

TRIAL RECORD (Feb. 4-5, 2014)

State v. Mike Elvich
Glee County Circuit Court Case No. 13-1116
State of Bliss

Charges:

Count I: Conspiracy to Engage in Animal Fighting (Class D Felony)
Count II: Engaging in Animal Fighting (Class C Felony)
Count III: Endangering the Welfare of a Child (Class D Felony)

List of Received Exhibits:

State's No. 101-104
Defense's No. 201-204

The jury has been selected and sworn. The attorneys have presented their opening statements. After a short recess, court reconvened and the following events transpired:

CLERK: All rise.

JUDGE: Thank you. Please be seated. Is the State ready?

PROS ATTY: Yes, Your Honor.

JUDGE: And is the Defense ready?

DEF ATTY: We are, Your Honor.

JUDGE: Counsel for the State, you may call your first witness.

PROS ATTY: Thank you, Your Honor. The State calls Barbara Pawson to the stand.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

PAWSON: I do.

CLERK: Ms. Pawson, please state your full name and spell your last for the record.

PAWSON: My name is Barbara Pawson, spelled P-A-W-S-O-N.

PROS ATTY: Ms. Pawson, where do you live?

PAWSON: I live at 123 Peaceful Lane, next door to the Defendant.

PROS ATTY: Does anyone else reside with you?

PAWSON: Yes, my dear dog Pit. He's my baby. My husband Gene died a few years ago and I was devastated to be alone, but then I found Pit.

PROS ATTY: Ms. Pawson, if I may, how old are you?

PAWSON: I'm 68 years old.

PROS ATTY: What do you do for a living?

PAWSON: Well, I had retired from teaching—I used to teach second grade at Bliss Elementary—but once Gene died I really felt like I needed to be doing something and getting out in the community. So I started volunteering at the local animal shelter “Life on Paws,” and that's where I met my baby.

PROS ATTY: Ms. Pawson, how often do you volunteer at the shelter?

PAWSON: It really depends on the week. I love to be there as much as possible but I also hate to leave my baby. Probably 12 or 15 hours a week.

PROS ATTY: What kind of work do you do there?

PAWSON: Anything really, mostly cleaning kennels and taking the dogs for walks.

PROS ATTY: And how did you end up adopting Pit?

PAWSON: Ah, well, I was coming back from a long walk with a couple of the dogs and walked inside past the investigation cages--that's the area where they put dogs that have just come in from a bad situation that they're investigating, you know, that have been abused or neglected or something and aren't just regular drop-offs.

PROS ATTY: And what did you see in the investigation cages?

PAWSON: I saw the most heartbreaking eyes ... *[witness crying]* I'm sorry ... I always get emotional when I think of that day ... I saw Pit lying in the bottom of the cage, just staring up at me with the sweetest eyes. His face had all these scars and stuff and they told me that he had been taken from a dogfighting house and that they would probably have to euthanize him because they would never be able to adopt him with his history. But I fell in love with him, took him home that day and he has been my baby ever since.

PROS ATTY: Is this a picture of your dog, Pit, in Exhibit 101?

PAWSON: Yes, that's him the day I adopted him, a few months before the attack ... those are his old scars there you can see, from when he was in that terrible abusive house.

PROS ATTY: The State offers Exhibit 101 into evidence.

JUDGE: Exhibit received.

PROS ATTY: Ms. Pawson, has Pit ever shown any aggression toward you or any other person?

PAWSON: No, never. They told me that he would have trauma from all that he had been through, but he's only ever been the sweetest thing in the world to me. People have such the wrong idea about pit bulls, that they're these nasty monsters that could never be good pets. But that couldn't be further from the truth. I've tried explaining that to my neighbor a million times but he never listened.

PROS ATTY: What is the nature of your relationship with the Defendant?

PAWSON: He's my next-door neighbor. We were never really friends, I mean he was cordial, but kind of a hard-ass kind of guy, you know? Glee County isn't really a super friendly type place, you don't really know your neighbors all that well. I always said hello and tried to pet his dog Goldie when they'd be out and about, but never really got more than a nod from him. You'd expect a little more neighborliness from an ex-cop.

PROS ATTY: Ms. Pawson, how did the Defendant respond to your bringing Pit home?

PAWSON: Oh, awfully. I couldn't believe it. He kept telling me that pit bulls shouldn't be kept as pets because they're too dangerous. He started leaving notes on my door, things like "control your dog or I'll have you cited."

PROS ATTY: Ms. Pawson, what happened on the morning of Saturday, September 14, 2013?

PAWSON: Well, I had gotten up pretty early because I was working at the shelter. I let Pit out the back screen door to do his business as I always do before I leave for a while. But he didn't come back in a couple minutes as he usually does. All of a sudden I heard this awful barking and snarling coming from my backyard, and one of the dogs involved sounded like my Pit. I ran outside and couldn't see anything right away; there was an awful glare from the sun that was just coming up. And then I saw ... I saw ... *[witness crying]*

PROS ATTY: It's ok Ms. Pawson, you can take a minute to gather yourself.

PAWSON: I'm sorry ... *[witness sniffing]* ... I saw that man, the Defendant, standing over the two dogs ... It was just a blur of fur at first, and then I realized that Goldie was attacking my poor Pit and I just started screaming and screaming.

PROS ATTY: Ms. Pawson, where exactly did you see Pit and Goldie?

PAWSON: In the woods, behind my backyard ... Pit usually liked to go to the edge of the backyard, where the trees start. It's all public land back there, and there's no fence between my backyard and the woods.

PROS ATTY: And your neighbor, the Defendant, his property also borders this public land?

PAWSON: That's right.

PROS ATTY: Ms. Pawson, is this Exhibit 102 that I'm holding up now an accurate depiction of your property in relation to the Defendant's property and the woods you describe?

PAWSON: Yes, I'd say so.

PROS ATTY: The State offers Exhibit 102 into evidence.

JUDGE: Exhibit received.

PROS ATTY: Ms. Pawson, let's go back to that awful scene you encountered when you went outside. Was there anyone else present that morning?

PAWSON: Yes, that poor kid, Mikie Jr. Such a good boy, but his father is a bad influence. Mikie was holding a video camera in his hand and was looking really scared, but Mike Sr.—sorry, the Defendant—was smirking and cheering them on. Until I started screaming ... and then the Defendant put some whistle thing in his mouth and suddenly Goldie jumped off of Pit and ran the other way.

PROS ATTY: What happened next?

PAWSON: Well, I ran over to Pit to see if he was ok, and he was shaking and panting and bleeding ... And then the Defendant starting yelling at me that this is why people shouldn't have pit bulls, and saying that I'm lucky Goldie wasn't dead because he would sue and that he was going to have Pit taken away from me ... *[crying]*

PROS ATTY: Ms. Pawson, had Pit ever encountered Goldie before?

PAWSON: I think they saw each other over the fence between our two houses a couple times, but Pit was always so shy around other dogs since I got him, from all his trauma.

PROS ATTY: And what were Pit's injuries from that day?

PAWSON: He had two huge gashes around his neck area, from Goldie's teeth I guess. Pit already had a few scars on his back and face from previous dogfights before I rescued him.

PROS ATTY: State offers Exhibit 103 into evidence.

JUDGE: Exhibit received.

PROS ATTY: Thank you Your Honor. No further questions at this time.

JUDGE: Counsel, your witness.

DEF ATTY: Ms. Pawson, you said that you let Pit out the door without supervision, is that correct?

PAWSON: Yes, I always let him go out into my yard to do his business. But there's a fence blocking him from the neighbors so there's never been a problem.

DEF ATTY: So you're saying that Pit has never gotten out of your yard?

