

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	C.A. No. 1004022592
)	
SOPHIA BENNETT,)	
)	
Defendant.)	

Submitted: October 18, 2010
Decided: November 29, 2010

DECISION AFTER TRIAL

Periann Doko, Esquire, Deputy Attorney General, State of Delaware Department of Justice, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801. Attorney for the State of Delaware.

Jonathan Layton, Esquire, Layton & Associates, P.A., Stone Mill Office Park, 724 Yorklyn Road, Suite 100, Hockessin, Delaware 19707. Attorney for Defendant.

DAVIS, J.

Defendant Sophia Bennett was cited on April 28, 2010 and charged with the four (4) misdemeanor offenses relating to her purported ownership of two (2) pit bull terrier dogs – Ginger and Wishbone (aka Danger). Specifically, Ms. Bennett was charged with two counts of violating section 3-16(a) (1) of the City of Wilmington Ordinance Code (the “Registration Charges”) and two counts of violating 3 *Del. Code* § 8204(a) (the “Inoculation Charges”). A bench trial on the charges was held on October 14, 2010. At the conclusion of the trial, the Court requested that the State and the Defendant submit additional arguments by October 18, 2010. Both the State and the Defendant submitted additional arguments in writing by October 18, 2010. This is the Court’s decision after trial. After a review of the record, and based upon the legal and

factual determinations made during the trial, the Court concludes that Ms. Bennett is GUILTY of the Inoculation Charges and NOT GUILTY of the Registration Charges.

DECISION

Offenses Charged in the Information

Ms. Bennett has been charged by the Information filed with the Clerk of Court by the Attorney General with the following offenses:

1. Sophia Bennett, on or about the 28th day of April, 2010, in the County of New Castle, State of Delaware, did fail to provide registration for a pit bull dog (Ginger) in violation of Section 3-16(a)(1) of the Wilmington Ordinance Code;
2. Sophia Bennett, on or about the 28th day of April, 2010, in the County of New Castle, State of Delaware, did fail to provide proof of rabies inoculation for a pit bull dog (Ginger) in violation of 3 *Del. Code* § 8204(a);
3. Sophia Bennett, on or about the 28th day of April, 2010, in the County of New Castle, State of Delaware, did fail to provide registration for a pit bull dog (Wishbone) in violation of Section 3-16(a)(1) of the Wilmington Ordinance Code; and
4. Sophia Bennett, on or about the 28th day of April, 2010, in the County of New Castle, State of Delaware, did fail to provide proof of rabies inoculation for a pit bull dog (Wishbone) in violation of 3 *Del. Code* § 8204(a).

Applicable Law

Section 8204(a) of title 3 of the Delaware Code (“Section 8204(a)”) provides:

Vaccination of dogs. – (1) Any person owning a dog 6 months of age or older in this State shall have that dog vaccinated against rabies by a veterinarian. The owner of the dog will receive a copy of the rabies vaccination certificate legibly signed by the veterinarian. The owner of the dog will be responsible for keeping a valid rabies vaccination certificate in his possession for inspection by an animal control officer, the Department of Agriculture or the Division of Public Health, if deemed necessary.

3 *Del. Code* § 8204(a) (“Section 8204(a)”).

For purposes of Section 8204(a), the term “owner is defined as any person owning, keeping or harboring 1 or more animals. 3 *Del. Code* § 8202(m). Ownership can be

determined in a number of ways, including through title, custody, prior assertions of ownership, location of the animal, lack of intervention by any other purported owner, and keeping or harboring of the animal. *Smith v. Caldwell*, No. Civ. A. 00-05-057, 2000 WL 33653407 (Del. CCP July 14, 2000).

Accordingly, a dog owner must have his or her dog vaccinated once the dog is 6 months old or older to be in compliance with Section 8204(a). 3 *Del. Code* § 8204(a). Moreover, the owner must receive a copy of the rabies vaccination certificate from the veterinarian, keep it in his or her possession and produce it upon request for inspection by an animal control officer. *Id.* The statute clearly places the duty upon the owner to (i) have the dog vaccinated, (ii) obtain and retain a legible copy of the vaccination certification, and (iii) to produce that certification on request. A dog owner who breaches this duty is in violation of the statute.

