

TRIAL RECORD
(Feb. 26-27, 2015)

State v. Nancy Clawse
Polar County Circuit Court Case No. 14-4132
State of Vortex

Charges:

- Count I: Animal Neglect in the First Degree (Class C Felony)**
[as to Shelbie]
- Count II: Animal Neglect in the Second Degree (Class A misdemeanor)**
[as to Cleo]
- Count III: Assault of a Law Enforcement Officer (Class A misdemeanor)**
[as to Sergeant Stone]

List of Received Exhibits:

State's No. 101-103
Defendant's No. 201-202

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 Sergeant Steve Stone 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?**
- STONE: I do.**

CLERK: Sergeant, please state your full name and spell your first and last name for the record.

STONE: Sergeant Steve Stone, S-T-E-V-E S-T-O-N-E.

PROS ATTY: Sergeant, what is your occupation?

STONE: I'm an officer with the Polar County Sheriff's Department in the State of Vortex.

PROS ATTY: And how long have you been with the sheriff's department?

STONE: Oh, since before you were born I'm guessing. (*chuckles*). 1984, so 30 years this past December.

PROS ATTY: What do your duties entail?

STONE: Well, I respond to complaints throughout the community, lots of neighbor dispute stuff, theft . . . child abuse, animal abuse—those are really the worst. So I'm out on the road a lot. Never was one to sit behind a desk all day, pushing paper. Except I write up all my reports of course.

PROS ATTY: Sergeant, how many animal cruelty calls would you say you've responded to over the course of your career?

STONE: Oh, hard to say exactly—but ballpark, couple hundred. Especially these last few years, since the recession hit, so many people can't take care of their horses anymore, it's sad.

PROS ATTY: Have you ever responded to an animal neglect complaint?

STONE: Yeah sure, Polar County is all farmland really, so we have lots of horses and cows and sheep and stuff. So sometimes people will call and say this horse looks skinny, or it's really hot and there's no shade for it. So I'll go and talk to the owner. I'm real good with people, see, so most of the time they just need someone to talk to and tell 'em they need to get better hay for their horse, or somethin' like that. My buddies down at the station call me the "animal whisperer." (*chuckles*)

PROS ATTY: Sergeant, can you tell us about the complaint you responded to on January 5, 2014?

STONE: Yeah, so I remember clearly because it was in the middle of the biggest snowstorm in years. We got a call that some dogs were

freezin' to death out at the old Clawse place. So I headed up there about 2 o'clock that day.

PROS ATTY: Your Honor, we ask that the Court take judicial notice of the fact that it was snowing on January 4 and January 5, 2014.

JUDGE: Granted. Continue counselor.

PROS ATTY: Tell us about what you found when you arrived at the defendant's property.

STONE: Well, the Clawse property sits right on the main road—Mill Road—and from the car as I drove up I could see a couple dozen blue barrels about 200 yards away, with some hay and dogs' fur visible.

PROS ATTY: Is this property within Polar County in the State of Vortex?

STONE: Yes.

PROS ATTY: Can you describe the weather as you drove up to the property?

STONE: Well, it was still snowin' pretty good, and probably 8, 12 inches on the ground from the storm so far. We ended up getting a foot and a half that storm, through the next morning.

PROS ATTY: What about the temperature?

STONE: Well I remember because it was so cold my car thermometer got stuck, so I took out my handheld thermometer. I use it in the summertime when we find animals stuck in hot cars.

PROS ATTY: Sergeant Stone, I am now showing you State's Exhibit 101. Can you describe what is depicted in this exhibit?

STONE: That's a picture of the thermometer that I took at the Clawse property that day, you can see it says five degrees there.

PROS ATTY: Your honor, the State offers Exhibit 101 into evidence.

DEF ATTY: No objection.

JUDGE: Exhibit received.

PROS ATTY: Thank you Sergeant. What else did you see as you drove up to the Clawse property?

STONE: Well, I passed the field where the barrels were, and turned up the long driveway where the Clawse house sits, at the top of the hill. Probably about a minute to get to the house from the road.

PROS ATTY: And from your position on the driveway, how far were you from the blue barrels?

STONE: Probably 50 feet or so, they were close to the fence.

PROS ATTY: And what could you see from your vantage point in the driveway?

STONE: Well, I could see some of the dogs' faces now, sticking out of the barrels. The barrels were on their sides and there were holes cut out, and I could see some straw in there. But then I saw a couple dogs' faces, and they were covered in snow, I could see icicles hanging from some of them and around the opening to the barrels.

PROS ATTY: What did you do next?

STONE: Well, I stopped the car near the barrels and got out, I was still in the driveway. But now I could see that some were shivering, and like I said it was freezing cold, and windy. Probably below zero with the windchill.

PROS ATTY: Did you see Ms. Clawse on the property?

STONE: No, not yet. I got back in my car and drove up to the house, about another 100 yards, 'cause I needed to talk to her about those dogs, they were going to freeze to death out there if they hadn't already—

DEF ATTY: Objection, speculation. Sergeant Stone is not a vet and cannot hypothesize about whether the dogs would die.

PROS ATTY: Your Honor, we discussed this during pretrial motions. Regarding the emergency aid exception ... Sergeant Stone deals with animal cruelty cases frequently and is in fact an expert in this field who could assess the animals' condition that day.

JUDGE: Yes, we did discuss this Counselor. Overruled. Continue with your witness, but Sergeant, please try to keep your testimony to what you observed, rather than what the dogs supposedly felt or experienced.

PROS ATTY: Sergeant Stone, you were concerned about the dogs. So what did you do next?