PAWSON: Well, there's woods at the back of my property, and there's no fence separating it from the woods. Sometimes Pit goes back there if he's being curious, but like I said he's rather timid and usually just stays in the yard.

DEF ATTY: Ms. Pawson, how far would you say it is from your back door to the woods behind your property?

PAWSON: Oh I'm not good with numbers, maybe 50 yards?

DEF ATTY: And on the morning of September 14, you said that you heard dogs barking outside and went out to your backyard, is that correct?

PAWSON: Yes. Well it wasn't really barking, more like a couple yelps, and I recognized my Pit's cry.

DEF ATTY: You didn't hear any other suspicious noises before the dogs barking?

PAWSON: No ... like I said, I was inside.

DEF ATTY: And where was Pit when you went outside?

PAWSON: He was at the edge of the woods, at the back of my yard.

DEF ATTY: So you couldn't really see what was going on, isn't that right?

PROS ATTY: Objection Your Honor, badgering the witness.

JUDGE: I'm not sure we've risen to the level of badgering yet, Counsel. Overruled. Ms. Pawson, please answer the question.

PAWSON: I reacted as any mother would, I heard my Pit crying and saw a scuffle, and I ran over to where him and Goldie and the Elvichs were.

DEF ATTY: So just to be clear, you have no idea how the dogs got into a fight, because you were inside at the time of the incident, is that correct?

PAWSON: I mean, I was inside, but Pit would never--

DEF ATTY: Ms. Pawson, did you or did you not see how the dogs started fighting?

PAWSON: I did not, no.

DEF ATTY: And you testified that when you came out of the house, you were blinded by sun glare, is that correct?

PAWSON: Yes, there was bright sun, but I still know--

DEF ATTY: So you really can't be sure that when you ran over, the Defendant wasn't just trying to break up the dog fight, true?

PAWSON: My Pit would never attack another dog, he's the most gentle creature! That man did this, I know he did! I know he did! [*witness crying*]

DEF ATTY: Nothing further.

JUDGE: State, your next witness?

PROS ATTY: The State calls Mike Elvich, Jr. to the stand Your Honor.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

MIKE JR: I do.

CLERK: Mr. Elvich, please state your full name and spell your last for the record.

MIKIE JR: My name is Mike Elvich, Jr. spelled E-L-V-I-C-H. People call me Mikie or Junior. But I'm changing my name to Flynn ...

PROS ATTY: We'll get to that in a minute, Mr. Elvich. Can you please tell the jury your age?

MIKIE JR: I just turned 17 last week. When I'm 18 I'm getting as far away from this place as possible.

PROS ATTY: Where do you reside currently?

MIKIE JR: At 125 Peaceful Lane, pretty much the most boring street in the United States of America.

PROS ATTY: Do you live there with anyone else?

MIKIE JR: My dad, Mike Elvich, the Defendant, unfortunately ... my mom left us a few years back.

PROS ATTY: I know this may be hard for you Mikie, but why did your mom leave?

MIKIE JR: My dad has this temper ... he gets real angry and would go off on Mom. This one time a couple years back he was drinking and started swinging his gun at her and she called the cops and everything. That was the last straw I think.

PROS ATTY: What kind of gun does your father, the Defendant, own?

MIKIE JR: A Marlin something or other, it's a hunting rifle. He's always been a crazy big hunter. He says he likes the thrill of watching an animal on the brink of death.

DEF ATTY: Objection, relevance?

PROS ATTY: Your Honor, we're trying to get a sense of the Defendant from his own son's perspective. This must be relevant.

JUDGE: Alright, I'll allow. Overruled.

PROS ATTY: Mr. Elvich, where were you on the morning of September 14, 2013?

MIKIE JR: In the woods behind our house, my da—the Defendant was dragging me along on another one of his hunts. I've always hated it; I have to get up at the crack of dawn while all my friends are sleeping in. He makes me carry all his stuff like his extra guns and camera and stuff. But then he saw that pit in the neighbor's yard and he started going berserk.

PROS ATTY: Does your father ever ask you to videotape his hunts?

MIKIE JR: Yeah sometimes, he likes to post 'em online on this "Happy Hunting" blog he's obsessed with. It's like a game for him and his weird friends seeing who can get the most gruesome kill on tape.

PROS ATTY: So on the morning of September 14, did the Defendant ask you to videotape anything?

MIKIE JR: Well, that was the weird thing. Da—the Defendant usually just makes us take Goldie out to kind of get her warmed up in the woods behind the house, before we drive out to the serious hunting turf.

PROS ATTY: Mikie, what usually happens during this warming up process?

MIKIE JR: Well, usually Dad will just do a couple runs with Goldie, you know having her spot a squirrel or something and getting her to chase it.

PROS ATTY: How was this day different?

MIKIE JR: Well, I came downstairs that morning, crazy early like I said, like 5:30 or something. I remember 'cause the sun was just coming up. And Dad was looking out the back porch, to the woods but kind of toward our neighbor's yard too. And he told me to get the camera for the warm-up, which I thought was kind of weird because we weren't going on the road yet.

PROS ATTY: Did he mention any reason for bringing the camera?

MIKIE JR: He said, "We're getting that Pit today, you with me?"

PROS ATTY: How did you respond to the Defendant's statement about "getting" Pit, Mikie?

MIKIE JR: Well, he's always saying stuff like that he hates that dog. I think he's even threatened Ms. Pawson about getting rid of him. I think I just kinda laughed and said yeah, sure we will. But I wasn't serious.

PROS ATTY: What happened next?

MIKIE JR: So then we got Goldie and I got all the gear and stuff and we headed back into the woods.

PROS ATTY: And what happened once you were in the woods?

MIKIE JR: Dad kept looking up toward the Pawson yard. I figured he was making sure that pit bull wasn't out, so he wouldn't interfere with our warm-ups, ya know? He kept directing Goldie to take off after a squirrel, but always had an eye on that yard.

PROS ATTY: Mikie, how does the Defendant instruct Goldie to catch her prey?

MIKIE JR: Well at first, when he first got into hunting he just used normal dog commands, like heel and fetch and stuff. But as he got more serious at it and catching bigger animals, he started using this whistle.

PROS ATTY: *[holding photograph]* Is this the type of whistle the Defendant uses to instruct Goldie?

MIKIE JR: Yea, it's an Acme, they're the best kind.

PROS ATTY: Your Honor, the State offers Exhibit 104 into evidence.

JUDGE: Received.

PROS ATTY: Mikie, can you describe how this whistle works?

DEF ATTY: Objection Your Honor, the witness is not an expert in dog whistles.

PROS ATTY: Your Honor, we are merely asking the witness to describe what he perceived with his own senses. He is surely an expert in what he perceived.

JUDGE: Overruled, but Counsel, please rephrase the question to reflect that specification.

PROS ATTY: Mikie, can you describe how, in your own experience, you saw and heard the Defendant use the whistle to train and instruct Goldie to capture animals?

MIKIE JR: Well, he had this system, two short calls were the "get ready" command, and one long call was the "attack" mode.

PROS ATTY: Did the Defendant have a command to call Goldie back, or get her to release her prey?

MIKIE JR: Yeah, that was three short calls.

PROS ATTY: Getting back to the morning of September 14, Mikie, can you describe what happened once you were back in the woods behind your house?

MIKIE JR: Sure, well, by that point, we had been out in the woods a few minutes, and I heard the door shut at Ms. Pawson's and Pit came out.

PROS ATTY: Did Pit approach you?

MIKIE JR: Well we were back in the woods a bit, but I'm pretty sure he could smell and see us, his ears perked up but he didn't come near us and kind of turned away to do his business.

