusion of evidence will be overturned on appeal if it affects a party's substantial right. *Clair v. Clair*, 281 P.3d 115, 153 Idaho 278 (Idaho 2012); *Perception Const. Management, Inc. v. Bell*, 254 P.3d 1246, 1249, 1250 151 Idaho 250 (Idaho 2011); I.R.E. 103; I.R.C.P. 61(a); *Burgess v. Salmon River Canal Co., Lt.*, 127 Idaho 565, 574, 903 P.2d 730, 739 (1995).

22. Evidence that is relevant to a material and disputed issue concerning the crime charged is generally admissible. *State v. Stevens*, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I.R.E. 401; see also *Stevens*, 146 Idaho at 143, 191 P.3d at 221. Whether a fact is of consequence or material is determined by its relationship to the legal theories presented by the parties. *State v. Johnson*, 148 Idaho 664, 671, 227 P.3d 918, 925 (2010). We review questions of relevance de novo. *State v. Raudebaugh*, 124 Idaho 758, 764, 864 P.2d 596, 602 (1993); *State v. Houser*, 41540 (unpublished) (Idaho App. 2014).

23. Appeals from an order of summary judgment are reviewed de novo, and this Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c). Under this standard, disputed facts are construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. Where the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review. *Huber v. Lightforce USA, Inc.*, 41887 (Idaho December 15, 2015); *Trotter v. Bank of N.Y. Mellon*, 152 Idaho 842, 845–46, 275 P.3d 857, 860–61 (2012) (footnotes, internal case citations, and internal quotation marks omitted).

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25. When reviewing an order for summary judgment, the standard of review for the Appellate Court is the same standard as that used by the district court in ruling on the motion. Summary judgment is appropriate if " the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Disputed facts should be construed in favor of the non-moving party, and all reasonable inferences that can be

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27. The Appellate Court employs an abuse of discretion standard when reviewing a district court's denial of a motion to amend a complaint to add additional causes of action. *Spur Prod. Corp. v. Stoel Rives LLP*, 142 Idaho 41, 43, 122 P.3d 300, 302 (2005). When reviewing an exercise of discretion on the part of a district court, this Court considers: " (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason." *Id.* (quoting *Estate of Becker v. Callahan*, 140 Idaho 522, 527, 96 P.3d 623, 628 (2004)); *Taylor v. McNichols*, 243 P.3d 642, 648, 149 Idaho 826, 832 (Idaho 2010).

28. An Appellate Court will not set aside the trial court's findings of fact unless they are clearly erroneous.; As to questions of law, the Court exercises free review. *Humberger v. Humberger*, 995 P.2d 809,811, 134 Idaho 39, 41 (Idaho 2000); See *Jensen v. Jensen* 128 Idaho 600, 604, 917 P.2d 757, 761 (1996).

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*Thomson v. Idaho Insurance Agency, Inc.*, 126 Idaho 527, 530, 887 P. 2d 1034, 1037; *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 273, 869 P.2d 1365, 1368 (1994).

31. A plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence, *see Herbert v. Lando*, 441 U.S. 153, 160 (1979); *Tavoulareas v. Piro*, 260 U.S. App.D.C. U.S. App.D.C.9, 66, 817 F. 2d 762, 789 (en banc), cert. denied, 484 U.S. 870 (1987), and it cannot be said that evidence concerning motive or care never bears any relation to the actual malice inquiry." *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 668, 109 S. Ct. 2997 (1989); *Clark v. Spokesman Review*, 144 Idaho 427, 163 P.3d 216 (Idaho 2007); *Gardner v. Hollifield*, 97 Idaho 607, at 610, 549 P.2d 266, at 269 (Idaho 1976).

32. Under Idaho law there are six elements which must be proved in a case for malicious prosecution. They are: 1. There was a prosecution of plaintiff; 2. The prosecution terminated in favor of the plaintiff; 3. That the defendant was responsible for the prosecution; 4. That the defendant was activated by malice; 5. That there was a lack of probable cause to charge plaintiff; 6. That the plaintiff sustained damages. *Rincover v. State*, 128 Idaho 653, 917 P.2d 1293 (1996); *Clark v. Alloway*, 67 Idaho 32, 170 P.2d 425 (1946); *Robinson v. White*, 90 Idaho 548, 414 P.2d 666 (1966); *Myers v. City of Pocatello*, 98 Idaho 168, 559 P.2d 1136 (1977), *Baddell v. Beeks*, 115 Idaho 101, 765 P.2d 126 (1988); *Shanahan v. Grigray*, 131 Idaho 664, 962, 962 P.2d 1048 (1998); and *Butler v. Elle et al*, 281 F.3d 1014 (9<sup>th</sup> Cir. 2001).

33. The substance of probable cause is a "reasonable ground for belief of guilt." *Mink v. Knox*, 613 F.3d 995, 1003 (10th Cir.2010) (quoting *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949)). Probable cause exists if the facts and circumstances are sufficient to warrant a person of reasonable caution to believe a crime has been committed. *Id.* ***If evidence is falsified or withheld, the probable cause determination is made by considering whether, excluding the falsified inculpatory evidence or including the withheld exculpatory evidence, probable cause existed to prosecute.***

34. Probable cause exists if the facts and circumstances are sufficient to warrant a person of reasonable caution to believe a crime has been committed. *Id.* If evidence is falsified or withheld, the probable cause determination is made by considering whether, excluding the falsified inculpatory evidence or including the withheld exculpatory evidence, probable cause

existed to prosecute. See *Pierce*, 359 F.3d at 1295. - See more at: <http://caselaw.findlaw.com/us-10th-circuit/1576115.html#sthash.X1Ff4gEN.dpuf>

35. In a ruling on summary judgment motions, the court does not resolve conflicting evidence with respect to disputed material facts, nor does it make credibility determinations. *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass'n*, 809 F.2d 626 (9<sup>th</sup> Cir. 1987).