STONE: Well, because the dogs were out there like that in the cold and snow, I thought maybe something was wrong with Ms. Clawse, so I knocked on her door to talk to her but no answer.

PROS ATTY: What did you do next?

STONE: Well I was real worried about those dogs, there must have been 40, 50 of them in those barrels. I know Ms. Clawse breeds Shelties and sells 'em, and I was worried they would all freeze to death if I didn't get 'em out of there. So I drove back down the driveway to where the barrels were, and noticed again there was ice and snow stuck to 'em and they were shivering. I knew I had to get 'em out of there. So I called animal control for backup—they have those big vans you know, and I just had my pickup with me at the time.

PROS ATTY: Sergeant, I am now showing you what has been marked as State's Exhibit 102. Is this a photograph of one of the Shelties you saw in the barrels?

STONE: Yeah, that's Shelbie. She was in real bad shape, poor thing, when we took her out, her body was limp, wouldn't even move. She died before we even got 'em all to the vet.

PROS ATTY: Your honor, the State offers Exhibit 102 into evidence.

DEF ATTY: No objection.

JUDGE: Exhibit received.

PROS ATTY: Sergeant, can you tell us about what you saw in the barrels?

STONE: Well, it looks like they were lined with hay, but that wasn't doing too much in the cold, I can tell ya. There were a couple dogs to a barrel, you could tell that they were huddling up and trying to keep warm with body heat. But they were all shivering, and like I said had ice and snow stuck to 'em.

PROS ATTY: Did you see any heat lamps in or around the barrels?

STONE: No, they were just barrels with hay, in the field. And like I said there was almost a foot of snow on the ground, so some was piling up at the entrance to the barrels and on top. There was another dog I remember well, little Cleo, he was whimpering pretty bad and shaking too. Seemed like the runt of the litter or something, a little on the small side. His barrel was all chewed around the edges, like he was frustrated or something.

PROS ATTY: Sergeant, can you describe what you see in State's Exhibit 103 that I have placed in front of you?

STONE: That's Cleo, tiny little tike. That's a photo of him we took on-site that day before we took them all.

PROS ATTY: Your honor, the State offers Exhibit 103 into evidence.

DEF ATTY: No objection.

JUDGE: Exhibit received.

PROS ATTY: So Sergeant Stone, you were standing in the driveway by the barrels and you were waiting for animal control to arrive. Did you see Ms. Clawse at any point?

STONE: Yeah, so when animal control showed up, she must've seen that we were going to take the dogs, and she ran out of her house and started screaming at us that we couldn't take her property, and that she'd have me fired.

DEF ATTY: Objection Your Honor, hearsay.

PROS ATTY: Your Honor, this is not being offered for the truth of the matter asserted but rather for the effect on the listener. I'm trying to establish how Ms. Clawse's words effected the sergeant's actions here.

JUDGE: Sustained and the jury is ordered to disregard the statement about what Ms. Clawse said. Continue counselor.

PROS ATTY: Sergeant Stone, what did you do next?

STONE: Well these dogs were freezing, and they didn't have proper shelter in my opinion. Like I said I respond to animal calls all the time, but I had never seen dogs in this condition before. I gave her the option of taking them inside her house, but she refused ...

PROS ATTY: Sergeant Stone, what did you do next?

STONE: Well like I said, those dogs were going to die, so I told her that I was seizing them because this was an emergency since she wasn't going to help them. So myself and the ACO—that's "animal control officer"—loaded them up onto the van and took them to the only vet that was open—Dr. Vogel.

PROS ATTY: And we'll hear from Dr. Vogel in a bit. Sergeant, how did Ms. Clawse respond when you began loading the dogs?

STONE: Not well, to say the least. She's a feisty one. She ran over and tried to pry one of the dogs from my arms, dug into my arm real good. Can't say I appreciated that, I was just doing my job.

PROS ATTY: So Ms. Clawse attacked you while you were taking the freezing dogs to get them medical care and proper shelter?

STONE: In a nutshell, yeah.

PROS ATTY: Sergeant, in the hundreds of animal cruelty complaints you've responded to, have you ever had to seize an animal on the spot like that?

STONE: No, never—this was the worst I had seen for neglect. Usually I have time to get a warrant at least, like wait a day or two. But like I said I thought these dogs were going to freeze, so I had to take action.

DEF ATTY: Sidebar your honor?

JUDGE: Approach the bench.

[Attorneys approach the bench. The following takes place outside the hearing of the jury].

DEF ATTY: Your Honor, I need to state for the record again that the Defense argues that these dogs were illegally seized without a warrant in violation of the Fourth Amendment, and therefore any subsequent evidence from examining the dogs must be suppressed.

PROS ATTY: Your Honor, we already settled this in pretrial motions. As you ruled then, the emergency aid exception applies here—the officer reasonably believed it was necessary to seize the animals because they were in imminent danger of freezing to death and there was no time to get a warrant.

DEF ATTY: Your Honor, respectfully, the State has never before applied the emergency aid exception to anyone besides human beings. The dogs are property in the eyes of the law, and therefore—

JUDGE: Counselor, please. I have already ruled on the motion to suppress. Your argument is preserved for the record in the event of an appeal. Please proceed with your witness counselor.

[end sidebar]

PROS ATTY: Nothing further your honor.

JUDGE: Defense, cross?

DEF ATTY: Thank you your honor. Sergeant Stone, you mentioned that this was the first time you had ever seized animals without a warrant for neglect. Have you ever cited an animal owner for failing to provide shelter to an animal?