PROS ATTY: Where was Pit standing in relation to you at that point?

MIKIE JR: He was right by the edge of the woods, where it connects to Ms. Pawson's yard. We were maybe 40 ... 50 yards back.

PROS ATTY: What happened next Mikie?

MIKIE JR: All of a sudden Dad told me to quick get the camera rolling, which I thought was strange because like I said, we had never taped Goldie on her warm-ups before. Then he pointed to Pit and gave Goldie the "ready" call, and before I knew it he had told her to attack and Dad was running with her, and Goldie was on that pit bull ...

PROS ATTY: Just to be absolutely clear, Mikie, the Defendant ordered Goldie to attack Pit?

MIKIE JR: Ya, he gave the long whistle. I didn't know what to do, I was stumbling after him cuz I didn't know what was happening at first. All this time I was recording but I never did see the tape.

PROS ATTY: Why didn't you ever see the tape, Mikie?

MIKIE JR: Well, the officers who came later took it, said it was evidence. But then they told us it was lost somehow in an inventory move or some bullshit.

PROS ATTY: Mikie, what happened when you reached the spot where Goldie was attacking Pit?

MIKIE JR: Well I was standing back like 10 feet, because I didn't want to get an arm bit off, but Dad was closer, maybe 2 feet from them, and he kept pumping his fist in the air like egging Goldie on.

PROS ATTY: So the Defendant was actually encouraging Goldie to attack Pit?

MIKIE JR: Ya, it was weird. I've seen him excited on hunts before but never this revved up. He was clenching his teeth and had this weird grin on his face.

PROS ATTY: At any point, did the Defendant give Goldie the "release" command or try to get her to stop?

MIKIE JR: No, not until Ms. Pawson came out and started screaming. Then he gave the three whistles and Goldie jumped off. She was all cut up and Pit too. Then Dad got all mad and started screaming back

at Ms. Pawson, about how her dog should be put down and she should go to hell and all this bad stuff.

PROS ATTY: Mikie, has Pit ever bothered Goldie or your family before?

MIKIE JR: No, never. He actually always seemed scared every time I tried to say hi to him over the fence. He had all these scars on his face and stuff so I figured he had been abused before or something.

PROS ATTY: And what was the Defendant's relationship with Ms. Pawson?

MIKIE JR: We never saw much of her, really. Dad always liked to keep to himself and especially after Mom left, he really stopped going out much at all, except to hunt.

PROS ATTY: Did the Defendant ever make any threatening remarks about Ms. Pawson?

MIKIE JR: He seemed really pissed off when she brought that pit bull home, but I just thought he was getting cranky and kind of senile. Every time he saw that pit in the yard he'd say things like "Goldie could take that mutt" and "scoundrels like that should get the chamber" but I never really got why.

PROS ATTY: Mikie, you mentioned that your father was abusive toward your mother. Has he ever harmed you?

MIKIE JR: He's never physically hurt me exactly, no, unless you count making me cry in a corner while he threatened my mother. My father's a jerk. He doesn't see me as a man, which I am—I'm nearly 18. He's never supported me in anything. After my mom left he sent me away for years to boarding school so he'd never have to see me. He always said I wasn't macho enough, that I had to join the army or be a cop or something. But I want to go to nursing school ... I'm applying this year. I want to really help people. He said only sissies are male nurses. I just can't take it anymore; I want to get out of that house and as far away from him as possible. That's why I'm changing my name to Flynn, no more Mikie Jr. I don't want to be connected to him. I'm getting a fresh start.

DEF ATTY: Objection. This line of questioning exceeds the bounds of the court's pretrial ruling as to the admissibility of the family history.

PROS ATTY: Your Honor, I direct the Court and Counsel to page 2, lines 5-11 of the pretrial order.

JUDGE: The State is correct, but this is pushing the envelope. Counsel move on.

PROS ATTY: Thank you, Mikie. Nothing further.

DEF ATTY: Mr. Elvich, you mentioned that the Defendant ordered Goldie to attack Pit.

MIKIE JR: That's right.

DEF ATTY: And how do you know that he gave that order?

MIKIE JR: I'm not sure what you mean.

DEF ATTY: Did you hear the Defendant execute one long call on the whistle?

MIKIE JR: Yeah, like I said, the long call is for attack. And before that he did the two short "ready" calls.

DEF ATTY: So you heard the Defendant execute both a ready call and an attack call.

MIKIE JR: Yeah, I was right next to him the whole time. I saw him pick up the whistle and put it to his lips and then he did the calls.

DEF ATTY: Mr. Elvich, is this the whistle the Defendant used to control Goldie?

MIKIE JR: Yeah I think so, the Acme Trainer 5000.

DEF ATTY: And can you read for the jury what it says there on the back of the packaging?

MIKIE JR: "High pitched, adjustable sound that only dogs can hear—inaudible to humans."

DEF ATTY: Your Honor, we offer this packaged Acme Trainer 5000 into evidence as Exhibit 201.

JUDGE: Exhibit received.

DEF ATTY: Mr. Elvich, how is it possible that you heard the Defendant blow the whistle and allegedly command Goldie to attack Pit when he used a hunting whistle that is inaudible to humans?

MIKIE JR: I mean, I don't care what the package says, I heard it. I always heard that whistle. They just tell you humans can't hear it so they can sell more, cuz hunters don't like to be deaf at the end of a hunt, ya know?

DEF ATTY: Mr. Elvich, isn't it possible that you didn't actually hear the type of call the Defendant gave to Goldie on the morning of September 14?

MIKIE JR: I mean, no, I know what I heard. I don't care what the Acme people say their whistle does, I was there. I heard it on all of the hunts.

DEF ATTY: Isn't it possible that, because the Acme Trainer 5000 is inaudible to humans, the Defendant actually gave Goldie a "release" command so that she would not attack the pit bull that was running toward you and your father?

MIKIE JR: No, that's not how it was, Pit wasn't attacking us, it was the other way around--

DEF ATTY: Mr. Elvich, you mentioned that your mother left you and the Defendant a few years ago. Can you specify what year that was?

MIKIE JR: About four years ago, 2009. I was only 13.

DEF ATTY: And you were having some trouble with the law yourself at that time, isn't that correct?

MIKIE JR: I had a couple misunderstandings.

DEF ATTY: You were convicted of attempted burglary and resisting arrest—both felony matters, is that correct?

MIKIE JR: It was a tough time, my parents were fighting all the time, I fell into the wrong crowd ...

DEF ATTY: After your convictions, upon your release, what did the Defendant do?

MIKIE JR: Well, my mother left right after that, so he sent me away, so he didn't have to deal with me.

DEF ATTY: He sent you to the Blissfree Military Academy for Boys, is that correct?

MIKIE JR: Yeah, that was hell. Absolute hell. So many messed up kids in there that their parents didn't know what to do with. I didn't belong there.

DEF ATTY: You returned home in 2011, right?

MIKIE JR: Yeah that's right, I finally got out.

DEF ATTY: You were expelled from that school, is that correct?

MIKIE JR: I was released, if that's what you mean. I had run away a couple of times and they finally got the message.

DEF ATTY: Mr. Elvich, you have attempted to be emancipated from the Defendant multiple times, is that correct?

MIKIE JR: Hell yeah, I didn't run away from that place to come back to live with him. But the government doesn't seem to get it.

DEF ATTY: Mr. Elvich, did the State promise you emancipation in exchange for your testimony here today?

MIKIE JR: Not quite true. The prosecutor never promised me that.

DEF ATTY: Mr. Elvich, you are still a full year away from turning 18 and being officially out of your father's custody, is that correct?

MIKIE JR: I'm counting the days.