36. In a successful action for malicious prosecution, the plaintiff must show: (1) that there was a prosecution; (2) that it terminated in favor of plaintiff; (3) that the defendant was the prosecutor; (4) that the defendant was actuated by malice; (5) that there was want of probable cause; and (6) that damages were sustained. *Howard v. Felton*, 85 Idaho 286, 290, 379 P.2d 414, 416 (1963).

37. Summary judgment must be denied if reasonable persons could reach differing or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

38. In a malicious prosecution action, the district court determines whether the defendant had probable cause for the action and if there are no disputed facts as to the investigation made by the defendant or concerning the defendant's conduct in pursuing the lawsuit, the district court can resolve issues of probable cause as a matter of law. *Badell*, 115 Idaho 101, 103, 765 P.2d 126, 128; *Shannahan v. Gigray*, 131 Idaho 664, 667, 962 P.2d 1048, 1051 (1998).

## STATEMENT OF THE CASE

### Nature of the Case

Appellant, Candace “Andi” Elliott, appeals the dismissal on summary judgment in her Malicious Prosecution claim against the Respondent. Respondent initiated a false claim of trespass against Plaintiff 24 July 2011 (CR- 2011-3409) causing her to undergo a two year court process culminating in Plaintiff’s acquittal on 2 July 2013 when the Respondent/Defendant

testified under oath on 5 June 2013 that he never saw Plaintiff on his property.

Plaintiff voluntarily investigates complaints of animal abuse, neglect, and abandonment in South East Idaho, and assists law enforcement in the notification of, investigation of, and enforcement of the laws (at times acting under the color of law) regarding such; and with her previous capacity as a member and then President of The Humane Society of the Upper Valley and currently in her capacity as President of For The Love of Pets Foundation, Inc., has provided financial support for the treatment, transport, care, feeding and housing of neglected, abused and abandoned animals in and for the County of Jefferson as well as other counties since 2002 and continuing to the month of this filing.

On 24 July 2011, Plaintiff received a call from a concerned citizen regarding some neglected horses. The horses in question happened to be located across the public roadway from Defendant's home who was unknown to Plaintiff at that time. Plaintiff and (her husband who often accompanies her on animal cruelty complaints) was on the public roadway at all times taking pictures of the neglected horses. While at the scene of the horses in question, Plaintiff called the Jefferson County Sheriff's Office (JCSO) and requested a welfare check of the horses. Meanwhile Defendant who lived across the roadway from the horses called the JCSO demanding that the Plaintiff be charged with trespass as indicated by the recording of the JCSO Dispatch audio recording.

Defendant's pictures and his own testimony on 5 June 2013 under direct questioning by the Honorable Judge Robert Crowley corroborated the fact that he never saw Plaintiff on his property. None of the three witness statements taken on the day of the alleged incident by the



responding deputy stated that Plaintiff had trespassed. The deputy testified that he had no documentation that he had previously trespassed Plaintiff from Defendant's property.

According to the JCSO Deputy's notes # 1101736.001 as follows:

"On 04-20-2011 at approximately 18:00 Hrs dispatch advised of an animal abuse complaint made by an anonymous female saying there was a malnourished horse in the corals behind the home at 1998 N 2500 E in Jefferson County, Idaho. (Defendant's address) Dispatch said the female had advised she did not want (Andi Elliott) Candace White Elliott to get involved."

Defendant said he had Plaintiff trespassed from his property only Plaintiff had no knowledge of the alleged call from the Deputy; the Deputy could produce no documentation at trial that he had ever made such a call to Plaintiff and there were no supporting phone records. Nor did Plaintiff even know of Defendant or his old horse until charged with trespass by him on 24 July 2011.

All pictures taken by Defendant at the time of the alleged trespass show that Plaintiff and the car in which she was a passenger was on the public roadway at all times. It is clearly stated in Defendant's Warranty Deed that the public roadway is excluded from his private property. Yet the Defendant insisted that Plaintiff be charged with trespass for standing on the public roadway as documented by Defendant's comments on the Deputy's DVD recording during his investigation of the alleged incident, Defendant's signature on the citation, and the audio recording of the JCSO Dispatch.

During the investigation of the Defendant's complaint, the Deputy specifically inquired of the Defendant asking whether the Plaintiff was on the public roadway or in the gutter also public property. Ignoring the Deputy's question, Defendant proceeded to sign a complaint

against Plaintiff. All of Defendant's actions/statements were recorded by the Deputy's DVD on 24 July 2011.

After two years of court appearances and five days of trial spanning seventeen months, Defendant testified on 5 June 2013 under the direct questioning by the presiding judge (The Honorable Judge Robert Crowley) and subsequently by Plaintiff's attorney that he never saw Plaintiff on his property. Plaintiff was acquitted on 2 July 2013.

Plaintiff filed a malicious civil suit against Defendant on 6 January 2015. Defendant submitted a sworn affidavit on 22 September 2015 that was a complete reversal of his previous testimony stating that Plaintiff had trespassed which was an obvious attempt to avoid culpability on the part of the Defendant. The presiding judge granted summary judgment to Defendant.

Plaintiff appeals the trial court's decision granting summary judgment to Defendant based on the assertion that probable cause existed when the evidence clearly shows that:

- that Defendant refused to respond to the Deputy's questioning asking Defendant if Plaintiff was on public roadway or the "gutter" both of which are public property;
- that the Defendant's WARRANTY DEED explicitly excludes the public road and the "gutter" from Defendant's property;
- that the Defendant's own pictures show that Plaintiff was on the paved public roadway;
- that the Defendant clearly had a duty to determine if the roadway was public property and was negligent in his failure to do so;
- that Defendant failed to reveal that there was another person who continued to harass Defendant about his old horse (as recorded on the JCSO Dispatch recording of 8 September 2011); information that was withheld during Plaintiff's trial and only discovered by happenstance from a discovery request in the civil suit and to which Plaintiff's attorney will testify;

-that the Defendant and the actively involved county prosecutor (Jefferson County Prosecutor Robin Dunn) in Plaintiff's criminal case were long time family friends.