STONE: No, I don't believe so ... this was the first time.

DEF ATTY: Sergeant, isn't it true that you had been to Ms. Clawse's property prior to January 5, 2014, during this same snow storm, and you failed to cite her for neglect?

STONE: Yes, I was there on January 4 ... but I didn't see reason to seize the animals at that time.

DEF ATTY: Oh? Was it substantially warmer on January 4?

STONE: No, I ... well, I talked to Ms. Clawse about the dogs on January 4, and told her that they could probably use some more hay or blankets or something.

DEF ATTY: So on January 4, you did not have probable cause to believe that Ms. Clawse was neglecting her animals?

STONE: Well, I gave her a warning ...

DEF ATTY: But on January 5, in the same weather, you suddenly found the exact same situation for the dogs to constitute criminal neglect?

STONE: Well, yes ... I mean, there was a lot of pressure for us to do something. Somebody posted some pictures on Facebook or Tweeter--

DEF ATTY: Twitter?

STONE: Yeah, on these sites, and put our number on it ... so our office was getting calls from around the country.

DEF ATTY: So before you even entered my client's property, you had decided that you were going to take those animals, even though just the day before you had decided that the dogs had adequate shelter?

STONE: Well no, like I said ... when I saw them I decided it was an emergency.

DEF ATTY: Sergeant Stone, you just testified that you have never cited anyone for neglect for inadequate shelter for an animal, isn't that right?

STONE: Correct, not before Ms. Clawse.

DEF ATTY: Sergeant, did you find food and water available to the dogs on January 5?

STONE: Yeah, there were some bowls with food and water from what I could see.

DEF ATTY: And was the water or food frozen in this weather you claim was so extreme?

PROS ATTY: Objection, Your Honor has already taken judicial notice of the weather on January 5.

JUDGE: Overruled. Please proceed.

DEF ATTY: Sergeant, was the food and water frozen?

STONE: No, 'cause see she—Ms. Clawse—had some heated water bowls or something, that was keeping them from freezing.

DEF ATTY: So my client had a heat source in every barrel, with every dog, but you claim that she was not providing adequate shelter?

STONE: Well, those bowls, they were barely keeping the water from freezing, it was ice cold—well not *ice*, but pretty friggin' cold water, with the wind and everything it was—

DEF ATTY: So my client did provide food and water to the dogs.

STONE: Yes, I mean they were certainly not eating any of it, but ... yes. But like I said they were freezing cold, those barrels weren't keepin' them warm.

DEF ATTY: Sergeant, did you seize any of the food or water bowls, or barrels, all evidence of this alleged neglect, on January 5 when you seized the dogs?

STONE: No, our priority was getting the animals out, for their safety. We went back the next day, but the all of the bowls and barrels were gone. Ms. Clawse must have gotten rid of them.

DEF ATTY: Sergeant, can you tell us your approximate height and weight?

STONE: Oh, about 6'1", 220 pounds. I'm on this Paleo thing now but it's hard with my buddies down at the station, there's always good greasy takeout waiting for me. *(chuckles)*

DEF ATTY: Sergeant, how many dogs did you seize from my client's property on January 5?

STONE: I believe it was 45 ... no, 46, including Shelbie.

DEF ATTY: So 46 dogs were seized, but my client has only been charged with two counts of cruelty?

STONE: Well, I ended up citing for a bunch more, but I guess you'd have to ask the prosecutor about the charges.

DEF ATTY: Nothing further.

JUDGE: State?

PROS ATTY: Sergeant, you had never cited for neglect based on inadequate shelter before, but was that because an owner is not required to provide shelter to their animals?

STONE: Well, I never really saw a situation like that that looked like neglect to me. Like I said every now and then someone would complain that a horse or something was out in the sun all day and didn't have shade, but I mean I always do a friendly check and warning before issuing a citation anyway. Before I saw those dogs on Ms. Clawse's property, I just hadn't ever seen animals that were suffering like that.

PROS ATTY: Nothing further.

JUDGE: Your next witness?

PROS. ATTY: The State calls Dr. Vera Vogel 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?

VOGEL: I do.

CLERK: Dr. Vogel, please state your full name and spell your first and last name for the record.

VOGEL: Dr. Vera Vogel, V-E-R-A V-O-G-E-L.

PROS ATTY: And what is your occupation?

VOGEL: I'm a veterinarian in Polar County, I treat mostly dogs and cats, sometimes rabbits.

PROS ATTY: And where did you get your degree in veterinary medicine?

VOGEL: The Ivy Medical School, in Boston. It's one of the top ten veterinary schools in the country.

PROS ATTY: And you are the recipient of some awards for your work, is that correct?

VOGEL: Yes, I received the Ivy Medal of Excellence for my paper on vet malpractice issues. I was also named the Ivy Group's "Most Promising Small Vet" in my graduating class.

PROS ATTY: At this time, Your Honor, I would offer Dr. Vogel as an expert in veterinary medicine.

DEF ATTY: No objection.

JUDGE: Dr. Vogel is accepted as an expert witness in veterinary medicine and may render expert opinions.

PROS ATTY: Dr. Vogel, you said that you see a lot of dogs in your practice?

VOGEL: Yes, I do.

PROS ATTY: Can you describe what happened on January 5, 2014?

VOGEL: Yes, I got a call from Sergeant Stone from the sheriff's office telling me that quite a few dogs had just been seized from the Clawse property, and so I began preparing the office for their arrival—it's

fairly small. I was told we were the only vet they could get ahold of due to the storm.

