

No. 08-101161-A

IN THE
COURT OF APPEALS OF THE STATE
OF KANSAS

CITY OF MISSION

Plaintiff-Appellee,

vs.

NANCY COATES

Defendant- Appellant

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~~REPLY~~ BRIEF OF APPELLEE

Appeal from the District Court of Johnson County, Kansas
Honorable Peter V. Ruddick, District Judge
District Court Case No. 08 CR 868

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NATURE OF THE CASE

The Defendant Nancy Coates was charged by the City of Mission, Kansas, for: (1) allowing her dog to run at large, and (2) owning, harboring, keeping, sheltering or licensing more than two canines. The Honorable Peter V. Ruddick heard the case on July 30, 2008, in Johnson County District Court. The Court found the Defendant guilty of harboring more than the maximum permissible number of canines, and acquitted the Defendant with regard to the dog at large charge. The Defendant now brings this appeal for her conviction of harboring more than the maximum permissible number of canines.

ISSUES ON APPEAL

- I. Whether the City of Mission produced sufficient evidence to support the conviction of the Defendant for violating Mission's Domestic Animals Ordinances Section 210.090 by owning, harboring, keeping, sheltering or licensing more than two canines.
- II. Whether the definitions contained in Domestic Animals Ordinance Section 210.010 are constitutional.

STATEMENT OF FACTS

The City of Mission, Kansas, charged the Defendant, Nancy Coates, with owning, harboring, keeping, sheltering or licensing more than two canines in violation of Section 210.090 of the Mission Domestic Animals Ordinances. The applicable portion of Section 210.090 states that "no single-family dwelling or any person or resident therein shall be allowed to own, harbor, keep, shelter or license more than two (2) canines over the age of six (6) months and more than two (2) felines over the age of six (6) months." The Honorable Peter V. Ruddick heard the case in a bench trial on July 30, 2008, in Johnson County District Court.

The Plaintiff called Brandon Loomis in support of its case. (II. p. 23, 1. 24-25). Loomis is employed by Northeast Animal Control and has been acquainted with the Defendant for approximately fourteen years. (II. p. 24, 1. 3-13). In response to a phone call he received by the Defendant's neighbor, Loomis responded to the Defendant's residence and issued the Defendant a citation for harboring too many canines. (II. p. 25, 1. 8-14, 22-23).

BY MR. MARTIN:

- Q. Okay. And did you have a conversation with Nancy?
A. Yes, I arrived at her house within five minutes from receiving the call.
Q. And did you look into her backyard?
A. Yes, I did.
Q. Okay. How many dogs were there?
A. There were three.
Q. And are you acquainted with each of those dogs?
A. Yes, we have dealt with them several times.
Q. Do you know the names of the dogs?
A. Dotty, Happy, and the brown and white one I can't remember. I am terrible with names. (II, p. 26 1. 12-20).

Although Loomis testified that one of the canines possessed by the Defendant was licensed to an owner in Roeland Park, Kansas, there was no evidence presented at trial that anyone else was present at the Defendant's residence. (II, p. 27, 1. 14-21). On cross-examination, Loomis clarified that he had not visited the Defendant's residence in the days immediately prior to or after he issued the Defendant a citation for violating the City's limitation on canines. (II. p. 27, 1. 6-13). After the Defendant's cross-examination of Loomis, the Plaintiff rested its case and the Defendant presented no evidence. (II, p. 28, 1. 2-4). The Court heard the following arguments from both parties:

MR. MARTIN: Judge, in the ordinance – you have got my copy there – is a definition of owning and definition of harbor. And one of – I think it is the own – it is the longer ordinance on the front page. The definitions under own includes a variety of words which includes harbor, but it also includes the word “possess.” So our position here and our position in front of Judge Vano was that she

possessed three dogs at the time and date alleged and that clearly the ordinance allows only two dogs to be possessed. (II, p. 28, 1. 6-15).

MR. McMAHON: Your Honor, we believe that the ordinance is overly broad in the sense that if you just provide water or shelter to a dog at any point in time, it consists of harboring. The statute under section 210.27.270 (sic) requires that for three consecutive days or more you would be considered the owner of the animal. The fact that somebody has an animal that may be somebody else's over at her property does not mean you harbor it within the statute, and there is no evidence that this is more than on the one occasion of this event that she had these three dogs. Based on Officer Loomis's testimony, I'm not disputing that he counts three dogs, but I don't know that that meets the fact there is enough evidence to show they're harbored, and I don't think it meets the statutory requirement beyond a reasonable doubt to find somebody guilty, or specifically to find the defendant guilty, Your Honor. (II, p. 28, 1. 17-25, p. 29, 1. 1-9).

After considering the arguments from both parties, the Court found the Defendant guilty of owning, harboring, keeping, sheltering or licensing more than two canines in violation of Section 210.090 of the Mission Domestic Animals Ordinances. (II, p. 30, 1. 14-18). In its holding, the Court relied on the Definitions provided in the Ordinances, one of which defines "own" as meaning to "own, keep, harbor, shelter, manage, possess or have a part interest in any animal." *Id.* The Court stated the following:

THE COURT: On the other hand, the harboring statute is quite specific. The definitions are quite inclusive, and as to owning, harboring, keeping or sheltering multiple dogs, I find the defendant guilty of violating that ordinance. (II, p. 30, 1. 14-18).