-Plaintiff was acquitted on 2 July 2013

On 22 September 2015, Defendant Young filed an Affidavit in Opposition to Plaintiff's Motion for Summary Judgment (copy attached). In his affidavit Defendant directly contradicts his recorded statements to the responding deputy and during his sworn testimony at trial. The following are excerpts from Defendant's sworn affidavit:

DEFENDANT KURT YOUNG writes: July 24, 2011 "Candace Elliott (Plaintiff) got out of the passenger side and walked around the car onto the public road." Defendant Young stated to the officer and as is recorded in the officer's official statement dated 24 July 2011 that the car was parked in front of his house and on the public road as depicted by Defendant's pictures.

DEFENDANT KURT YOUNG writes: "The place where the car was first stopped and Candace Elliott got out of the car is located on my property." Defendant testified that he never saw Plaintiff (Elliott) get out of the car.

DEFENDANT KURT YOUNG writes: I explained to him (Deputy) what I had seen, including where the car was located when the car first parked in my driveway and she (Plaintiff) got out of the car. I pointed specifically to that location so the deputy could see where it was." False, Kurt Young never told the above to the Deputy as documented on the Deputy's DVD recording. Kurt Young did point out to the deputy the location of the car that was on the paved public roadway.

DEFENDANT KURT YOUNG writes: "Although I signed a citation it was never used in the criminal case against Candace Elliott." (Plaintiff) Because Defendant signed a criminal citation against me, Plaintiff was charged with trespass.

DEFENDANT KURT YOUNG writes: "According to Deputy Clements' Affidavit, 'Kurt said that Candace W. Elliott had been on his property taking photos of his neighbor Dan Murdock's property and animals. (Note: Plaintiff had received a complaint about the poor horses belonging to the Murdock's.) Kurt said Candace had been on his property not on the roadway.'" Kurt testified multiple times (5 June 2013) that he never saw me on his property. Kurt refused to answer the Deputy when the Deputy specifically asked if the Plaintiff was on the public roadway or in the gutter (both public property).

There are other statements made in the Defendant's sworn affidavit that deviate from the actual recording made by the Deputy on the day of the alleged incident. Defendant leaves out of his affidavit that he told law enforcement that he had pictures of the alleged trespass. No pictures of such event were presented at trial and the Deputy testified in February 2012 (first day of trial) that he had been given no such pictures. Defendant's conflicting testimonies should call into question any statements made by him thereby impeaching his Affidavit dated 2 ½ years later.

The trial court granted Summary Judgment to Defendant in February 2016.

### **COURSE OF THE PROCEEDINGS**

Plaintiff filed her complaint against Defendant for malicious prosecution in the District Court on January 6, 2015, alleging that Defendant falsely and maliciously accused her of trespassing. Defendant was represented by the County Prosecutor Robin Dunn who was an active participant during Plaintiff's trial as documented by court minutes

Upon motion to disqualify opposing counsel by Plaintiff on March 24, 2015, the Honorable Judge Alan Stephens disqualified the Prosecutor citing violations of the I.R.P.C.) On May 29, 2015, Defendant retained attorney, Royce B. Lee, Esq.

There were various motions filed in an attempt to have Defendant's counsel to respond to discovery requests. For over 100 days Defendant's counsel refused to respond to discovery requests.

In August 2015, Plaintiff filed a motion to recuse based on the fact that the judge had already ruled against Plaintiff in two previous cases *based on the same set of facts*. Motion was denied on September 29, 2015.

On December 15, 2015 a jury trial was scheduled for February 23, 2016.

On February 1, 2016 hearing for motions on summary judgment.

On February 5, 2016 Court granted summary judgment to Defendant.

On March 15, 2016, Plaintiff filed Notice of Appeal.

#### STATEMENT OF THE FACTS

Plaintiff and Defendant are residents of Hamer, Jefferson County, Idaho population 51 (citing the US Census Bureau 2013). Before the alleged incident, Plaintiff did not know of Defendant.

On July 24, 2011, Plaintiff, Candace “Andi” Elliott, received a call from a neighbor about some poor horses. Plaintiff and her husband drove to the site of the horses. Upon observing several very thin horses, Plaintiff exited the car driven by her husband which never left the paved road. (Per affidavit of the driver, John Grubb.) Plaintiff stood at all times on the paved road and the public right of way taking pictures of the horses in questionable condition located across the road from Defendant’s property.

While at the scene, Plaintiff called the JCSO Dispatch explained the situation and requested a welfare check of the horses as documented by the JCSO audio recording. Plaintiff then re-entered the car and headed home.

Meanwhile, Plaintiff had noticed a man who was very agitated standing in front of a home located immediately across the roadway from the horses as she indicated in her witness statement. Plaintiff subsequently learned that it was the Defendant who called in a complaint about Plaintiff stating to Dispatch that he wanted Plaintiff charged with trespass and that he had

pictures of the alleged trespass.

Defendant produced no pictures of Plaintiff trespassing at trial. Defendant testified that he had no pictures of Plaintiff on his property. Defendant and Plaintiff's husband (Grubb) took pictures of each other taking pictures. Not ONE of the pictures taken by all three parties showed that at any time neither the Plaintiff or the car in which she was riding had left the pavement public right of way.

JCSO Deputy John Clements responded to the scene shortly after the alleged trespass. His video-taped investigation showed Defendant refusing to respond to his question as to whether Plaintiff was on the public roadway on the gutter (both public property). The video also shows multiple malicious comments made by Defendant against Plaintiff. The video ends at the point where Defendant prepares to sign a citation against Plaintiff.

A few weeks later (August 2011) Plaintiff was officially and formally charged with trespass by the office Jefferson County Prosecutor Robin Dunn (who has admitted to being a long time family friend of Defendant) based on Defendant's signed complaint.

Please note: Mr. Dunn has stated in a sworn affidavit that **"I was not involved in the day-to-day prosecution of the case."** However court minutes indicate that he was present on multiple days, addressed the court, questioned witnesses, signed subpoenas, and at one hearing was the only attorney representing the State. Mr. Dunn also initiated the imposition of a "gag" order against Plaintiff.