PROS ATTY: Can you describe the conditions of the dogs that Sergeant Stone brought to your office that day?

VOGEL: They had all been in the truck for a good half hour, so they had warmed up quite a bit. Shelbie was the only one that didn't make it—she died on the way over. We ended up doing a necropsy on her.

PROS ATTY: Dr. Vogel, what is a necropsy?

VOGEL: It is the animal equivalent of an autopsy.

PROS ATTY: What did your necropsy of Shelbie reveal?

VOGEL: We discovered that she had died from hypothermia.

PROS ATTY: And can you describe what happens to a dog with hypothermia?

VOGEL: Well, just like in people, hypothermia is a condition in which the body loses heat faster than it can produce heat. Usually caused by prolonged exposure to cold temperatures.

PROS ATTY: Does a dog's coat usually protect it from hypothermia?

VOGEL: Well, Shelties like Shelbie and Cleo have thick coats, but even that can't help them in extreme cold like we had back in the big storm last January.

PROS ATTY: What are some of the signs of hypothermia?

VOGEL: Shivering, lethargy, oftentimes frostbite accompanies the condition. When Cleo got here, he was whimpering and still shivering, even though they had wrapped him in blankets on the ride over here.

PROS ATTY: What was Cleo's body temperature when he arrived at your office?

VOGEL: 97 degrees, but like I said he had been in the car for a half hour or so and had been wrapped in blankets, so his temperature was probably low 90s—

DEF ATTY: Objection, speculation. Dr. Vogel did not take the dog's temperature prior to its arrival in her office.

JUDGE: Sustained. Continue, Counselor.

PROS ATTY: Dr. Vogel, what is the normal body temperature for a dog?

VOGEL: Between approximately 99.5 and 102.5 degrees. Like I said Cleo's temperature was about 97 when he came in, and we got it up to 99.

PROS ATTY: How long did it take for Cleo's body temperature to return to normal?

VOGEL: About an hour after he arrived; we wrapped a hot water bottle in a blanket with him, just like we did for all the other dogs that came in that day from the Clawse place.

PROS ATTY: Dr. Vogel, is hypothermia painful for dogs?

VOGEL: Certainly, dogs that suffer hypothermia get frostbite on their extremities, and when those areas warm, the effect can be extremely painful for them—again just like in humans.

PROS ATTY: Did you observe frostbite on Cleo that day?

VOGEL: Yes, his two front paws, and his tail and ears.

PROS ATTY: How did you know these areas were frostbitten?

VOGEL: Well, those body parts were discolored, the skin was a pale blue.

PROS ATTY: And you said Cleo was whimpering a lot that day, yes? From the pain he was in?

VOGEL: Well yes, frostbite is very painful for dogs when those areas start warming up, just like humans.

PROS ATTY: Thank you, Dr. Vogel. No further questions.

JUDGE: Defense, cross?

DEF ATTY: Dr. Vogel, let's start right there. You said that frostbite is "painful" for dogs; how do you know that?

VOGEL: Well, the scientific community really unanimously agrees now that animals are sentient creatures that suffer just like us. We know that when a dog like Cleo is in a situation like that, in extreme cold, with freezing body parts ... well it's common sense, really, that he felt pain.

DEF ATTY: Doctor, you were quite the acclaimed student at Ivy Medical School. The award-winning article that you mentioned, that was entitled *More Bark than Bite: Vet Malpractice Damages in Today's Courts*, is that correct?

VOGEL: Yes.

DEF ATTY: And in that article, you argue that animals have rights just like humans, correct?

PROS ATTY: Objection, Counsel is testifying.

JUDGE: I'll allow this time, overruled.

DEF ATTY: Please answer the question, Dr. Vogel.

VOGEL: Well, not exactly. My thesis points out that awarding vet malpractice damages beyond the market value of the animal will not actually amount to rising costs for the consumer or vets themselves. You see, there's a growing trend toward awarding actual damages for an animal's injury or death, to reflect the value of that pet to the family, not just the dollar amount the pet could be sold for—the mere market value.

DEF ATTY: So in other words, a dead animal should be treated like a deceased human family member in these cases?

VOGEL: Exactly.

DEF ATTY: Dr. Vogel, do you believe that animals have the same rights as humans?

PROS ATTY: Objection, relevance?

DEF ATTY: Withdrawn. Dr. Vogel, you're fairly new out of veterinary school, are you not?

VOGEL: I graduated in 2012.

DEF ATTY: And how many clients have you had in that time?

VOGEL: Well, it's hard to say ... It's tough, we're in a small town, and there are a lot of other vets doing all the livestock animals ... see I do small animals, dogs and cats, but there's not as much of a need—

DEF ATTY: So you haven't actually treated many real, live dogs at all. You had only treated a few dogs in your practice as of January 5, 2014.

VOGEL: Like I said, I'm still starting out.

DEF ATTY: Was your first necropsy the necropsy you performed on the dog named Shelbie?

VOGEL: Yes. But I had a team working with me ...

DEF ATTY: Dr. Vogel, did you take any pictures of Cleo that day in your office, to document the alleged frostbite?

VOGEL: Everything was happening so fast ... my assistant took down notes of the dogs' conditions, but no pictures.

DEF ATTY: Nothing further.

JUDGE: State?

PROS ATTY: Nothing more for this witness, Your Honor.

JUDGE: State, you have one more witness for us?

PROS ATTY: Yes, we call Mr. Louie Stew 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?

STEW: I do.

CLERK: Please state your full name and spell your first name and last name for the record.

STEW: Louie Stew, L-O-U-I-E S-T-E-W.