The Court proceeded to sentencing at the conclusion of the trial and the Defendant subsequently filed her Notice of Appeal in this case. The Defendant has raised two issues in appealing the guilty verdict in Johnson County District Court. The first issue is whether there was sufficient evidence to support the conviction of the Defendant for violating Section 210.090 by owning, harboring, keeping, sheltering or licensing more than two canines. The second issue is whether the definitions contained in Section 210.010 are constitutional. As supported by the District Court's ruling, the Plaintiff maintains that the Defendant violated Section 210.090 by

possessing more than two canines, and that such conduct is specifically and unambiguously prohibited by the Mission Domestic Animals Ordinances.

ARGUMENTS AND AUTHORITIES

I. Standard of Review

When the sufficiency of evidence is challenged in a criminal case, the standard of review is whether, after review of all the evidence, viewed in a light most favorable to the prosecution, the appellate court is convinced a rational factfinder could have found the defendant guilty beyond a reasonable doubt. *State v. Cavaness*, 278 Kan. 469, 479, 101 P.3d 717 (2004). An appellate court does not reweigh the evidence, pass on the credibility of witnesses, or resolve conflicts in the evidence. *State v. Hayden*, 281 Kan. 112, 132, 130 P.3d 24 (2006).

II. The City of Mission produced sufficient evidence to support the conviction of the Defendant for violating Mission's Domestic Animals Ordinances Section 210.090 by owning, harboring, keeping, sheltering or licensing more than two canines.

In this case, the Defendant is appealing her conviction in Johnson County District Court for violating Section 210.090 of the Mission Domestic Animals Ordinances. Section 210.090 prohibits persons from owning, harboring, keeping, sheltering or licensing more than two canines. The applicable portions of the provision are provided below:

Section 210.090: LIMIT ON CANINES AND FELINES – PERMIT REQUIRED

A. *Limit on Canines And Felines In A Single-Family Dwelling.* No single-family dwelling or any person or resident therein shall be allowed to own, harbor, keep, shelter or license:

1. More than two (2) canines over the age of six (6) months and more than two (2) felines over the age of six (6) months; and
2. Have more than one (1) litter of pups and one (1) litter of kittens at the dwelling under the age of six (6) months.

3. Individual pups or kittens between birth and age six (6) months old are not required to be licensed.

C. *Exceeding Limit On Animals, Illegal.* No resident, person, firm, corporation or organization shall own, harbor, keep, shelter or license any additional number of animals other than the number allowed in this Section, except by permit as defined in (D).

Considering that the Defendant never obtained a permit for a third canine, the issue presented here is solely whether the Defendant did, in fact, “own, harbor, keep, shelter or license” more than two canines at the time of her offense. See Section 210.090. In addition to the plain meanings of these terms, Section 210.010 of the Mission Domestic Animals Ordinances provides definitions for the terms “harborer,” “keeper,” “owner, ” and “own,” all of which are provided below:

HARBORER OR KEEPER: Any person who shall allow animals to habitually remain or lodge or to be fed within his/her home, store, yard, enclosure or place of business or any other premises where he/she resides or controls.

OWNER: Any person, firm, corporation, employee, agent or guardian who keeps, harbors, shelters, feeds, waters, offers refuge or asylum to or for any animal or who permits same for any animal.

OWN: Includes own, keep, harbor, shelter, manage, *possess* or have a part interest in any animal. (emphasis added).

As the Plaintiff successfully argued on appeal in Johnson County District Court, the Defendant violated Section 210.090 by possessing a third canine on her property. See Section 210.010. In her possession of a third dog, the Defendant’s conduct falls directly within the Section 210.010 definition of “own,” which unambiguously includes the act of possessing an animal. The testimony of Northeast Animal Control officer Brandon Loomis establishes that when he arrived at the Defendant’s residence on January 12, 2008, the Defendant was clearly in possession of more than two canines.

BY MR. MARTIN

- Q. Okay. And did you have a conversation with Nancy?
A. Yes, I arrived at her house within five minutes from receiving the call.
Q. And did you look into her backyard?
A. Yes, I did.
Q. Okay. How many dogs were there?
A. There were three.
Q. And are you acquainted with each of those dogs?
A. Yes, we have dealt with them several times.
Q. Do you know the names of the dogs?
A. Dotty, Happy, and the brown and white one I can't remember. I am terrible with names. (II, p. 26 1. 8-20).

Section 210.010 was drafted to specifically include the term "possess" as an act constituting ownership of an animal, and the Defendant's conduct here is consistent with such terminology. Loomis testified that the Defendant had contained the three dogs within her backyard and that it was the Defendant with whom Loomis discussed the dogs' presence. (II, p. 26 1. 8-17). There is no evidence that anyone other than the Defendant was on her property or responsible for or in control of the canines. Additionally, this was not the first time that the dogs had been an issue. Loomis testified that he has known the Defendant for fourteen years and is acquainted with these particular dogs. (II, p. 24 1. 7-13, 26 1. 16-17). Loomis' testimony confirms that Animal Control had dealt with all three dogs on several previous occasions and that, in addition to recognizing the animals, Loomis could easily remember the names of two of the three canines. (II, p. 26 1. 16-20).