Plaintiff's criminal trespass bench trial began in February 2012, followed by another trial date in March of 2012, followed by three (3) more trial dates 15 months later, on June 5, 6, and 7

of 2013. On 5 June 2013, Defendant Young testified multiple times under direct questioning by the presiding judge and subsequently by Plaintiff's attorney that he never saw Plaintiff on his property. Plaintiff was acquitted on 2 July 2013.

In response to Defendant Young's false accusation and later recantation, Plaintiff filed a Malicious Prosecution suit against Defendant on January 6, 2015. (Jefferson County Prosecutor Robin Dunn offered to represent Defendant. Plaintiff filed a motion to disqualifying opposing counsel which was granted based on the Prosecutor's violation of the I. R. P. C.)

Defendant's sworn affidavit submitted to the court on 22 September 2015 is in direct conflict to his testimony on 5 June 2013.

It is believed that the current counsel, Mr. Royce B. Lee, Esq. agrees that all elements of a Malicious Prosecution suit have been met with the exception of the fifth element: (1) there was a prosecution (2) the original action terminated in favor of the plaintiff; (3) the defendant was instrumental in initiating the prosecution; (4) that he was actuated by malice; (5) there want of probable cause; and (6) the amount of damages that Plaintiff sustained. *Russell v. Chamberlain*, 12 Idaho 299, 303, 85 P. 926 (1906); *Robinson v. White*, 90 Idaho 548, 414 P.2d 666 (1966); Restatement (Second) of Torts § 667; *Howard v. Felton*, 85 Idaho 286, 290, 379 P.2d 414, 416 (1963).

*It is the fifth element, "want of probable cause", that is the basis of this appeal...as there it is clearly documented and admitted by Defendant that Defendant initiated the prosecution, the action was terminated in favor of the Plaintiff, the Defendant acted with malice as evident on the*

Deputy's DVD, that the prosecutor was not impartial and independent and the Plaintiff sustained damages in the amount of \$25,000 for attorney's fees.

### **ISSUES PRESENTED ON APPEAL**

- a. Did the District Judge err in granting summary judgment in favor of Defendant?
- b. Did the District Judge err in not taking into account that Defendant provided documented false statements to law enforcement?
- c. Did the District Judge err in not considering that Defendant and the substantially involved Prosecutor (Jefferson County Prosecutor Robin Dunn) were long time family friends?
- d. Did the District Judge err in not considering that Defendant's sworn affidavit of September 2015 submitted in this current matter was in direct conflict to his testimony of June 5, 2013 during Plaintiff's trial?
- e. Did the District Judge err in failing to consider that the Prosecutor has a long time history of bias against Plaintiff as evidence by prior writings/actions against Plaintiff?
- f. Was it error for the District Judge to fail to consider Defendant's documented and recorded animus towards Plaintiff?
- g. Did the District Judge err in failing to consider that Defendant waited two years before testifying that he never saw Plaintiff on his property?
- h. Did the District Judge err in failing to consider that Defendant withheld information the court/law enforcement/prosecutor that the harassment of Defendant about his old horse continued AFTER he charged Plaintiff as documented by the Deputy's call to the JCSO on 8 September 2011?
- j. Was it error for the District Judge to fail consider that there was *no evidence* presented by law enforcement that the Plaintiff had ever been trespassed from Defendant's property?
- k. Did the District Judge err in failing to recuse himself as requested by Plaintiff because of



his previous interactions with Plaintiff regarding the same set of facts and the same Prosecutor?

l. Did the District Judge err in failing to recognize that Defendant produced NO PICTURES of Plaintiff trespassing as he told law enforcement and as stated in the probable cause affidavit?

m. Did the District Judge err in failing to consider that the Defendant refused to answer the Deputy when he specifically inquired of the Defendant whether the Plaintiff was on the public roadway or in the gutter (public right of way)?

n. Did the District Judge err in not recognizing Defendant's extreme negligence in not checking his property boundaries or with county employees as to whether the public roadway was his property before having Plaintiff charged?

o. Did the District Judge err in not considering that the Defendant had a duty to fully and truthfully inform law enforcement so the magistrate could have made an informed decision regarding the issuance of a probable cause affidavit?

## ARGUMENT

*Allen* indicates that the “advice of counsel defense” is not available in a malicious prosecution claim if you lie to the police or to the prosecutor. “If the record shows that a substantial question of fact exists as to whether respondent had stated to counsel all the material facts know to him the motion for summary judgment should not have been granted.” *Allen v. Moyle*, 84 Idaho 18, 24, 367 P. 2d 579, 583 (1961).

When a party knowingly provides false information, “an intelligent officer’s discretion becomes impossible, and a prosecution based upon it is procured by the person giving the false information.” Restatement (Second) of Torts § 653 cmt. G (1977).

In an action for malicious prosecution, the “advice of counsel” defense is predicated upon “full and fair disclosure” Howard, 85 Idaho at 293-294. There is no distinguishing between magistrate and law enforcement.

Defendant stated to the JCSO Dispatch on 24 July 2011 (the date of the alleged trespass) that Plaintiff was on his property and that he had pictures...information that was included by the officer in his Probable Cause Affidavit. Defendant told officer as recorded by the Officer's DVD, that he had pictures of Plaintiff on his property. The Deputy's notes state that the Defendant stated that he had pictures of Plaintiff trespassing. However, *Defendant testified that he had NO pictures of Plaintiff on his property and none were produced at trial. Defendant testified multiple times in court on 5 June 2013 that he never saw Plaintiff on his property.*

There is an issue of material fact as to Defendant's "advice of counsel" defense for the jury to decide in her malicious prosecution claim. In *Howard v. Felton*, the court has established that the defense of advice of counsel is equivalent to a showing of probable cause thereby precluding an action for malicious prosecution. *Howard*, 85 Idaho 286, 291, 379 P.2d 414, 417. *Further, the court holds that the advice of counsel is only a defense to an action for malicious prosecution when it appears that the prosecution was initiated in reliance in good faith on advice given after a full and fair statement to the attorney of all facts.* *Dawson v. Mead*, 98 Idaho 1, 5, 557 P. 2d 595, 599 (1976); *Allen v. Moyle*, 84 Idaho 18, 24-25, 367 P.2d 579 (1961).