PROS ATTY: Mr. Stew, where do you reside?

STEW: I live in Polar County, about a mile and a half from Nancy.

PROS ATTY: From the defendant, Nancy Clawse?

STEW: Yeah, sorry. From the defendant.

PROS ATTY: Mr. Stew, what is your relationship to the defendant?

STEW: Well, no relationship now. Until last year, I was livin' up there on that farm with her. Until she went 'n cheated on me.

PROS ATTY: So you were the defendant's boyfriend?

STEW: Yep, and I did everything for her. Helped her out when she needed money. I'm a truck driver, big rigs you know. I work really long shifts, away days at a time. But on my off days when I shoulda been sleepin' I helped her with all them dogs, shovelin' crap and dishin' food and even playin' with 'em ...

PROS ATTY: Mr. Stew, how long did you live with the defendant?

STEW: About two years ... 2011 summer till about October 2013. I remember because I love Halloween, and it ruined that holiday for me to move out just then.

PROS ATTY: And between 2011 and 2013, did the defendant always have 50 or so dogs?

STEW: Yep, well ... it only started as a couple. She's always been crazy for shelties since we were kids—we grew up together you know, went to the same schools and all. When I first moved in she only had a couple, maybe 8, 9, and only one was the momma, Wilma. But then she kept getting' all these orders for more, and by the time I moved out she had maybe 10 momma dogs and all these puppies she was sellin'.

PROS ATTY: And how did the defendant deal with the growing number of dogs?

STEW: Well, her daddy left her all this land, she's got a big place see. At first the dogs could fit inside, but that house ain't too big itself, so she started leavin' em outside in the yard. She said it was better for 'em so they could run around and all that, but we had a couple cold winters where I was a little worried. Nothin' like that next January though.

PROS ATTY: Can you describe the defendant's care of the dogs once they moved outside?

STEW: Oh, I think at first she was in over her head. It never seemed like she had enough food to go around. I tried to help for so long, like I said, dishin' out food and cleanin.' But she just didn't stop breedin' em. Every year there were more ... She called 'em her "cash cows"—this was one of our jokes because she never was good with

real livestock you know, never had her daddy's genes for farmin.' So I guess this was like her project. She kept a couple of 'em inside the house with her, her pets you know, the ones she had forever, but the rest were always outside.

PROS ATTY: Mr. Stew, you mentioned that there were a couple of winters where you were "worried." What did you mean by that?

STEW: Well she would go days at a time without checkin' on 'em outside, which was ok for the warmer months I guess, but winter 2012 in particular I remember tellin' her that those dogs might freeze to death and she wouldn't listen—

DEF ATTY: Objection, hearsay.

JUDGE: Sustained. Strike that from the record please, the part about Mr. Stew telling the defendant "the dogs might freeze." The jury is directed to disregard that statement.

PROS ATTY: Your Honor, we are not offering it for the truth of the matter asserted but rather for the effect on the listener. We're trying to establish that the defendant was told on multiple occasions by various people, including her romantic partner, that the dogs were in danger in the cold.

JUDGE: No ... sustained. Mr. Stew was not on the Clawse property on the date in question here, so let's not go down that road ... continue.

PROS ATTY: Let's back up Mr. Stew. In your personal experience, having lived with the defendant for more than two years, did the defendant have a habit of leaving the dogs outside for days at a time?

STEW: Yes.

PROS ATTY: Even in winter months?

STEW: Yeah.

PROS ATTY: Did the defendant ever express any concern for the dogs' well-being during extreme temperatures?

STEW: No ... She was in that business for the money. Once she started seein' green, she never looked back.

PROS ATTY: Thank you, Mr. Stew. Nothing further.

JUDGE: Cross?

DEF ATTY: Mr. Stew, you said that you left the defendant in fall 2013. But she broke up with you, isn't that correct?

STEW: She was cheatin' on me if that's what you mean. I know she was.

DEF ATTY: So in October 2013, the defendant asked you to leave. But you've been back to the Clawse property since, isn't that correct?

STEW: She still loved me, I know she still did.

DEF ATTY: In fact, the defendant had to call the police on a number of occasions because you were trespassing, isn't that correct?

STEW: Well, er ... I still had some of my stuff there, so I was coming back to get it.

DEF ATTY: Mr. Stew, are you here to get revenge on my client for breaking your heart?

PROS ATTY: Objection!

DEF ATTY: Withdrawn. Nothing further.

PROS ATTY: State rests, Your Honor.

JUDGE: Outstanding ... looks like I can be home in time for dinner tonight! Taco Thursday ... OK, let's reconvene tomorrow for the defense's case.

[adjourned]

[trial resumes]

JUDGE: Well, glad to see everyone got here in this snow ... Defense, your first witness?

DEF ATTY: Thank you, Your Honor. The Defense calls Nancy Clawse 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?

CLAWSE: I do.

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

CLAWSE: Nancy Clawse, N-A-N-C-Y C-L-A-W-S-E.

DEF ATTY: Ms. Clawse, where do you live?

CLAWSE: I live at 1142 Mill Road, in Polar County.

DEF ATTY: What is your occupation?

CLAWSE: I'm an ABC certified dog breeder, Shelties. I love my Shelties.

DEF ATTY: And when did you begin breeding Shelties?

CLAWSE: Back in 2010. I got laid off after the economy crashed, in 2009. Before that I was an assistant for the library, reading to kids on class trips and all that. But when I got laid off I had nothin,' no one would hire me. I was livin' hand to mouth for awhile, you know. See, I'm a widow ... my husband died in '02. And let me tell you, it's slim pickins for us country girls, especially at my age! Before Louie moved in, I could hardly pay for my heat--

DEF ATTY: Ms. Clawse, let's slow down a minute. Why did you begin selling Shelties?