DEF ATTY: So it would look mighty favorable to your emancipation request if your current guardian was a convicted felon, isn't that right?

MIKIE JR: The truth carries its own consequences.

DEF ATTY: Nothing further.

JUDGE: Thank you, Mr. Elvich. You may step down. State, you may call your next witness.

PROS ATTY: Thank you, Your Honor. The State calls Officer Carla Danger to the stand.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

DANGER: I do.

CLERK: Ms. Danger, please state your full name and spell your last for the record.

DANGER: My name is Officer Carla Danger, D-A-N-G-E-R.

PROS ATTY: Officer Danger, who is your employer?

DANGER: I'm an animal cruelty investigator with Rescue Is Bliss, the State Humane Society. Technically I'm a peace officer in Glee County.

PROS ATTY: Officer Danger, how many animal cruelty-related cases have you worked on in your career?

DANGER: Oh, probably hundreds. They're really the saddest to see. Everything from abuse... like some guy taking a baseball bat to

his dog that wets the carpet, to long-term neglect like hoarding dozens of cats. It can get pretty bad.

PROS ATTY: Have you encountered animal fighting cases in your line of work?

DANGER: Yes, unfortunately. I've led a few busts of some pretty solid fighting rings, out in the rural counties like Chipper. Usually they're pretty professional set-ups, spectators paying money, gambling, all that.

PROS ATTY: Officer Danger, where were you on September 14, 2013?

DANGER: I was called to the scene of a dogfight at 123 Peaceful Lane, and arrived there around ... 6:30 A.M.

PROS ATTY: Please tell the jury what you discovered there.

DANGER: When I arrived, I found Ms. Pawson in her backyard, huddling over Pit, who looked pretty traumatized. Pit was shaking and had an open gash on his neck, which from my experience looked like a pretty intense dog bite.

PROS ATTY: Did Pit have any other wounds?

DANGER: Yeah, scars that looked to be a couple years old on his face and back, which I recognized as pretty common for dogfighting. I guess those were from his former situation that Ms. Pawson rescued him from—

DEF ATTY: Objection, speculation. Officer Danger has no knowledge of how the dog obtained its scars.

JUDGE: Sustained, Officer Danger please stick to what you yourself witnessed.

PROS ATTY: Officer Danger, was the Defendant on the scene when you arrived?

DANGER: No, he had left, and I guess that's when Ms. Pawson called the police. Ms. Pawson was just crying, "he made Goldie attack Pit," and sobbing—

DEF ATTY: Objection, hearsay.

PROS ATTY: Your Honor, this is clearly an excited utterance, Ms. Pawson was in shock and describing the shocking event that just occurred.

JUDGE: Overruled. Continue counsel.

PROS ATTY: Officer Danger, did you speak with the Defendant that morning?

DANGER: Yes, after we spoke with Ms. Pawson we visited the Defendant at his home at 125 Peaceful Lane.

PROS ATTY: Did you notice anything in particular about the Defendant?

DANGER: Just that he was decked out in hunting gear, you know, a full camo outfit with a dog whistle and everything.

PROS ATTY: Officer Danger, every dog in Glee County is required to be licensed, is that correct?

DANGER: Yes, licensing helps ensure the safety of humans and animals alike.

PROS ATTY: And how long has Pit been licensed in Glee County?

DANGER: About 4 months, which according to adoption records is how long Ms. Pawson has had him.

PROS ATTY: And in those 4 months, have you ever had any complaints at 123 Peaceful Lane involving Pit or any other matter?

DANGER: No, we've never had a complaint about Pit. I know a lot of people think pit bulls are inherently dangerous, but they're really gentle animals and great companions. It's the trainers that bring out their aggression in the breed. Actually, pit bulls scored better than golden retrievers on a temperament test by The American Canine Temperament Testing Society.

PROS ATTY: And has the county ever had any complaints about 125 Peaceful Lane?

DANGER: Yes, I believe the Defendant was arrested for domestic violence back in 2009 for threatening his wife.

DEF ATTY: Objection, improper character evidence of my client.

JUDGE: Yes, sustained, the jury will note that the testimony about the Defendant's 2009 arrest shall be stricken from the record.

PROS ATTY: Nothing further.

DEF ATTY: Officer Danger, you've broken up some pretty major dogfights, is that correct?

DANGER: Yes, unfortunately, I've been called to some pretty gruesome scenes.

DEF ATTY: And what evidence have you found at those dogfights?

DANGER: Well, for the major players, they've usually charged admission to a dozen or more spectators. I've found treadmills, illegal drugs, bait animals rotting in cages ... you name it.

DEF ATTY: And what did you find at the Defendant's home at 125 Peaceful Lane? Any dog treadmills, spectators, bait animals?

DANGER: No ... but that doesn't mean—

DEF ATTY: So this wasn't exactly your typical dogfighting scenario, is that correct?

DANGER: It wasn't an organized event if that's what you mean, but that doesn't mean it wasn't a dogfight.

DEF ATTY: And you yourself were not at the scene at the time of the alleged "fight," right?

DANGER: No, I responded to the scene—

DEF ATTY: And both of the dogs, Pit *and* Goldie, had wounds from the incident, isn't that correct?

DANGER: Yes, I believe Goldie had a broken leg and as I testified Pit had a large gash in his neck from a bite.

DEF ATTY: Officer, what usually happens to the fighting dogs that you find at these major dog fights you break up?

DANGER: Well, unfortunately, they usually need to be put down. Most of the dogs are unfit for adoption because they've been trained to be so aggressive.

DEF ATTY: So would you say that most dogs found in dogfighting situations aren't fit to be pets?

DANGER: Well, it's really a case-by-case determination for the Humane Society, but yes, unfortunately, most of those dogs can't be pets after that horrible trauma.

DEF ATTY: Pit came from a dogfighting situation, isn't that correct?

DANGER: Yes, I noted that in my report, and confirmed with the Humane Society later that Pit was rescued from a dogfight.

DEF ATTY: And didn't the Humane Society determine that the dog had to be put down for being too aggressive?

DANGER: I only work cases for them; I can't speak to whether they determined Pit should be euthanized or for what reason. Every dog is really different, so it depends on the case.

DEF ATTY: Officer Danger, isn't it possible that Pit still retained his aggression after years of fighting, and took out that aggression on Goldie on September 14, 2013 when he saw Goldie in the woods?

DANGER: Well, anything's possible, but I have no proof that ...

DEF ATTY: Officer Danger, do you dislike hunters?

DANGER: Well, I, I mean ... I don't agree with hunting, personally, but I do not let that affect my work.

DEF ATTY: Officer Danger, do you have a Facebook page?

DANGER: Yes, but that's private.

DEF ATTY: Actually, you have your settings set to "friends of friends," and so many people can access your posts. Officer Danger, do you have a Facebook group called "Danger Invites Rescue"?

DANGER: Yes, I do. It's a page for other humane officers to share experiences on the job, you know, war stories and figure out how we can all be better for the animals.

DEF ATTY: Officer Danger, did you post this on September 15: "just nabbed a hunter. No better than dog fighting in my book."?

DANGER: I don't—I mean--

DEF ATTY: This is your Facebook name, correct? CDangerRescue?

DANGER: Yes ... yes I posted that.

DEF ATTY: Officer Danger, do you believe that hunting is the same as dogfighting?

PROS ATTY: Your Honor, relevance?

DEF ATTY: Your Honor, I am trying to establish that the witness is biased against hunters and is rendering testimony against the Defendant for that reason.

JUDGE: That's a bit of a stretch Counsel. I'll allow the previous testimony but let's move on, shall we.

DEF ATTY: Thank you Your Honor, nothing further.