Section 3-16(a) of the Wilmington Ordinance Code (“Section 3-16(a)”) provides, in pertinent part, that:

(a) Only persons 21 years of age or older who have complied with the licensing and registration requirements as set forth in section 3-9 of this chapter by June 16, 2000, shall be allowed to own, keep or harbor a pit bull terrier inside the city limits. Such ownership is subject to the following conditions:

(1) All pit bull terriers in the city must be licensed and registered by June 16, 2000. Newly acquired pit bull terriers or pit bull terriers belonging to people moving into the city must be licensed and registered within 30 days of the event. Documentation showing acquisition of the new dog (bill of sale or adoption contract) and/or relocation to the city, as evidenced by a signed lease or purchase agreement, will be required to register a pit bull terrier after June 16, 2000. Persons who do not license and register their pit bull terrier by June 16, 2000, shall, in addition to complying with the registration requirements, be assessed an additional \$50.00 fee.

...

(4) Upon registration, the document shall be carried by the owner at all times and the owner must produce it upon request. Whenever the pit bull

terrier leaves the premises, the registration information must be carried by the person who is in possession of the dog.

Section 3-1 of the Wilmington Ordinance Code defines owner as “any person owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.” Except for clarifying the term “harboring,” the definition of “owner” in the City of Wilmington Code mirrors the definition of “owner” contained in title 3 of the Delaware Code.

For a person living in Wilmington to own a pit bull, the person must be 21 years of age or older and comply with the specific licensing and registering requirements within thirty days of either (i) purchasing the pit bull terrier if the owner is already a resident of Wilmington or (ii) moving to and residing in Wilmington (a “Triggering Event”). As with Section 8204(a), Section 3-16 places the duty upon the pit bull terrier owner to license and register the pit bull terrier within thirty days of a Triggering Event, possess proof of licensing and registration and to produce such proof upon request. A pit bull terrier owner who breaches this duty is in violation of the ordinance.

The State has a burden of proving each and every element of these offenses beyond a reasonable doubt. 11 *Del. Code* § 301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965). As established case law indicates, a reasonable doubt is not a vague, whimsical or merely possible doubt, “but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscious consideration of the case. *Matushefske*. A reasonable doubt “means a substantial, well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.” *State v. Wright*, Del. Gen. Sess., 79 A. 399 (1911).

The State also has the burden of proof beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 *Del. Code* § 232. *James v. State*, Del. Supr., 377 A.2d 15 (1977). *Thornton v. State*, Del. Supr., 405 A.2d 126 (1979).

In determining whether the State has met its burden of proving each and every element of these offense(s) beyond a reasonable doubt as required by 11 *Del. Code* § 301, the Court may consider all direct and circumstantial evidence.

Evidence at Trial

The following witnesses testified for the State:

1. Nicholas Pepe of the Delaware S.P.C.A; and
2. David Sloan of the Delaware S.P.C.A.

In addition to having two witnesses, the State admitted one exhibit (State's Exhibit 1). State's Exhibit 1 is the civil action coversheet (Civ. Action No. JP1310005847) for a lawsuit filed by Sophia Bennett against the Delaware S.P.C.A. In the lawsuit, Sophia Bennett seeks damages for the loss of her dogs. The evidence adduce at trial demonstrated that "my dogs" referred to by Sophia Bennett in the lawsuit were Wishbone and Ginger.

The defense presented the following witnesses and evidence:

1. Charlotte Bennett; and
2. Sophia Bennett.

In her defense, Sophia Bennett also introduced a number of documents: (a) Delaware SPCA Redemption Contract (Defendant's Exhibit 1); (b)(i) New Castle County Dog License Application identifying Charlotte Bennett as the owner of Ginger (Defendant's Exhibit 2A); (b)(ii) New Castle County Dog License Application identifying Charlotte Bennett as the owner of Wishbone (Defendant's Exhibit 2B); (b)(iii) Rabies Vaccination Certificate identifying

Sophia Bennett as the owner of Wishbone (Defendant's Exhibit 2C); (b)(iv) Rabies Vaccination Certificate identifying Sophia Bennett as the owner of Wishbone (Defendant's Exhibit 2D); and (c) a copy of a civil action coversheet (Civ. Action No. JP1310005847) which purports to amend the lawsuit filed by Sophia Bennett against the S.P.C.A. to include Charlotte Bennett as a plaintiff (Defendant's Exhibit 3). In testimony, it became clear that Defendant's Exhibit 2C actually is the vaccination certificate for Ginger.