CLAWSE: Well Fred and Wilma—they're my first Shelties—had a litter, and a neighbor came by one day and said she'd been looking for a pup for her little girl, and she wouldn't let me give him away without payin' me, and then a friend of hers wanted one too ... and I realized, hey, this could be some income for me.

DEF ATTY: So Ms. Clawse, you *needed* your breeding business to survive?

CLAWSE: Absolutely—I had no other job, and none around to even apply for. I was broke. These dogs have kept me alive.

DEF ATTY: Can you tell us about your relationship with Mr. Stew?

CLAWSE: Oh, that man ... always so jealous! Anytime I talked to the mailman or the grocer or really anyone in town besides him, if I smiled at another man, Louie was grilling me with questions. I finally just couldn't take it anymore and told him to get out.

DEF ATTY: And how did that go?

CLAWSE: Not well ... he kept coming back. I was a little frightened a few times, he was throwing things around pretty hard when he came back for more stuff, so I had to call the police.

DEF ATTY: Ms. Clawse, we heard some testimony yesterday from Mr. Stew to the effect that you did not care about your dogs. Is that true?

CLAWSE: Of course not, my puppies are my babies! I love Shelties ... I always have. It tugs on my heart a little each time I have to give one away ... but it's all I have. There's no work out here in the country for a woman like me. I never was good with farmin' ... my late husband, Bill, well he was the one who took care of the horses and cows and chickens when we had 'em. Then after he died, I just couldn't do it on my own. And the old barn burnt down in '05, so I was really outta luck.

DEF ATTY: Ms. Clawse, let's talk about what happened in January 2014.

CLAWSE: Well, I knew there was bad storms comin.' We all heard it on the news. The sheriff had come by and just said to keep an eye on the dogs in the cold weather. I think he was makin' the rounds to check on folks.

DEF ATTY: Ms. Clawse, was it your understanding that the dogs had appropriate shelter?

CLAWSE: Oh yeah, they were fine! They have thick coats. I even got some pictures of them playin in the snow, they really loved it.

DEF ATTY: Ms. Clawse, I'm now showing you Defendant's Exhibit 201. Is this a picture of one of your dogs in the snow on January 4, 2014?

CLAWSE: Yep, that's Wilma, my oldest girl.

DEF ATTY: Your Honor, we offer Exhibit 201 into evidence.

PROS ATTY: No objection.

JUDGE: Exhibit received.

DEF ATTY: So Sergeant Stone stopped by on January 4 you said?

CLAWSE: Yes ...

DEF ATTY: And at that time, was it your understanding that you had to do anything additional for the dogs, to be in compliance with the law?

CLAWSE: No, definitely not ... like I said he was just makin' the rounds in the neighborhood.

DEF ATTY: And what happened on January 5?

CLAWSE: Well, someone must have called them or something ... I was inside with Fred and Wilma, the snow was really coming down, you know. I was up in the attic getting out some extra blankets. And I heard a couple revs of an engine and looked out and saw the sergeant backing down the driveway.

DEF ATTY: Did you hear Sergeant Stone knock on your door?

CLAWSE: No, like I said I was in the attic. So if he knocked, I didn't hear it.

DEF ATTY: What happened after you noticed the sheriff's car?

CLAWSE: Well, I ran downstairs, and I saw another car pulling up, one of those dog-catcher vans, and they started grabbing my pups and loading them into the van! I ran outside, hollerin' to him, asking what they were doing, but he wouldn't answer me ... I told them I needed a warrant, but they didn't stop.

DEF ATTY: Judge, we can—

JUDGE: Yes, strike that last part about needing a warrant and the jury is directed to disregard that comment. Continue please.

DEF ATTY: How was Sergeant Stone and his crew handling the dogs?

CLAWSE: Oh, they were just yankin' 'em out of their little dens I had made, and putting them into cages in the van with blankets ...

DEF ATTY: Can you describe the "dens" you mentioned?

CLAWSE: Oh yeah, they're cute little things. You can use old barrels and then line 'em with straw and some blankets, I had heated bowls in there for 'em too. See dogs like Shelties love their dens, it's their safe place.

DEF ATTY: Did you notice the condition of the dogs when the Sergeant and his team were grabbing them from their dens?

CLAWSE: Oh, they looked reeeal frightened. They've only really known me, ya know, so these big men grabbing them out of their safe little caves and into these cages, of course they were scared ... some were shivering they were so frightened.

DEF ATTY: Ms. Clawse, you were surely upset when the Sergeant took your dogs and started loading them into the animal control van?

CLAWSE: Absolutely ... I couldn't believe what was happening.

DEF ATTY: What did you do when you saw your dogs being taken from you?

CLAWSE: Well, like I said before, I was hollerin' but no one would answer me. The sergeant was holding Cleo, and I tried grabbing for him. I know now that I shouldn't have, but it was my gut reaction in the situation, ya know? Like a mother's instinct.

DEF ATTY: And how was Cleo responding?

CLAWSE: Oh, Cleo was shaking real bad, poor thing must have been scared out of his mind.

DEF ATTY: Ms. Clawse, what is your height and weight?

CLAWSE: Well, a lady never tells her age or weight ... but I know I'm under oath. Last I checked, 5'2" and about 120 pounds.

DEF ATTY: So you, a woman barely over five feet, tried to take back your own pup from a grown man nearly double your size—did you think you could do it?

