

IN THE IOWA DISTRICT COURT FOR WORTH COUNTY

STATE OF IOWA,)	
PLAINTIFF)	
)	Case No. SMCR011328
VS.)	
)	NOTICE OF APPEAL AND
BARBARA J. KAVARS,)	REQUEST FOR ORAL ARGUMENT
DEFENDANT.)	

COMES NOW, Barbara J. Kavars, by and through her undersigned attorney, and hereby gives notice of her appeal in the above captioned cause from the adverse decision of the jury dated October 18, 2019 and the imposition of sentence by Associate Judge Lawrence Jahn on October 29, 2019, and from every adverse pre-trial ruling, including, but not limited to, the Ruling on Motion to Suppress dated October 7, 2019 and Rulings on Motion in Limine and seeks suppression of evidence seized on November 12, 2018 or in the alternative seeks reversal of the judgment and modification of the sentence thereon.

This matter is timely filed and the Defendant raises the following issues, including but not limited to:

1. The Reversal of Ruling on Motion for Suppression as to:
 - A. The Associate Judge Jahn improperly found that the Relinquishment Agreement introduced as Exhibit 136 was voluntarily signed by the Defendant during the execution of the search warrant on November 12, 2018 despite:
 - (1.) Specific intimidation that if the relinquishment agreement was not signed, Ms. Kavars would have all of the dogs taken from her premises; and
 - (2.) The fraudulent inducement that if she signed the agreement the 9 dogs and 4 cats excepted from the relinquishment agreement would be allowed to be retained by her and those animals would be left with Barb for her to keep, subject only to the medical



recommendations for care required for the animals. These threats and promises are recorded on body cams and car cams admitted into evidence regarding the seizure of animals on November 12, 2019 as Exhibit 16 and Exhibit 17 in the suppression hearing.

- (3.) That the Ruling of Associate Judge Jahn failed to require the State to assume the burden of proof that the “taking” of property pursuant to any claim of voluntary release by the Defendant during the execution of the search warrant must be placed on the State and the Court must view with suspicion any variation from the Court issuance of a warrant or the supervision of the Court over its own warrants will be unconstitutionally impaired. State v. Freese 166 NW 2d 785 (Iowa 1969).

Indeed, at page 6, the Court notes:

“Although Kavars may not have been pleased with the removal of the dogs from her premises, her actions suggest that she nevertheless consented...”

This is not the standard to find consent during the execution of a search warrant and the burden is on the State to prove consent separately from any intimidation or coercion related to the warrant by clear and convincing evidence. Signing a document after the agreement is reached by intimidation or coercion does not prove consent.

- B. That the trial court improperly concluded that ASPCA was not acting under color of law as an agent of the state despite:

- (1.) The agreement between Worth County and ASPCA, Trial Exhibit 137, clearly indicates:

- (a) ASPCA was providing assistance to Worth County for “evidence identification, collection and evaluation.” (P. 1 paragraph 1, Emphasis added.)
- (b) It was anticipated that law enforcement may seize and take custody of approximately 200 or more dogs and/or puppies (the “seized animals”).
- (c) Worth County agreed to hold harmless and indemnify all ASPCA related persons arising from any activity under that agreement.

- (2.) ASPCA is specifically authorized by Magistrate Krull on November 9, 2018 to assist Worth County Sheriff's office in execution of the Warrant and Section 808.5 of the Iowa Code requires all such persons act only in aid of the authorized person (Deputy Grunhovd) at his request and under his supervision.
- (3.) During the execution of the warrant at 7:50 a.m. on Exhibit 16 Andy Grunhovd states that he has to check with Kyle Held and the ASPCA legal person as to procedure during the execution of the warrant.
- (4.) Only after Deputy Grunhovd delays execution of the search warrant to provide ASPCA an opportunity to seek a voluntary release of 100 dogs to ASPCA does the Deputy start to execute the warrant.
- (5.) Throughout the collection of dogs pursuant to the search warrant, Deputy Grunhovd allows Kyle Held of ASPCA to continue to negotiate with the Defendant that she can either sign over the number of dogs Kyle Held requires and keep the remaining animals or if she does not do so, all animals will be taken pursuant to the search warrant already in the process of being executed. As clearly noted on page 6, last paragraph of the Court's Ruling on Motion to Suppress:

"Recorded conversations between Kavars and ASPCA agent Kyle Held indicate that when faced with the possibility of having her dogs seized pursuant to a warrant, she opted to voluntarily surrender the dogs."