PROS ATTY: The State rests Your Honor, no further witnesses.

JUDGE: Would the Defense like to call its first witness?

DEF ATTY: Yes, Your Honor, we call our client, Mr. Mike Elvich to the stand.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

ELVICH: I do.

CLERK: Mr. Elvich, please state your full name and spell your last for the record.

ELVICH: My name is Michael Elvich, E-L-V-I-C-H.

DEF ATTY: Mr. Elvich, where do you reside?

ELVICH: I live at 125 Peaceful Lane in Glee County.

DEF ATTY: What is your occupation?

ELVICH: I'm a retired officer with the Glee County Police Department, retired a few years ago after 35 years of service.

DEF ATTY: Mr. Elvich, what kinds of cases did you work on during your service?

ELVICH: Everything, really. I started with DUI checkpoints, traffic stops, stuff like that, but eventually worked up to homicides, some major drug busts.

DEF ATTY: So it's fair to say you were promoted more than a few times throughout your career?

ELVICH: Yes, I guess that would be true. I had a really good group a' guys to work with, real upstanding folk.

DEF ATTY: And what would you consider your greatest accomplishment in your service as a police officer?

ELVICH: Well, just serving my community every day was a great feeling. I guess one of my proudest moments was getting my award from the Humane Society.

DEF ATTY: And what was that award for?

ELVICH: Well, I helped them a bit in passing a law that protects law enforcement animals. So now it's a felony to hurt a police dog.

DEF ATTY: Is this a picture of you receiving your award?

ELVICH: Yes, that's at the Humane Society. Warms my heart just to see that again.

DEF ATTY: Defense offers Exhibit 202 into evidence.

JUDGE: Exhibit received.

DEF ATTY: Have you always been fond of dogs Mr. Elvich?

ELVICH: Yea, I grew up with goldens my whole life, my dad and I used to hunt with our two dogs when I was just a boy. I always hoped I would carry on that tradition with my own son, but he just never really got it. He's had a lot of behavioral issues his whole life, which was hard on his mother ... I've kind of been left to deal with him myself over the last few years after she left.

DEF ATTY: Mr. Elvich, could you tell the jury a little bit about what happened with your wife?

ELVICH: Well, we had been growing apart for a few years ... I was always so busy with work, she was left to tend to the house and Junior and I guess that wore on her. I always had long shifts, 12 or 14 hours at a time, that's just the way of the job, you know? I wouldn't really see her for days on end, and that was most of our marriage. So I really couldn't wait to retire so I could spend more time with her and Junior.

DEF ATTY: Did you get in arguments with your wife?

ELVICH: Of course, we fought just like any couple did. And then when I retired I hoped things would change. But they didn't ... and then I found out about her affair.

DEF ATTY: Do you remember what you were arguing about the night of July 4, 2009?

ELVICH: Yea, I had just come home from my annual Red, White, & Blue Hunt with my buddies, and I caught her on the phone with her lover ... *[witness getting tearful]* I had had an inkling about it for awhile, but I never really thought she could be unfaithful to me. I mean, we had a son together, you know? I had worked so hard for years to put food on the table for my family, tried to care for them as best I could, and this is what I get in return?

DEF ATTY: What happened after you caught her on the phone, Mr. Elvich?

JUDGE: Excuse me folks. Counsel, approach...

[Sidebar]

JUDGE: Is the defense trying to create a post-conviction relief issue here?

DEF ATTY: No Your Honor, I've made a tactical decision, in full consultation with my client, to lay it all out for the jury to hear so that they can assess the family dynamic in evaluating the testimony of my client and his son.

JUDGE: Well, this is quite unusual, but under the circumstances, with your presentation on the record via this sidebar, let's proceed.

[End sidebar]

ELVICH: Well, I was so angry, so of course I was yelling how could she do this, and she was yelling back. I didn't even realize that I had my hunting rifle still in my hand from when I walked in the door, so I get how it probably looked bad when the cops showed up.

DEF ATTY: Were you arrested for that incident, Mr. Elvich?

ELVICH: Yeah, but they finally realized it was just a misunderstanding. Never any charges filed or anything. She and I split up soon after that though, and she just left one day ... never came back. Junior was acting out all the time and I just didn't know what to do. Then a buddy of mine told me what Blissfree had done for his son, instilled some discipline in him you know, so I realized that was my only real option.

DEF ATTY: After your son was expelled from the military academy in 2011, did your relationship with him improve?

ELVICH: Well, I tried my best I'll tell you that. The only way I really thought we might be able to connect was hunting, you know, that was the way my father and I had bonded. So I got Goldie and we all started going out together. I know Junior didn't like it, especially getting up early and all that on the weekends, but I was still hopeful. Goldie was the cutest little pup, she took to the thrill of the hunt right away.

DEF ATTY: Is this a photo of your dog, Goldie, in Exhibit 203?

ELVICH: Yes, that's her around 3 months, just beginning training.

DEF ATTY: Defense offers Exhibit 203 into evidence.

JUDGE: Exhibit received. Proceed.

DEF ATTY: Mr. Elvich, can you describe what happened the morning of September 14, 2013?

ELVICH: Well, it was a beautiful morning. I got up a bit before sunrise and fed Goldie. We were waiting for Junior down in the kitchen, 'cause we had plans to do a good long hunt that day. Goldie's favorite is pheasant, so we were heading down to John's Creek area over in

Chipper where there's quite a few birds. So I was just watching the sun come up through the treetops there and then Mikie came downstairs.

DEF ATTY: Did you tell Mikie Jr. to bring anything with him?

ELVICH: Well, since it was such a beautiful morning, I asked him to grab the video camera to get some shots of Goldie warming up—we always do some warm-ups for a few minutes before a long hunt, gets her in the zone. I thought I could post them to Facebook or something, I'm just getting used to all those high-fangled technological things. So we headed outside and I just had Goldie do some of her runs, chasing a few rodents, that kind of thing.

DEF ATTY: What happened next?

ELVICH: Well, whenever we were outside I always had my eye on Ms. Pawson's yard—she had just gotten this fighting dog in the last few months. I knew from my time on the job that dogs like that don't come from good places and can be so dangerous. I've seen a lot of rough stuff in my years of service, but pit bull maulings were some of the worst—kids' arms bitten off, awful stuff. The last thing I wanted was Goldie or any of us getting hurt.

DEF ATTY: So did you see Pit in the yard?

ELVICH: Yes, after a few minutes out there I saw Pit come out the back door, and that dog started coming toward us, toward the woods. I gave Goldie the whistle call for "release"—which is the same as "stay" for her—she knows not to go for the target when I do that. But as soon as that dog started charging toward us, Goldie must have gone into defense mode, to protect us you know, and she went toward Pit before she got too close to us.

DEF ATTY: What did you do when you saw that Pit was about to attack you?

PROS ATTY: Objection you Honor, speculation, it has not been established that Pit "attacked" the defendant.

JUDGE: Sustained.

DEF ATTY: Mr. Elvich, when you saw that Pit was coming toward you and Goldie was moving forward toward her, what did you do?

ELVICH: Well, my officer instincts kicked in, and I thought, I need evidence of this. This dog is attacking us. So I remembered that Mikie had the video camera and I asked him to record it, as proof that this is what dogs like that do to people. And to other dogs, my poor Goldie.

DEF ATTY: What injuries did Goldie sustain as a result of the attack?

ELVICH: She had a broken leg and a few bad bites around her face, poor girl. That pit really did a number on her.

DEF ATTY: Can you describe what you see in Defense Exhibit 204?

ELVICH: That's Goldie, a couple days after the attack with her cast. You can see the big gash on her head there.

DEF ATTY: Defense offers Exhibit 204 Your Honor.