CLAWSE: I never meant any harm, like I said, it was just my reaction. I'm sure I didn't hurt him at all.

DEF ATTY: Ms. Clawse, did Sergeant Stone take any of the barrels that had been providing shelter for your dogs?

CLAWSE: No, he left em' all there. Only took the dogs.

DEF ATTY: So again, as of January 5, 2014, you had not been told by anyone, including the sheriff who had visited you the day before, that the dogs required any additional shelter, heat lamps, anything to keep them warmer?

CLAWSE: No, definitely not.

DEF ATTY: Would it have been possible to bring the dogs inside your home?

CLAWSE: On no ... I'm no hoarder—I'm in a little house, two tiny bedrooms and an attic, there was no place to put them!

DEF ATTY: Would it have been possible for you to construct a heated barn between January 4 and January 5 of 2014, between the time that the sheriff first visited to notify you of the storm and the time that he seized all of your dogs without a warrant?

CLAWSE: Absolutely not.

DEF ATTY: Ms. Clawse, are you a rich woman?

CLAWSE: *[laughs loudly]* If only! People think breeders make all this money. Well maybe big breeders, in a city. Polar County, we're out in the country. I only sell my dogs for 50 bucks apiece ... like I said that really just keeps my electricity running—

DEF ATTY: So it would not have been possibly, either logistically or financially speaking, for you to provide additional shelter for your dogs on January 5, 2014?

CLAWSE: That is correct.

DEF ATTY: Nothing further.

JUDGE: Cross?

PROS ATTY: Ms. Clawse, what time did the Sergeant visit your home on January 5, 2014?

CLAWSE: It was afternoon ... maybe 2, 3 o'clock?

PROS ATTY: And had you been outside that day to check on the dogs, to see how they were faring in the storm?

CLAWSE: Well no, not yet ... I usually do a night check, refill their food and all that.

PROS ATTY: So it had been almost 24 hours since you had even seen the dogs, despite the fact that a foot of snow had fallen in that time?

CLAWSE: I knew they were ok, they had food and water and were in their dens, and like I said the Sergeant had been out the day before--

PROS ATTY: Ms. Clawse, you said that two of your dogs were in the house with you on January 5. Do you always keep these dogs in your heated home?

CLAWSE: Well yes, those two are mine ... the others I sell ...

PROS ATTY: So you treat the other dogs differently, correct? The ones that are just for sale?

CLAWSE: I care for those dogs very well, they all have dens--

PROS ATTY: Let's take another look at Defendant's Exhibit 201—this is Wilma?

CLAWSE: Yes, she loves the snow ... all Shelties do.

PROS ATTY: You said this picture was taken on January 4, the day the snow began. How long was Wilma outside that day?

CLAWSE: Oh, I took her and Fred out for a bit, like I said they love to play in the snow ... maybe a half hour.

PROS ATTY: And can you describe what Wilma is wearing in this picture?

CLAWSE: That's her jacket.

PROS ATTY: What is the material of the jacket?

CLAWSE: Oh who knows these days, cotton, probably fleece ...

PROS ATTY: So you took your full-grown Sheltie out for only 30 minutes in a fleece coat, but thought it was acceptable to leave Shelbie, Cleo, and dozens of other dogs in the freezing cold and snow for days at a time, checking on them once a day at best?

CLAWSE: Like I said, they had their dens.

PROS ATTY: Nothing further.

JUDGE: Defense?

DEF ATTY: Nothing further.

JUDGE: Moving right along then ... Defense, your next witness?

DEF ATTY: We call Dr. Billie G. Gruff 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?

GRUFF: I do.

CLERK: Dr. Gruff, please state your full name and spell your name and last name for the record.

GRUFF: Dr. Billie G. Gruff, B-I-L-L-I-E G-R-U-F-F.

DEF ATTY: Dr. Gruff, what is your occupation?

GRUFF: I'm a veterinarian in Polar County, 17 years serving my community.

DEF ATTY: And where did you get your degree?

GRUFF: Vortex State Veterinary School, graduated in 1997.

DEF ATTY: At this time, Your Honor, I would offer Dr. Gruff as an expert in veterinary medicine.

PROS ATTY: No objection.

JUDGE: Dr. Gruff is accepted as an expert witness in veterinary medicine and may render expert opinions.

DEF ATTY: Dr. Gruff, is Ms. Clawse one of your clients?

GRUFF: Yes, I've been goin' to the Clawse place since Bill Clawse had livestock up there, cows and chickens and such. And I've been checkin' on Nan's dogs since she started that little business of hers.

DEF ATTY: Do you recall examining a dog named Shelbie in your visits to the Clawse place?

GRUFF: Oh yeah, cute little gal, about a year old. Shame that she died. But she always had a heart murmur from the time she was a pup, I think Nan had a hard time selling her because of her medical condition.

DEF ATTY: Can you explain what a heart murmur is?

GRUFF: Ya well, they're born with it. I can tell it's a murmur 'cause there's a "swishing" sound when I listen to their heart with a stethoscope. Basically, a murmur is a disease of the heart.

DEF ATTY: Can you describe Shelbie's heart murmur specifically, was it serious?

GRUFF: Yeah, sad but that's probably what she died from. Like I said she was born with it and it was real bad. She was always kind of lethargic, coughing and stuff.

DEF ATTY: Dr. Gruff, you see a lot of animals throughout Polar County. Is it common to keep dogs outdoors?

GRUFF: Oh yeah, for city folk it might seem strange, but out here in the country we know that animals want to be outside. Dogs like Nan's Shelties, they have real thick coats, they're fine in all types of weather.