The court continued:

"These conversations reflect negotiations between Kavars and Held not so much as to whether dogs would be surrendered but rather as to the number of dogs that Kavars would be able to exclude from her consent. In those negotiations, Kavars effectively argued her position. Through a persistent and protracted series of pleas, promises, cajoling, coaxing, capitulation and other persuasive efforts, Kavars was able to improve her position with respect to the number of dogs she could retain."

- (6.) The Relinquishment Agreement signed by Barb Kavars gave ownership and possession of the animals not to ASPCA, but to



worth County and was accepted by Deputy Grunhovd for Worth County.

- (7.) Not disclosed to Barb Kavars, Worth County had already signed the confidential agreement with ASPCA that ASPCA, not Worth County, would assume control of the animals seized by warrant or voluntary surrender (Trial Exhibit 137).
- (8.) Judge Jahn's reasoning that the ASPCA was not acting under color of law, or as an agent of the State is set out as follows, beginning at page 5:
- (a.) It was not Worth County that took the lead in seizing or relinquishment of the animals, but the actions of animal welfare agencies while Grunhovd was there just to "keep the peace" (Ruling, p. 5.). This suggests the Worth County Sheriff's Office was acting in obtaining the warrant as an agent of the animal welfare agencies, not the other way around. The rescue of an endangered animal under 717B.5 is made by a "law enforcement officer," not an animal welfare agency and 717B.5 allow for contractual maintenance of the animals after they are seized. This ignores, however, that both the search warrant itself and the agreement between Worth County and the ASPCA allow ASPCA to do more than just house the animals after seizure, but to participate in the collection and seizure of the animals themselves.
- (b.) That dogs relinquished "voluntarily" by Kavars were isolated from the actions of the deputy and those animals were not subject to §717B.5. ASPCA acted under the relinquishment agreement alone and not under 717B.5 because that applies only to the law enforcement officer. Also, the ASPCA relinquishment agreement is separate from the action of the Deputy in seizing the animals not released voluntarily to ASPCA, whether that was under 717B.5 or 717B.3.
- (9.) However, this ignores Judge Jahn's decision that:
- (a.) The criminal warrant as issued is valid, and it is that which gave the deputy and his designated agents (including ASPCA) the right to enter the property for the purposes for which it was sought only (last paragraph, page 5 of Ruling.)
- (b.) That the Relinquishment Agreement negotiation was not part of the purpose for which the criminal warrant was sought.



That if the State acted under §717B.5 in its use and application of the warrant, so did the ASPCA because it was authorized only to assist in the law enforcement action under the warrant, not to conduct any independent action or activity whatsoever.

- C. That the warrant directs and requires the collection of all dogs found on the premises as evidence of criminal investigation and does not authorize the law enforcement officer to accept voluntary surrender of that property by relinquishment. The judge allowed the deputy to act inconsistently and contrary to warrant. Magistrate Krull's warrant may not be modified at the discretion of law enforcement at the scene or used as a weapon to influence the Defendant to release the animals to law enforcement by other means.
- D. That Associate Judge Jahn erred in applying probable cause of the affidavit in support of the search warrant as to all dogs on the premises, given the limited nature of the following:
- (1.) Only three dogs were identified on March 27, 2018 as being injured or needing medical care that resulted in tail amputation of two of them with one dying after surgery.
 - (2.) Only one dog died after being significantly injured by an attack by another dog related to females in heat in same kennels which was self-reported by the Defendant on November 6, 2018.
 - (3.) The vague description of "few", "several", or "many" throughout the affidavit relating to concerns for the animals fails to identify number of animals involved, or which animals specifically were involved.
 - (4.) That the repeated allegations as to empty food and/or water buckets does not establish probable cause for insufficient food or water probable cause standard when observation is made on a limited number of days for short period of time, not during feeding or watering times. Regulations require only that food and water be made available in an adequate amount once every 24 hours and not on a 24/7 basis per Chapter 162. The indication of May 3, 2018 that the owner failed a civil state inspection as a registered breeder does not provide probable cause for criminal violation of neglect without greater detail.
 - (5.) All other allegations as previously urged in the original Motion to Suppress.