**The advice of counsel relied upon must come from an independent, disinterested attorney.**

*Howard*, 85 Idaho 286, 291, 379 P. 2d 414, 417. Prosecutor Robin Dunn revealed in court that he was/is a long time family friend of the complainant and also has a long history of bias against Plaintiff. The presiding judge disqualified Mr. Dunn from representing Defendant in the civil action for violating the I.R.P.C.

Had Defendant made full and fair disclosure in his statements to law enforcement there would have been no basis for probable cause. Defendant waited two years before finally testifying that he never saw Plaintiff on his property. Defendant had Plaintiff charged with trespass in spite of the fact that his Warranty Deed specifically excluded the public roadway from his property. Defendant had Plaintiff charged even though there was evidence that there was another suspect involved according to deputy's Dispatch call...information that was withheld from Plaintiff during her trial and only discovered by happenstance through a discovery request during the Plaintiff's malicious prosecution action against Defendant.

Defendant is attempting to build a different case now over four years after the alleged baseless trespassing event. The test for probable cause applies at the time the original case commenced and the facts document in the Defendant's own words and with his own pictures and testimony that the Plaintiff at no time ever was on the Defendant's property, that Defendant had made repeated complaints about Plaintiff (unknown to her because the JCSO found them to be unfounded), that Defendant and the substantially involved Prosecutor were long time family friends, that information was withheld indicating another person was involved in the harassment of Defendant's about his horse, that Defendant has submitted a false affidavit to the court (22 September 2015) in direct conflict with statements previously made by Defendant testimony and the facts of the matter have already been determined in court resulting in an acquittal of the Plaintiff.

## SUMMARY

Plaintiff has presented more than a “scintilla” of evidence creating an issue of material fact that should be presented to a jury:

- Defendant did not provide all material facts known to him.
- Defendant stated that he had pictures of Plaintiff trespassing when he had none; information that was included in the probable cause affidavit presented to the magistrate.
- Defendant withheld information that there was a second possible suspect.
- Defendant failed to reveal that he and the Prosecutor were long time friends.
- Defendant had a history of making baseless complaints about Plaintiff unbeknownst to her and only discovered through discovery requests.
- Defendant testified to the following on 5 June 2013 CR-2011-3409 Court audio recording:

3:37 Defendant testified that he didn't observe Plaintiff getting out of car  
4:11 Defendant testified that he did not see Plaintiff get out of the car  
4:55 Defendant testified that he didn't see me get out of the car  
5:25 Defendant testified that he never saw me get out of the car  
6:57 Defendant testified that he first saw me walking down the side of the road  
7:21 Defendant testified that he didn't see Plaintiff on his property  
9:00 Defendant testified that he didn't see me on his property  
10:01Defendnat testified that he did not see me get out of the car

These statements are in direct conflict with Defendant's sworn affidavit of 22 September 2015 and therefore serves to impeach the Defendant.

The “advice of counsel” defense must fail for there was no valid probable cause to charge Plaintiff with trespass. The probable cause affidavit rather was based upon Defendant's false statements (which two years later he recanted under oath) and the lack of a “disinterested and

impartial” prosecutor (Defendant’s friend) who was actively involved in Plaintiff’s trial as evidenced by court minutes/signed subpoenas, and direct calls between Defendant and Prosecutor indicating collusion between Defendant and Prosecutor.

*Probable cause exists if the facts and circumstances are sufficient to warrant a person of reasonable caution to believe a crime has been committed. Id. If evidence is falsified or withheld, the probable cause determination is made by considering whether, excluding the falsified inculpatory evidence or including the withheld exculpatory evidence, probable cause existed to prosecute. See Pierce, 359 F.3d at 1295. - See more at: <http://caselaw.findlaw.com/us-10th-circuit/1576115.html#sthash.X1Ff4gEN.dpuf> . **Probable Cause: The advice of counsel relied upon must come from an independent, disinterested attorney.** Howard, 85 Idaho 286, 291, 379) .2d 414, 417.*


The court has established that the defense of advice of counsel is equivalent to a showing of probable cause and that normally this would preclude an action for malicious prosecution. *Howard*, 85 Idaho 286, 291, 379 P.2d 414, 417. Advice of counsel is only a defense for a malicious prosecution action when it appears that the prosecution was initiated in reliance in good faith on advice given after a full and fair statement to the attorney of all facts. *Dawson v. Mead*, 98 Idaho 1, 5, 557 P.2d 595, 599 (1976); *Allen v. Moyle*, 84 Idaho 18, 24-25, 367 P.2d 579 (1961). The advice of counsel relied upon must come from an independent, disinterested attorney. *Howard*, 85 Idaho 286, 291, 379 P.2d 414, 417.

Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

The facts of this matter demonstrate beyond a reasonable doubt that the Defendant acted in a reckless and malicious manner. No reasonable person would find grounds for Defendant’s complaint against Plaintiff if given a chance to view the evidence and hear testimony.

Therefore, Plaintiff respectfully requests that the summary judgment order in favor of Defendant be overturned and that the facts of this case be allowed to be presented to a jury.

Respectfully submitted this 28 day of July, 2016.

  
\_\_\_\_\_  
ANDI ELLIOTT

## EXHIBITS for Elliott v. Young

Docket No. 44068

- Exhibit A Judge's order final page
- Exhibit B Letter from Jefferson County Sheriff's Office indicating that an "anonymous" person continued harassment of Defendant after he had Plaintiff charged...dated September 8, 2011.
- Exhibit C Copy of JCSO Deputy notes dated July 24, 2011
- Exhibit D Defendant's witness statement dated July 24, 2011
- Exhibit E Plaintiff's witness statement dated July 24, 2011
- Exhibit F Probable Cause Affidavit dated 29 July 2011
- Exhibit G Defendant's Warranty Deed (2 pages)
- Exhibit H Defendant's sworn affidavit dated September 22, 2015
- Exhibit I JCSO Deputy notes about "anonymous female caller" complaining about Defendant's horses specifically requesting the Plaintiff not become involved.