JUDGE: Exhibit received. Please proceed.

DEF ATTY: Mr. Elvich, when you left your home that morning and went to the woods, did you have any reason to know that Pit would be in that yard?

ELVICH: No, of course not. I mean, that dog goes out to do its business every now and then, and it wasn't out there when we left. We were just doing our hunting warm-ups.

DEF ATTY: So you did not go into the woods behind your home to watch Goldie and Pit fight?

ELVICH: Absolutely not. That's ludicrous. How could I go out there to watch them fight if I didn't know that pit bull would even be out there? And why would I want my own Goldie to get hurt by that mutt?

DEF ATTY: Thank you, Mr. Elvich. Nothing further.

JUDGE: State, your witness.

PROS ATTY: Mr. Elvich, you're claiming that you just happened to have your video camera with you the morning of September 14, the morning you happened to find Pit in Ms. Pawson's yard?

ELVICH: Yes, like I said, I asked Mikie Jr. to get some shots of Goldie doing her warm-ups.

PROS ATTY: That doesn't seem a bit coincidental to you, that you just happened to have that camera on hand?

ELVICH: No.

PROS ATTY: Mr. Elvich, have you visited the web forum "Happy Hunting"?

ELVICH: Hmm, I'm not sure; I'm not too good with the interwebs. The younger cops always made fun of me for not being able to use computers [*witness chuckles*].

PROS ATTY: So by your recollection, you've never visited this website?

ELVICH: I've poked around a little bit online looking for hunting tips, but I can't recall that one in particular.

PROS ATTY: Mr. Elvich, this is a printout of a post that came from your IP address—in other words, your computer—less than one week before the incident, on September 8. Do you recognize that website now?

ELVICH: How did you get that?

PROS ATTY: We issued a subpoena to your Internet Service Provider and the host of the blog site and we supplied the results to your attorney.

ELVICH: Geez. Yeah, I guess this looks familiar.

PROS ATTY: And can you read that post for the jury, written by the name "Golden Ticket"?

ELVICH: Yeah, uh ... it says ... "have a pit problem. anyone ever hunted a dangerous dog? hahaha."

DEF ATTY: Objection Your Honor, hearsay and relevance?

PROS ATTY: Your Honor, this is an admission by a party opponent and clearly relevant to this case.

JUDGE: Agreed, I'll allow. Overruled.

PROS ATTY: Mr. Elvich, did you write that statement?

ELVICH: I was just goofing around, that's why I put the "hahaha." I wasn't serious about any of it.

PROS ATTY: Mr. Elvich, were you soliciting advice on how to attack Pit on the site "Happy Hunting"?

ELVICH: No, of course not, it was just a joke.

PROS ATTY: You have quite a history of violent behavior, don't you Mr. Elvich?

ELVICH: I already explained, I wasn't charged with anything for that argument with my wife. It was just my hunting rifle that made it look bad.

PROS ATTY: You didn't exactly retire from service, did you Mr. Elvich? Didn't the police department ask you to leave because of citizens' complaints about your excessive use of force?

ELVICH: No, I retired. There were complaints, sure, but people that get arrested are always complaining about police, they just want to get off easy.

PROS ATTY: Kind of like you “got off easy” when you assaulted your wife?

DEF ATTY: Objection!

PROS ATTY: I retract my question Your Honor. Mr. Elvich, you still have some pretty strong ties to the Glee County Police Department, is that correct?

ELVICH: Yeah, I still have some buddies over there. I haven’t really seen the boys in awhile though; I’ve been kind of out of touch since my wife left.

PROS ATTY: But you’re pretty tight with some officers in the property bureau, you know the place where they store evidence?

DEF ATTY: Objection, speculation. The State is now trying to convict not only my client but the entire police force of Glee County.

PROS ATTY: Request for sidebar judge?

JUDGE: Permission to approach.

[Sidebar]

PROS ATTY: Judge, there was clearly tampering with this video camera. It just disappeared, and it was our best piece of evidence. I’m merely trying to establish that the Defendant was likely involved in its disappearance.

DEF ATTY: Judge, this is insane. There is absolutely no proof at all that the camera was deliberately lost or that my client had anything to do with it.

JUDGE: I do empathize with the State’s setback, but I cannot allow this speculation to continue at the expense of confusing the jury. Objection sustained.

[End sidebar]

PROS ATTY: Nothing further, Your Honor.

JUDGE: Counsel, your next witness?

DEF ATTY: Defense calls Mr. Charlie Hirsch to the stand.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

HIRSCH: I do.

CLERK: Mr. Hirsch, please state your full name and spell your last for the record.

HIRSCH: My name is Charlie Hirsch, H-I-R-S-C-H.

DEF ATTY: Mr. Hirsch, what is your relationship to the Defendant?

HIRSCH: He's an old high school buddy of mine, and now we go hunting together sometimes.

DEF ATTY: Mr. Hirsch, would you describe the Defendant as a violent person?

HIRSCH: No, not at all. Mike is an upstanding guy. He was a beloved police officer in this county for over 30 years.

DEF ATTY: You've been friends with Mike for quite a long time. Do you remember how his separation from his wife affected him?

HIRSCH: Oh yeah, Mike just hasn't been the same since. He lost his zest for living I guess you could say. We used to go out hunting on weekends and stuff, but he really just keeps to himself now.

DEF ATTY: How often do you see your friend, the Defendant, now?

HIRSCH: We still do some hunting together, couple times a year. We went back in August.

DEF ATTY: Mr. Hirsch, what kinds of game do you and the Defendant hunt when you go out together?

HIRSCH: Oh, small game mostly. Rabbit, pheasant. I remember in August it was pheasant because that's what Mike said Goldie really loved these days.

DEF ATTY: Did the Defendant ever express an interest in hunting larger animals?

HIRSCH: Not really, no. Big-game hunting was never our thing. It was mostly just about the companionship, you know, of being on this adventure together. That's what hunting's about, just like any other sport, you're on this mission together and you have to build the skills to get the right kill. And of course have a good dog, like Goldie is—or was, before this horrible attack.

DEF ATTY: So the Defendant never tried to encourage you to hunt larger game, like bears or moose?

HIRSCH: No, no. I don't even think Mike would know what to do with those sized animals.

DEF ATTY: And he never expressed an interest in seeing Goldie attack animals her size?

HIRSCH: Never. I'm sure he wouldn't have wanted to risk Goldie getting hurt.

PROS ATTY: Objection, speculation. The witness can't speak for the Defendant.

JUDGE: Sustained.

DEF ATTY: Mr. Hirsch, one last question. Did the Defendant ever, in all your years together, express a desire to hurt another animal for the pleasure of seeing it suffer or fight?

HIRSCH: No, absolutely not.

DEF ATTY: Thank you, Mr. Hirsch. Nothing further Your Honor.

JUDGE: State, your witness.

PROS ATTY: Mr. Hirsch, when you say that the Defendant never expressed a desire to see an animal hurt, you meant outside of the hunting context, is that correct?

HIRSCH: Well, er ... ya, outside huntin.' But huntin' isn't about seeing an animal suffer. It's for the thrill of it--

PROS ATTY: For the thrill of killing an animal?

HIRSCH: Well, yes, but like I said, it's more like a game, like the excitement of training your dog to be smart enough and quick enough to kill the game.

PROS ATTY: Mr. Hirsch, would you say that the Defendant got excited when he watched Goldie kill another animal during a hunt?

HIRSCH: Well ya, sure, he got excited. But like I said we only really hunted birds n' rabbits n' stuff.

PROS ATTY: Can you describe the Defendant's demeanor when Goldie was going in for a kill?