- E. Deputy Grunhovd admitted making a false statement in the warrant application which was material to the issue of not providing water to the animals every 24 hours during the winter, and his failure to review notes or his available video cam from the day in question before submitting his testimony under oath constitutes reckless disregard for the truth which cannot be accepted by the impartial judiciary in issuing search warrants for conduct which would otherwise violate the rights under both State and Federal Constitutions. This statement affects the overall weight, credibility, and reliability of the informant as well as the weight of the evidence in support of probable cause.
- F. Judge Jahn erred in ruling or implying any consent by Barb Kavars to allow ASPCA to enter the property because of prior releases of animals to Humane Society of North Iowa (bottom of Ruling page 2) or execution of a Relinquishment Agreement after entry onto the property, and after the entry of the execution of the search warrant begun (p. 2, Ruling). At the bottom of page 6, the trial court implies because animal welfare agencies did not see conditions improve this also may be a separate implied ground for entry of ASPCA who had never been involved with Barb Kavars previously as a continued ongoing interest of animal welfare agencies to remove the animals, separate from criminal warrant action.

2. That Associate Judge Jahn impermissibly restricted the testimony of Barb Kavars at time of trial to place in contention her consent to executing the Relinquishment Agreement based upon the Magistrate's ruling at law for purposes of suppression in the Motion to Suppress that the signing was voluntary. The Defendant should have been allowed to testify as to factual circumstances of the interpretation and meaning of the relinquishment agreement itself under the totality of the circumstances with the jury as to the finder of the fact as to the meaning of voluntariness of that signing under either coercion or false pretenses as part of its findings of fact. Such issues related not only to the Defendant's voluntariness, but also to the bias and prejudice and lack of candor of the State's witnesses – both for Worth County and particularly the ASPCA.



3. That the Court improperly allowed evidence of weight gains in the animals after November 12, 2018 for proof of inadequate feeding as of November 12, 2018.

4. That the sentencing provisions of the Court imposing 240 days in jail even though suspended was extreme given the Defendant's personal history, her contact to Humane Society of North Iowa for assistance in the difficulties she was facing in handling her animals due to unintended numbers and her cooperation with voluntary reduction of those animals, and her work under the circumstances to provide for necessary sustenance for all animals under her care.

WHEREFORE, Defendant requests this matter be heard for a review by the District Court pursuant to the Iowa Rules of Criminal Procedure and the Court allow the presentation of oral argument as well as written briefs in support of Defendant's case, and reverse the findings of the Associate Judge Lawrence Jahn, and order the suppression of all evidence taken under the original search warrant of November 9, 2018 relating to "all dogs" as being overbroad and unconstitutionally vague and further determine that the seizure, pursuant to the Relinquishment Agreement authored by ASPCA, was contrary both to the warrant and the right of the Defendant to be free of unreasonable search and seizure and accordingly suppressed.

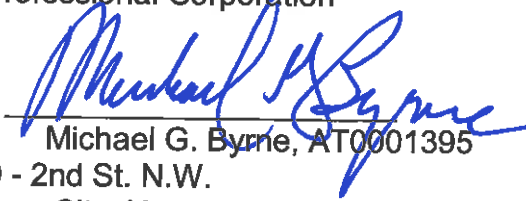
IT IS FURTHER REQUESTED, that the Court vacate the verdict of the jury and the sentencing imposed thereon and/or in the alternative modify the sentence imposed herein as unreasonably harsh given the consecutive imposition of 30 day sentences on each count of the conviction, and for such further relief requested herein and shown by evidence on submission briefs, and presentation of oral argument and the Court's review of the evidence.



Respectfully Submitted,

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