JUL/08/2013/MON 11:25 AM

FAX No.

A

P. 005

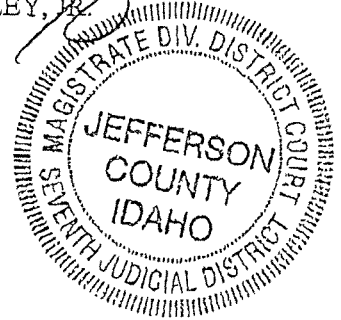
property) and did not have permission on that date to enter upon the defendant's property, however, based upon the evidence admitted at trial, the court finds and concludes that the State did not prove beyond a reasonable doubt that the defendant, in fact, entered or was actually on Kurt Young's property (or an area of Kurt Young's property not encompassed by a public easement and/or right-of-way) on or about July 24, 2011.

**CONCLUSION**

Based upon the foregoing, the court finds the defendant Not Guilty of Trespass.<sup>2</sup>

DATED: 7/2/2013

  
ROBERT L. CROWLEY, JR.  
Magistrate



<sup>2</sup> The finding of Not Guilty on the charge of Trespass does not resolve the issues encompassed by the State's Motion for Contempt, which, as set forth above, will be tried at a later date after appointment of a special prosecutor.

DECISION FOLLOWING TRIAL





B

**Steven P. Anderson**  
**Jefferson County Sheriff**  
**200 Courthouse Way • Rigby, Idaho 83442**  
**Ph: 208-745-9210 Fax: 208-745-9212**

Dear Andi,

02/02/2016

I have been asked to research and locate a telephone recording of an "Anonymous" phone call of a complaint that was called in about Mr. Kurt Young at 1998 N 2500 E (Old Butte Hwy) in Hamer on September 8, 2011. The incident shows the time of the call at 1058 a.m. There is no recording on file that I can locate. I have searched the recorder for two hours before this call and there is no call being called in anonymously against Mr. Young. At 1058 a.m. Deputy John Clements called dispatch and advised dispatch to make an incident; Incident 2011-05063. Deputy Clements told dispatch he did not know who the Reporting Party was because they kept sending anonymous faxes about animal abuse at Kurt Young's residence. Dispatch, therefore, had no name to attach as a Reporting Party due to the fact the Anonymous Caller did not call dispatch. I hope this helps.

Sincerely,

A handwritten signature in cursive script that reads "Mike Miller".

Sgt. Mike Miller, Jefferson County 911

On 07-24-2011 at approximately 13:37 Hrs dispatch advised me of a trespass complaint at 1998 N 2500 E in Jefferson County, Idaho. Dispatch advised the reporting party said that Candace W Elliott AKA (Andi Elliot) was on his property and his neighbors property. I responded to the area.

Dispatch advised me while I was responding to the area that Candace had also called in a report of animal abuse at the Dan E Murdoch residence at 1995 N 2500 E in Jefferson County, Idaho. I advised dispatch to ask Candace to wait and talk to me in Hamer on the Old Butte Hwy. Dispatch said Candace said she would wait at her residence at 2498 E 2100 N in Jefferson County, Idaho.

I responded to 1998 N 2500 E. I spoke with the reporting party Kurt E Young. Kurt said that Candace had been on his property and was taking photos of his and his neighbors horses. Kurt said he had photos of Candace on his property. Kurt filled out a witness statement.

I spoke with Klurissa Young. Klurissa said she saw a car with two people in it and a female got out of the car and was on their property taking pictures of the property and of the Murdoch property as well. Klurissa filled out a witness statement.

Kurt provided me the photos he had taken of the people on his property. I verified with Kurt that Candace had been on his property not on the roadway or the gutter area. Kurt said she had been on his property. Kurt said he wanted to sign a citation for trespassing and disturbing the peace. I allowed Kurt to sign a citation and advised him that I would forward it to the prosecutor with a full report.

I had previously trespassed Candace from Kurt's property on 04-20-2011 at Kurt's request.

I responded to 1995 N 2500 E. I spoke with Dan Murdoch. Dan said that his wife saw Candace in the area taking photos of the horses. Dan said he saw a woman and a man taking photos of their horses and then argued with Kurt and left the area. Dan filled out a witness statement.

I spoke with Brenda Murdoch. Brenda said she was on the porch cooking when she saw Candace taking pictures of the horses and driving back and forth past the property. Brenda said that Candace got out of the car

D

# Written Statement

Witness     Suspect     Victim

|  |                                 |   |
|--|---------------------------------|---|
| Date statement given<br>7/24/11  | Time statement given<br>2:00 Pm | Location statement given<br>1998 N 2500 E |
| Full Name<br>Kurt E Young  |                                 | [REDACTED]                                |
| Mailing/Physical Address (where you currently reside)<br>1998 N 2500 E Hamer IDAHO |                                 |   |
| City<br>Hamer  | State<br>IDAHO                  | Zip Code<br>83425                         |
| Home Phone<br>(208) 662-5266   | Work Phone                      | Cell Phone<br>(208) 220-8434              |
| Deputy   | Department/Office               | Incident Number                           |

(IF [REDACTED] 135)  
 My Daughter Notified me of a white car driving by slowing  
 by my pasture and my house turning around and looking back into  
 my coralls, she (Aadi Elliot) then 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. She then called the JCSO on her cell phone and told  
 them there was animal abuse. I heard the whole conversation.  
 They then continued down the road and parked by my back gate  
 continuing to take pictures, she then crossed onto the borrow pit  
 and entered her car and left. They took pictures of me the whole  
 time this was going on.

more statement attached

Signed Kurt E Young  
The above is a true and correct statement

E

# Written Statement

Witness  Suspect  Victim

|  |                              |   |
|--|------------------------------|---|
| Date statement given<br>24 July 2011                                   | Time statement given<br>2:48 | Location statement given<br>2498 E 2100 N HAMER |
| Full Name<br>Andi Elliott  |                              | Date of Birth                                   |
| Mailing/Physical Address (where you currently reside)<br>2498 E 2100 N |                              |   |
| City<br>HAMER  | State<br>ID                  | Zip Code<br>83425                               |
| Home Phone<br>208-662-5808   | Work Phone                   | Cell Phone<br>419-8064                          |
| Deputy<br>Clements   | Department/Office            | Incident Number                                 |

Approx. 1 p.m. I received a call from Bill Shurdiffs, the next door neighbor to Dan Murdoch's corner of horses). Bill told me that the Murdoch horses were in terrible shape & that he & another neighbor had called in complaints previously. I believe he said last week.