HIRSCH: I'm not sure what you mean.

PROS ATTY: What was the Defendant's facial expression, body language, and so forth when Goldie was closing in on prey?

HIRSCH: Well, when Goldie would go in for a kill, Mike would get red in the face n' start kind a muttering to himself ... ha, actually, he'd do a little fist pump in the air, like a victory wave or somethin,' I always made fun of him for that.

PROS ATTY: Mr. Hirsch, you admitted that you haven't really been in very frequent contact with the Defendant over the last couple years, correct?

HIRSCH: Yeah, but I think he's been so depressed 'cause of his wife leavin' him. We still go out on hunts but just not as much.

PROS ATTY: So the Defendant has changed since his wife left, into a more reclusive and violent person who you don't know as well as you once did, is that correct?

DEF ATTY: Objection, Counsel is testifying.

PROS ATTY: I'll rephrase, Your Honor. Mr. Hirsch, is it fair to say that the Defendant has become more reclusive since his wife left him?

HIRSCH: Yeah, he keeps to himself more I guess.

PROS ATTY: And you admit that you haven't seen him very often in the last couple years, is that correct?

HIRSCH: Yes, that's true. Only every few months, like I said.

PROS ATTY: Is it possible, then, that you aren't aware of all the ways that his wife's leaving has affected the Defendant?

HIRSCH: I guess so.

PROS ATTY: Nothing further Your Honor.

JUDGE: Counsel, you have another witness for us this afternoon?

DEF ATTY: Defense calls Ms. Annie Gunn to the stand.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

GUNN: I do.

CLERK: Ms. Gunn, please state your full name and spell your last for the record.

GUNN: My name is Annie Gunn, G-U-N-N.

DEF ATTY: Ms. Gunn, what is your occupation?

GUNN: I'm a professional hunter. Right now I work at Valentine Ridge over in Chipper, it's private land so new hunters pay me to take them out and be their guide. I like working with the newbies, it takes me back to when I was first learnin.' Before I worked up at the Ridge I was full-time with the DNR, controlling wolf populations that were out of control, that kind of thing.

DEF ATTY: What is DNR?

GUNN: The Department of Natural Resources, part of the State. We basically went up in helicopters and shot down at the kill.

DEF ATTY: Why did you leave DNR?

GUNN: I didn't like that as much, it's just not real huntin' to me when you're not tracking prey on the land, and I missed huntin' with my dogs.

DEF ATTY: Ms. Gunn, you have published quite a number of books on hunting, is that correct?

GUNN: Yeah, I found my niche I guess. *When Nature Calls: How to Answer* and *Whistle While You Work (at Hunting)* are my latest. The *Whistle* book was even on the *New York Times* bestsellers for a few weeks.

DEF ATTY: Can you tell us what *Whistle While You Work* is about?

GUNN: Oh yeah, well that's kind of my claim to fame I guess you could say. See for me, a good whistle was always the issue. When you're out on the hunt, there's too much goin' on, trees rustling and critters moving and you can't count on your dog to be watching you for hand signals, and you don't want to shout out commands that'll scare the game away. When I first started hunting, I played around with a few whistles, but my dog at the time, Bo, would never respond to them. So I invented a new whistle, the Acme Trainer 5000, and that's what the book is about.

DEF ATTY: So you invented the Acme Trainer 5000, the whistle that the Defendant uses?

GUNN: That's right.

DEF ATTY: So what is special about the Acme 5000?

GUNN: Well, all these other whistles I was using set the whistle at a certain pitch, see, a pitch that dogs could hear. But the first

problem was that not every dog responds to the exact same frequency for hunting—some dogs would, but a lotta other dogs like my Bo would just be annoyed by it, and try to run away. So I created the 5000 to let you adjust the frequency of the whistle to a pitch your own dog responds to.

DEF ATTY: Are there any other distinguishing features of the Acme?

GUNN: Oh yeah, this one was a doozy. All the other dog whistles out there would claim that the whistle was already set at one certain pitch that “only dogs could hear” and not humans, but that was only true if you didn’t blow too hard into the thing. You’d end up deaf at the end of a run! So with the 5000 we set a pitch range that humans can’t hear, which is why I was asked to write the book and all that.

DEF ATTY: So just to be clear, the Acme Trainer 5000 is inaudible to humans?

GUNN: Yep, just like it says on the package that you showed.

DEF ATTY: Please let the record show that the witness is now pointing to Exhibit 201.

So when a hunter blows into the Acme Trainer 5000, no human hears the whistle, no matter what the frequency is set to?

GUNN: That’s correct. That was the genius of the thing, if I do say so myself.

DEF ATTY: Thank you, Ms. Gunn. Nothing further.

JUDGE: Does the State care to cross?

PROS ATTY: We do, Your Honor.

Ms. Gunn, you are clearly an expert hunter, working for DNR and now your private work.

GUNN: Well, thanks, yeah, I would say I’m a pretty good hunter.

PROS ATTY: But do hunters often engineer hunting gear like whistles?

GUNN: No, I guess not, which is why my book has been such a hit.

PROS ATTY: Ms. Gunn, did you attend college?

GUNN: I did a couple years at Community Bliss, but then I started doin’ some private hunting tours and then the DNR, so I didn’t get to finish. I knew hunting was my calling, I didn’t need a degree for that.

PROS ATTY: You never finished college, so you don't have a degree in engineering or anything similar that would prepare you for something like designing a whistle?

GUNN: No, but like I said, I don't need a fancy degree. I've worked on the ground with these things, and I messed around with 'em enough to know how they work.

PROS ATTY: Ms. Gunn, have you had any negative feedback on your Acme whistle?

GUNN: There's always haters out there, but I try to ignore 'em.

PROS ATTY: The packaging on the Acme Trainer 5000 that the Defense introduced as Exhibit 201 claims the whistle is "inaudible to humans," is that correct?

GUNN: Yes, that's on the box, and it's true.

PROS ATTY: But isn't the Acme company forcing you to change that slogan this year?

GUNN: That's confidential, I can't--

PROS ATTY: Let me rephrase that, Ms. Gunn, you're saying that the Acme 5000 doesn't make even the slightest noise when you blow into it?

GUNN: I mean, you hear the air going into the whistle, but the whole point is that only dogs can hear it, not humans.

PROS ATTY: What do mean by "you can hear the air"?

GUNN: You know, you can tell that air's going into the whistle, and there's a slight vibration--

PROS ATTY: An audible sound you mean? An audible vibration?

GUNN: Well yeah, but when it does, which isn't all the time, it's so soft, it's not loud enough to scare off prey or hurt the hunter's ears like all the other annoying screechy ones. It's just soft enough so you know the thing is working. Nobody more than a couple feet away could hear it, only the hunter using it probably.

PROS ATTY: Ms. Gunn, you are testifying that your "inaudible to humans" label is not accurate?

GUNN: No, it is "inaudible," in marketing speak, that's what the lawyers said. It does its job; it doesn't make the loud whistle sound that would deafen us hunters.

PROS ATTY: So just to be perfectly clear, the Acme 5000 is labeled "inaudible" but actually does make a sound when the whistle is blown, is that correct?

GUNN: I guess.

PROS ATTY: So when the Defendant used the Acme Trainer 5000 on September 14, his son Mikie, Jr. would have heard the whistle, even though you claim it's "inaudible?"

GUNN: I really can't say, I wasn't there ... but I guess it's possible.

PROS ATTY: Thank you Ms. Gunn. Nothing further.

DEF ATTY: We have no further witnesses, Your Honor. The Defense rests.

JUDGE: Excellent. The Court will now take a short recess and then we'll hear closing arguments.