DEF ATTY: So it's a common practice in your community to keep herding dogs like the defendant's Shelties outdoors, even in winter?

GRUFF: That's right.

DEF ATTY: Nothing further.

JUDGE: Cross?

PROS ATTY: Dr. Gruff, what types of animals do you primarily see in your practice?

GRUFF: Well, livestock I guess, horses, pigs, chickens. Sometimes goats. And dogs.

PROS ATTY: Have you examined many dogs in your work?

GRUFF: Oh sure, lots of people have a herding dog or two on their farms out here.

PROS ATTY: But you are primarily a large animal vet, horses and cows, is that correct?

GRUFF: I guess you could say that.

PROS ATTY: Did you examine Shelbie on January 5 or do a necropsy to determine her cause of death?

GRUFF: No, but those dogs had plenty of warmth. Their coats alone ... of all those dogs out there that day, only Shelbie died you see. So it must have been her murmur.

PROS ATTY: Dr. Gruff, in your supposedly many examinations of Shelbie, did you ever do any diagnostic testing to confirm that she actually had a heart condition?

GRUFF: Oh, I didn't need to. Folks out here don't have money for that kind of thing ... I know what a murmur sounds like, and Shelbie had all the signs for it.

PROS ATTY: And again, you were not available to examine Shelbie or any of the other Clawse dogs on January 5, and did not perform the necropsy, is that correct?

GRUFF: I was stuck on another call that day in the storm ... so no.

PROS ATTY: Nothing further.

DEF ATTY: Nothing further for this witness, Your Honor.

JUDGE: Defense, your last witness?

DEF ATTY: The Defense calls Ida Barker 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?

GRUFF: I do.

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

BARKER: Ida Barker, I-D-A B-A-R-K-E-R.

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

BARKER: I'm the Director of the Vortex state chapter of the ABC, the American Breeder's Club.

DEF ATTY: And tell us about the ABC?

BARKER: Well, we're a national organization that sets the standards for dog breeding. Breeders that meet certain requirements can register with

us, and it helps their business to be ABC-certified because well, we're such a respected organization. We organize national dog shows where breeders show their best dogs and compete. We also inform lawmakers about important legislation to ensure that "man's best friend" can continue to have such an important place in our society.

DEF ATTY: Is the defendant an ABC-certified breeder?

BARKER: Yes, Ms. Clawse has been ABC-certified since 2011.

DEF ATTY: Ms. Barker, I've placed Defendant's Exhibit 202 in front of you. Is this a picture of Ms. Clawse from your website?

BARKER: Yes, she was in our "Shelties in the Spotlight" series last year, that's Ms. Clawse with a few of her dogs there.

DEF ATTY: Your Honor, we offer Exhibit 202 into evidence.

PROS ATTY: No objection.

JUDGE: Exhibit received.

DEF ATTY: Ms. Barker, since you clearly know dog breeds, can you describe the Sheltie breed to us?

BARKER: Sure, Shelties are long-haired working dogs with thick coats. They trace back to the Border Collies of Scotland that were bred as farm protectors and herders of flocks.

DEF ATTY: So would you say that Shelties were bred to withstand cold weather?

BARKER: Absolutely, they're a great dog for outdoor farming in all weather. Like I said, very thick coats.

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

JUDGE: State, you may cross examine.

PROS ATTY: Ms. Barker, does the American Breeder Club certification take into account the treatment of a breeder's dogs?

BARKER: Well no, our rules require that a dog meet certain lineage, weight, and height requirements, but we don't investigate the dogs' living conditions, if that's what you mean.

PROS ATTY: So an ABC-certified breeder could be neglecting their dogs, and still maintain certification?

BARKER: Well, someone convicted of animal cruelty would lose their certification. But we don't do that kind of investigation.

PROS ATTY: Nothing further.

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

JUDGE: Excellent! We're moving right along today. Let's adjourn for the day and then reconvene for closing arguments tomorrow.

****END TRIAL TRANSCRIPT****

STATE EXHIBIT 101



STATE EXHIBIT 102



STATE EXHIBIT 103



DEFENSE EXHIBIT 201



DEFENSE EXHIBIT 202



JURY INSTRUCTIONS

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 Vortex against the Defendant, Nancy Clawse. The Defendant has been charged with Animal Neglect in the First Degree (Count I of the Indictment), Animal Neglect in the Second Degree (Count II of the Indictment) and Assault of a Law Enforcement Officer (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

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
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. 9
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. 10
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. 11
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. 12
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 animal neglect in the first degree, animal neglect in the second degree, and assaulting a law enforcement officer. The defendant has pleaded not guilty to each of these three charges.

Count I: ANIMAL NEGLECT IN THE FIRST DEGREE

A person commits animal neglect in the first degree if the person unjustifiably fails to provide minimum care, such as food and water, to an animal in that person's custody or control resulting in serious injury or death to the animal.

Nothing in this section shall be construed to prohibit normal animal husbandry practices.

Count II: ANIMAL NEGLECT IN THE SECOND DEGREE

A person commits animal neglect in the second degree if the person unjustifiably fails to provide minimum care, such as food and water, to an animal in that person's custody or control resulting in pain or suffering to the animal.

Nothing in this section shall be construed to prohibit normal animal husbandry practices.

Count III: ASSAULT OF A LAW ENFORCEMENT OFFICER

A person assaults a law enforcement officer if that person knowingly places the officer in reasonable apprehension of immediate bodily harm.

****END JURY INSTRUCTIONS****