The evidence produced at trial was clear on certain points. First, Wishbone and Ginger are both pit bull terriers that were at least two (2) years old or older on April 28, 2010. (Testimony of Officers Pepe and Sloan; Defendant's Exhibits 2C and 2D.) Second, at no time, upon request of Officers Pepe and Sloan, did Sophia Bennett (or for that matter Charlotte Bennett) produce copies of the vaccination certifications required under Section 8204(a) or the pit bull licenses/registrations required under Section 3-16 for Wishbone and Ginger. (Testimony of Officers Pepe and Sloan.)

Sophia Bennett argues that the State failed to demonstrate that she was the owner of Ginger and Wishbone. As support, Sophia Bennett relies on her testimony, the testimony of Charlotte Bennett and Defendant's Exhibits 1, 2A-D and 3. Sophia Bennett and Charlotte Bennett both testified that Charlotte Bennett was the owner of Ginger and Wishbone. In addition, Defendant's Exhibits 1 and 2A and 2B identify Charlotte Bennett as the owner of Ginger and Wishbone.

The State contends that it has carried its burden in showing that Sophia Bennett was an owner of Ginger and Wishbone on April 28, 2010. The State relies upon admissions made by Sophia Bennett to Officer Pepe that Ginger and Wishbone were her dogs. (Testimony of Officer Pepe – "why are you taking my [expletive omitted] dogs?") In addition, the State

produced evidence of a lawsuit initiated by Sophia Bennett against the Delaware S.P.C.A. through which Sophia Bennett seeks damages she purportedly suffered due to her loss of Ginger and Wishbone.¹

Conclusion

The Court finds that Sophia Bennett was an owner of Ginger and Wishbone on April 28, 2010 for purposes of Section 8204(a) and Section 3-16. Sophia Bennett admitted to Officer Pepe that Ginger and Wishbone were her dogs. Moreover, Ginger and Wishbone were in the custody and care of Sophia Bennett on April 28, 2010. Sophia Bennett initiated (and remains a plaintiff in) a lawsuit seeking damages from the Delaware S.P.C.A. due to the loss of Ginger and Wishbone. (State's Exhibit 1 and Defendant's Exhibit 3.) In addition, Defendant's Exhibits 2C and 2D identify Sophia Bennett as the owner of Ginger and Wishbone. It is true that Charlotte Bennett testified that she was the sole owner of Ginger and Wishbone. However, the Court does not find Charlotte Bennett credible on this point given her demeanor at trial, bias in favor of her daughter Sophia Bennett, the admissions and conduct of Sophia Bennett and the documentary evidence which shows Sophia Bennett as an owner of Ginger and Wishbone.

The Court also finds that Sophia Bennett never produced the vaccination certifications necessary under Section 8204(a) or the license/registration necessary under Section 3-16. The State demonstrated this fact beyond a reasonable doubt at trial through the credible testimony of Officers Sloan and Pepe that Sophia Bennett, upon request, never produced these documents.

¹ Sophia Bennett also produced a copy of the same lawsuit that shows that the suit was amended and that Charlotte Bennett was added as a plaintiff. (Defendant's Exhibit 3.) There was no evidence produced by Sophia Bennett, however, that demonstrated that the amended lawsuit no longer asserted that she was an owner of Ginger and Wishbone.

Because Sophia Bennett (i) was an owner of Ginger and Wishbone (dogs at least 6 months or older) on April 28, 2010 and (ii) failed to provide a copy of the vaccination certificates upon request of Officers Pepe and Sloan, the Court finds Sophia Bennett GUILTY of the two Inoculation Charges under Section 8204(a).

The Court finds Sophia Bennett NOT GUILTY of the two Registration Charges under Section 3-16. To demonstrate that Sophia Bennett is guilty under Section 3-16, the State must show that Sophia Bennett needed to license/register Ginger and Wishbone and that Sophia Bennett failed to produce proof of the license/registration upon request of Officers Pepe or Sloan. The State did show that Sophia Bennett failed to produce, upon request, the necessary paperwork under Section 3-16. However, the State did not demonstrate that, as of April 28, 2010, Sophia Bennett needed to obtain the requisite license/registration. At trial, the State proved that Sophia Bennett resided in Wilmington. But, the State did not prove **beyond a reasonable doubt** that thirty (30) days had expired from a Triggering Event -- either (i) purchasing or otherwise obtaining ownership of Ginger or Wishbone if Sophia Bennett was already a resident of Wilmington or (ii) Sophia Bennett (along with Wishbone and/or Ginger) moving to and residing in Wilmington. Accordingly, the State did not fully carry its burden of proof on the Registration Charges.

The Clerk of the Court shall schedule this matter for sentencing.

IT IS SO ORDERED.

Eric M. Davis
Judge