****END TRIAL RECORD****

STATE EXHIBIT 101



STATE EXHIBIT 102



STATE EXHIBIT 103



STATE EXHIBIT 104



DEFENSE EXHIBIT 201



DEFENSE EXHIBIT 202



DEFENSE EXHIBIT 203



DEFENSE EXHIBIT 204



INSTRUCTION No. 1
PRELIMINARY INSTRUCTIONS

(Note: Instruction No. 1 was given by the Court to the members of the jury prior to taking testimony)

Introductory Paragraphs

Ladies and gentlemen: You are now the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions.

At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

One of my duties is to decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Order of Trial

The trial will proceed in the following manner:

First, the State's attorney may make an opening statement. Next, Defendant's attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

After the opening statements, the State will call witnesses and present evidence. Then, the Defendant will have an opportunity to call witnesses and present evidence. After the parties' main cases are completed, the State may be permitted to present rebuttal evidence. After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. After that, you will go to the jury room to deliberate on your verdict.

Charges and Defenses

The positions of the parties can be summarized as follows:

This case involves criminal charges by the State of Bliss against the Defendant, Mike Elvich. The Defendant has been charged with Conspiracy to Engage in Animal Fighting (Count I of the Indictment), Engaging in Animal Fighting (Count II of the Indictment) and Endangering the Welfare of a Minor (Count III of the Indictment).

Defendant has pleaded not guilty to each of these three charges.

Evidence in the Case

The evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and any facts that I may instruct you to find or that the parties may agree or stipulate to. A stipulation is an agreement between both sides that certain facts are true.

Credibility of Witnesses

You will have to decide whether the testimony of each of the witnesses is truthful and accurate – in part, in whole, or not at all. You also have to decide what weight, if any, you give to the testimony of each witness.

Inferences

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

What is Not Evidence; Evidence for Limited Purpose

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case: the attorneys’ statements, arguments, questions, and objections of the attorneys; any testimony that I instruct you to disregard; and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Rulings on Objections

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself.

Objections of Counsel

The lawyers for the parties in this trial have a duty to object to what they feel are improper questions asked of the witnesses. You should not draw any conclusion for either side from the fact that an objection was made to any question, and that the witness may not have been permitted to answer it.

Jury Conduct

All jurors must follow certain rules of conduct, and you must follow them, too.

First, you must not discuss this case with anyone – including your fellow jurors, members of your family, people involved in the trial, or anyone else. You must not let others discuss the case with you. If anyone tries to talk to you about the case please let me know about it immediately.

Second, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

Third, you must not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own.

Fourth, you must not make up your mind about what the verdict should be until after you have gone to the jury room to decide this case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

INSTRUCTION No. 2 FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments from the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are, or about what your verdict should be.

INSTRUCTION No. 3
PRESUMPTION OF INNOCENCE OF DEFENDANT
AND PROOF BEYOND A REASONABLE DOUBT

The defendant is presumed innocent unless and until the defendant is proven guilty beyond a reasonable doubt. The burden is on the State to prove the guilt of the defendant beyond a reasonable doubt.

Reasonable doubt is doubt based on common sense and reason. Reasonable doubt means an honest uncertainty as to the guilt of the defendant. Reasonable doubt exists when, after careful and impartial consideration of all the evidence in the case, you are not convinced to a moral certainty that the defendant is guilty. The defendant is never required to prove his innocence or to produce any evidence at all.

INSTRUCTION No. 4
DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE

You may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION No. 5
TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)

You must decide whether the testimony of each of the witnesses is truthful and accurate – in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about
- the witness's memory
- any interest, bias, or prejudice the witness may have
- the witness's intelligence
- the manner of the witness while testifying
- the reasonableness of the witness's testimony in light of all the evidence in the case

**INSTRUCTION No. 6
DEFENDANT'S STATEMENTS**

When a witness testifies about statements made by the defendant, you should consider such testimony with caution.

In reviewing such testimony, you should consider, among other things, the following:

- (1) Did the defendant make the statement, and, if so, did the defendant clearly express what [he / she] intended to say?
- (2) Did the witness correctly hear and understand what the defendant said?
- (3) Did the witness correctly remember and relate what the defendant said?
- (4) Did the witness intentionally or mistakenly alter some of the words used by the defendant, thereby changing the meaning of what was actually said?

If, after weighing such factors, you conclude that the defendant said what [he / she] intended to say and that the witness to the statement correctly understood, remembered, and related to you what the defendant said, then you are authorized to consider such statements for what you deem them to be worth.

**INSTRUCTION No. 7
WITNESS FALSE IN PART**

A witness who lies under oath in some part of his or her testimony is likely to lie in other parts of his or her testimony. Therefore, if you find that a witness has lied in some part of his or her testimony, then you may distrust the rest of that witness's testimony.

Sometimes witnesses who are not lying may give incorrect testimony. They may forget matters or may contradict themselves. Also, different witnesses may observe or remember an event differently.

You have the sole responsibility to determine what testimony, or portions of testimony, you will or will not rely on in reaching your verdict.

INSTRUCTION No. 8
DEFENDANT’S/WITNESS’S PRIOR CONVICTION

If you find that the defendant or any witness has been convicted of a crime, you may consider this conviction only for its bearing, if any, on the believability of the defendant/witness’s testimony.

INSTRUCTION No. 9
ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION No. 10
EXPERT WITNESSES

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness’s qualifications, and all of the other evidence in the case.

INSTRUCTION No. 11
NONEXPERT OPINION EVIDENCE

Although a witness may be allowed to state his or her opinion, you are not required to accept that opinion. To determine what value, if any, you will give to a witness’s opinion you should consider such things as the witness’s opportunity and ability to form the opinion, the witness’s believability, and how the witness reached the opinion.

**INSTRUCTION No. 12
DEFINITION OF INTENTIONALLY**

INTENTIONALLY AND WITH INTENT

A person acts “intentionally” or “with intent” when that person acts with a conscious objective either (a) to cause a particular result; or (b) to engage in particular conduct.

**INSTRUCTION No. 13
DEFINITION OF KNOWINGLY**

KNOWINGLY AND WITH KNOWLEDGE

A person acts “knowingly” or “with knowledge” when that person acts with an awareness either (a) that his or her conduct is of a particular nature; or (b) that a particular circumstance exists.

**INSTRUCTION No. 14
CRIMINAL CHARGES**

THE CHARGE - THE INDICTMENT

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with conspiracy to engage in animal fighting, engaging in animal fighting, and endangering the welfare of a minor. The defendant has pleaded not guilty to each of these three charges.

Count I: CONSPIRACY TO ENGAGE IN ANIMAL FIGHTING

A person commits the crime of conspiracy to engage in animal fighting if the person, with the intent to commit the crime of engaging in animal fighting, agrees with one or more persons to commit the crime of animal fighting. In the State of Bliss, it is not a defense to the crime of conspiracy that the other person or persons lacked the intent to form such agreement.

Count II: ENGAGING IN ANIMAL FIGHTING

A person commits the crime of engaging in animal fighting if that person knowingly promotes, conducts or participates in, or performs any service in the furtherance of an exhibition of an animal fight. An “exhibition of an animal fight” is defined as a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals for amusement or gain is a significant feature. “Exhibition of an animal fight” does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking or self-protection. “Animal” means vertebrate nonhuman animal.

Count III: ENDANGERING THE WELFARE OF A MINOR

A person commits the crime of endangering the welfare of a minor if that person knowingly and unjustifiably places a minor in danger of imminent harm or knowingly and unjustifiably induces, causes, or encourages a minor to engage in unlawful behavior. “Minor” is defined as a person under the age of 18.

****END JURY INSTRUCTIONS****