So he called me & asked that I go see them - they are about 1/2 mile from my home.

My husband & I drove over there immediately & saw about a dozen horses in the pasture. They were thin but not too bad.

Then I saw a group of horses <sup>bundled</sup> in a small area... once we they began walking out into the pasture.

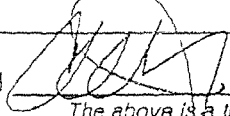
Horse were none would expect a horse to look in mid-summer.

Especially noteworthy were 3 (not all part of the corral)... a small paint (a 1-2 on the Norwiche scale) a small bay & a very poor little chestnut.

I'm guessing that they are perhaps started Equines.

The neighbor across the street (obviously unhappy) began taking pictures & made a phone call.

After observing the animals, I called the GCSD.

Signed  \_\_\_\_\_  
The above is a true and correct statement .

more statement attached

F

IN THE DISTRICT COURT OF THE SEVENTH DISTRICT JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON MAGISTRATE DIVISION

2011 AUG 18 AM 8:02

STATE OF IDAHO, )  
)  
Plaintiff )  
)  
vs )

Case SCR-2011-34408 DISTRICT COURT JEFFERSON COUNTY, IDAHO  
(to be assigned by Clerk)

PROBABLE CAUSE AFFIDAVIT

Candace White Elliott  
Defendant

State of Idaho, County of Jefferson, ss.

John Clements, the undersigned, being first duly sworn on oath, deposes and says:

1. I am a peace officer employed by Jefferson County Sheriff's Office.
2. The Defendant was arrested on \_\_\_\_\_ at \_\_\_\_\_  am  pm for the crime(s) of:  
18-7008 trespass  
18-6409(1) disturbing the peace
3. The crime(s) occurred in the County of Jefferson.
4. How was the defendant identified? Witnesses
5. The crime(s) was committed in my presence  Yes  No
6. I believe that there is probable cause to believe the Defendant committed such crimes(s) because of the following facts (Note: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person): On 07-24-2011 at approximately 13:37 Hrs dispatch advised me of a trespass at 1998 N 2500 E in Jefferson County, Idaho. While I was enroute to 1998 N 2500 E dispatch advised me that Candace White Elliott aka (Andi Elliott) called reporting animal abuse at 1995 N 2500 E. On my arrival at 1998 N 2500 E I met with Kurt E Young. Kurt said that Candace W Elliott had been on his property taking photo's of his neighbor Dan Murdoch's property and animals. Kurt said he had trespassed Candace from his property and he wanted her charged with trespassing and disturbing the peace. Kurt said Candace had been on his property not on the roadway. I spoke with Klurissa Young. Klurissa said she saw Candace out of her vehicle on the property taking photos and driving by the home several times. Kurt said he had photos of Candace. Kurt provided the photos to me.
7. I checked the Sheriff's Office records and found that I had trespassed Candace from Kurt's property on 04-20-2011 at Kurt's request.

8/18/11



105003  
FIRST AMERICAN TITLE  
336948

AFTER RECORDING MAIL TO:

Kurt Young and Kaylene Young  
1998 North 2500 East  
Hamer, ID 83442

Instrument # 336948

RRIGBY, JEFFERSON, IDAHO  
22005-01-25 04:10:00 No. of Pages: 2  
RRecorded for: FIRST AMERICAN TITLE  
CCHRISTINE BOULTER Fee: 6.00  
EEEx-Officio Recorder Deputy EC  
IIndex to: WARRANTY DEED

G

### WARRANTY DEED

File No.: 105003-RI (II)

Date: January 20, 2005

For Value Received, **Michael D. Hunter and Lisa Hunter, husband and wife**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Kurt Young and Kaylene Young, husband and wife**, hereinafter called the Grantee, whose current address is **1998 North 2500 East, Hamer, ID 83442**, the following described premises, situated in **Jefferson County, Idaho**, to-wit:

**PARCEL 1: TOWNSHIP 7 NORTH, RANGE 36 E.B.M., JEFFERSON COUNTY, IDAHO.**

**SECTION 23: ALL THAT PART OF THE SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> OF SAID SECTION 23 LYING WEST OF THE RAILROAD RIGHT-OF-WAY.**

**EXCEPTING THEREFROM: BEGINNING AT THE SW CORNER OF THE SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> OF SAID SECTION 23, AND RUNNING THENCE NORTH 430 FEET; THENCE EAST TO THE WEST RIGHT-OF-WAY OF AN EXISTING RAILROAD; THENCE SOUTHEASTERLY, FOLLOWING THE WEST RIGHT-OF-WAY OF SAID RAILROAD TO THE INTERSECTION WITH THE SOUTH LINE OF THE SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; THENCE WEST TO THE POINT OF BEGINNING.**

**PARCEL 2: TOWNSHIP 7 NORTH, RANGE 36 E.B.M., JEFFERSON COUNTY, IDAHO.**

**BEGINNING AT THE SW CORNER OF THE SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> OF SAID SECTION 23, AND RUNNING THENCE NORTH 430 FEET; THENCE EAST TO THE WEST RIGHT-OF-WAY OF AN EXISTING RAILROAD; THENCE SOUTHEASTERLY, FOLLOWING THE WEST RIGHT-OF-WAY OF SAID RAILROAD TO THE INTERSECTION WITH THE SOUTH LINE OF THE SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; THENCE WEST TO THE POINT OF BEGINNING**

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

RECEIVED BY

ASSESSOR

For PLATTING

Date 1/25/05 Time 4:10P





Royce B. Lee, P.A.  
Attorney at Law  
770 South Woodruff Avenue  
Idaho Falls, Idaho 83401  
Telephone: (208) 524-2652  
Facsimile: (208) 524-2051  
Idaho State Bar #1691

*Hurts  
Affidavit  
H*

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

|                            |   |                            |
|----------------------------|---|----------------------------|
| CANDACE "ANDI" W. ELLIOTT, | ) |                            |
|                            | ) | Case No. CV-2015-04        |
| Petitioner,                | ) |                            |
|                            | ) | AFFIDAVIT IN OPPOSITION TO |
| v.                         | ) | PLAINTIFF'S MOTION FOR     |
|                            | ) | SUMMARY JUDGMENT           |
| KURT E. YOUNG, SR.,        | ) |                            |
|                            | ) |                            |
| Respondent.                | ) |                            |
| _____                      | ) |                            |

COMES NOW Kurt E. Young, Sr., under oath and swears and deposes as follows:

1. My name is Kurt E. Young, Sr. I am the Defendant in the above case.
2. On July 24, 2011, I was at my home in Hamer, Idaho, shortly after 1:00 p.m. I saw a white car parked in my driveway facing north. Candace Elliott got out of the passenger side and walked around the car onto the public road. The driver then drove the car to another section of my driveway.
3. The place where the car was first stopped and Candace Elliott got out of the car is located on my property. The edge of the car and the place where she got out of the car was approximately 31 to 31 and 1/2 feet from the center of the road. The road is about 22 feet wide so my half is about 11 feet. Attached as Exhibit A is a correct copy of my

Warranty Deed. It shows I own to the SW Corner of the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 23. That corner is in the middle of the county road in front of my house.

4. I called the Jefferson County Sheriff's Department to complain about Candace Elliott trespassing on my property. Candace Elliott had been previously "trespassed", meaning, at my request, she had been told by Jefferson County Sheriff Deputy John Clements, on April 20, 2011, that she was not allowed to come on my property.
5. Deputy John Clements came to my house to respond to my phone call. I explained to him what I had seen, including where the car was located when the car was first parked in my driveway and she got out of the car. I pointed specifically to that location so the deputy could see where it was.
6. The deputy told me that if he had seen her on my property he could have arrested her for trespassing.
7. Deputy Clements gave me a paper called a citation. He asked me if I wanted to sign it against Candace Elliott for trespassing. Based on what the Deputy Clements just told me, I told him that I did. I did so believing that Candace Elliott was in fact on my private property on that day.
8. Although I signed a citation it was never used in the criminal case against Candace Elliott.
9. Deputy Clements prepared a Probable Cause Affidavit which was filed with the Court on August 18, 2011. A copy of that report is attached to this Affidavit as Exhibit B. According to Deputy Clements' Affidavit, "Kurt said that Candace W. Elliott had

been on his property taking photos of his neighbor Dan Murdock's property and animals. Kurt said Candace had been on his property not on the roadway.

10. The Jefferson County Prosecuting Attorney prepared a Criminal Complaint against Candace White Elliott in Case No. CR-11-3409. It was filed with the Court on August 22, 2011, approximately twenty-nine days after I signed the citation. The Criminal Complaint was signed under oath by John Clements, Jefferson County Sheriff Deputy. It was witnessed by Judge Robert Crowley. A copy of that Complaint is attached hereto as Exhibit C.

11. The Jefferson County Prosecutor decided to file the Criminal Complaint against Candace Elliott. I did not have any further contact with the prosecuting attorney or the sheriff's office after my discussion with Deputy Clements on July 24, 2011, and before the Criminal Complaint was filed.

12. I was called as a witness in the trial against Candace Elliott but I was not the prosecuting party in that case. I did not participate in the decision by the Prosecutor to file charges against Candace Elliott.

13. On April 20, 2011, Candace Elliott came to my property and I saw her taking pictures of my property. It appeared she was taking pictures of my house and I was concerned that she was actually trying to take pictures of my children. As a result I asked the Jefferson County Sheriff's Department to notify Candace Elliott that she was "trespassed" from my property, which he did.

14. When Candace Elliott came to my property on July 24, 2011, and actually trespassed on my property and was taking pictures of my neighbor's property, it was

upsetting to me as I had given her notice not to come on my property. I believed that, and still believe, that she was ~~on my property~~ on July 24, 2011, as compared to being on the public roadway or right-of-way.

15. When I spoke with Deputy Clements I explained to him exactly what I had seen about Candace Elliott being on my property. He indicated to me that based on what I showed to him that she was guilty of trespassing. He then asked me if I wanted to sign the citation against her. Based on what I understood at that time and the information I received from Deputy Clements I signed the citation. I did so believing I was correct and that she had trespassed on my property.

16. The information contained in Deputy Clements' Probable Cause Affidavit about Candace Elliott being on my property on July 24, 2011, is correct. I believe there was a reasonable basis for me and for Deputy Clements to state that she had trespassed on my property.

DATED this 22 day of September, 2015.

Kurt E Young  
Kurt Young

STATE OF IDAHO )

County of Bannock)

On this 22 day of September, in the year 2015, before me Royce B. Lee  
a notary public in and for the State of Idaho, personally appeared Kurt Young, known or  
identified to me to be the person whose name is subscribed to the within instrument, and  
acknowledged to me that he executed the same.

(SEAL)



Royce B. Lee  
Notary Public for Idaho  
My Commission Expires: 6/18

T

On 04-20-2011 at approximately 18:00 Hrs dispatch advised of an animal abuse complaint made by an anonymous female saying there was a malnourished horse in the corals behind the home at 1998 N 2500 E in Jefferson County, Idaho. Dispatch said the female had advised she did not want (Andi Elliot) Candace White Elliott to get involved.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 28 day of July 2016 by prepaid mail or hand delivery.

Royce B. Lee, Esq.

770 Woodruff Ave.

Idaho Falls, ID 83401

  
\_\_\_\_\_

ANDI ELLIOTT