As the Johnson County District Court acknowledged in its ruling, the Defendant's possession of the dogs was prohibited by the Mission Domestic Animals Ordinances' restriction on owning, harboring, keeping, sheltering or licensing more than two canines. See Section 210.090. In finding the Defendant guilty, the Court held that the Ordinance's language is sufficiently specific to determine the Defendant violated Section 210.090:

THE COURT:

On the other hand, the harboring statute is quite specific. The definitions are quite inclusive, and as to owning, harboring, keeping or sheltering multiple dogs, I find the defendant guilty of violating that ordinance. (II, p. 30, l. 14-18).

On appeal, this Court must now uphold the district court's ruling if it finds that a rational factfinder could have found the Defendant guilty beyond a reasonable doubt. See *State v. Cavaness*, 278 Kan. 469, 479, 101 P.3d 717 (2004). Viewing the evidence in a light most favorable to the Plaintiff, there is no doubt that a rational factfinder could have found the Defendant possessed more than two canines in violation of Section 210.090. See *Id.*

As previously mentioned, the uncontroverted evidence shows that Officer Loomis from Northeast Animal Control viewed three canines within the Defendant's possession. (II, p. 26, l. 14-15). There is no evidence that anyone other than the Defendant was on her property or responsible for or in control of the canines. Loomis also testified that he was familiar with the Defendant and the three dogs at the Defendant's residence. (II, p. 24 l. 7-13, 26 l. 16-17). Considering this undisputed evidence and the specificity of Section 210.090 and the Section 210.010 definition of "own," there is no doubt a rational factfinder could find the Defendant guilty of harboring more than two canines.

- a. **The Section 210.090 prohibition against owning more than two canines includes the act of possessing such canines as defined in the Section 210.010 definition of "own."**

The Defendant asks this Court, however, to interpret the statutory provisions upon which the District Court relied in its ruling. The most fundamental rule of statutory construction is that the legislature's intent should govern if such intent can be ascertained. See *State ex. rel. Stovall v. Meneley*, 271 Kan. 355, 378 (2001). The legislature is presumed to have expressed its intent

through the language of the statutory scheme it enacted. *Id.* The *Meneley* Court elaborated on this presumption in its discussion of when statutory construction should not be employed:

When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Stated another way, when a statute is plain and unambiguous, the appellate courts will not speculate as to the legislative intent behind it and will not read such a statute so as to add something not readily found in it. *Id.*

A statute's words and phrases should be construed according to context and the approved usage of the language, and any words in common use must be given their natural and ordinary meaning. *O'Donoghue v. Farm Bureau Mut. Ins. Co., Inc.*, 275 Kan. 430, 432 (2003). If a statute is clear and unambiguous, there is no need to resort to statutory construction. *State v. Robinson*, 281 Kan. 538, 540 (2006).

In this case, the relevant Domestic Animals Ordinance clearly and unambiguously states that a person may not "own, harbor, keep, shelter or license" more than two canines. See Section 210.090. In addition to the ordinary and plain meaning attributed to such terminology, the Ordinances further provide a Definitions provision to clarify exactly what behavior the statute was intended to address. See Section 210.010. By specifically including "possess" in its definition of "own," the legislature unambiguously declared that such behavior would be considered a violation of Section 210.090. Therefore, the Court need not construe the Ordinances' clear and unambiguous language and intent.

b. The Designation of Animal Ownership provision in Section 210.270 of the Mission Domestic Animals Ordinances does not apply to the facts of this case.

The Defendant additionally argues that the Court should ignore the Section 210.010 definition of "own" and instead rely on an unrelated provision within the Ordinances. In seeking to limit the definition of "own," the Defendant argues that the Court should rely solely on

Section 210.270 of the Ordinances. Titled the “Designation of Animal Ownership,” Section 210.270 establishes three specific situations in which a person will be considered an animal’s owner. The statute is limited, however, to circumstances involving: (1) persons who claim animals from humane shelters, (2) at-large animals, or (3) feral animals. Section 210.270 provides the following:

Section 210.270: DESIGNATION OF ANIMAL OWNERSHIP

- A. Any person who signs a receipt for the return of an animal from any City designated animal shelter facility, animal holding facility, humane shelter or licensed veterinarian shall be considered the animal’s owner.
- B. Any person who provides food, water, shelter or who keeps, harbors or offers refuge or asylum to or for any animal at-large or who professes to be providing food, water, shelter or keeping, harboring or offering refuge or asylum to or for any animal at-large or, as a resident permits the same, for three (3) consecutive days or more shall be considered the animal’s owner.
- C. Any person who provides food, water, shelter or who keeps, harbors or offers refuge or asylum to or for any feral animal or who professes to providing food, water, shelter or keeping, harboring or offering refuge or asylum to or for any feral animal, or as a resident permits same, for three (3) consecutive days or more shall by the animal’s owner.

Exception to Subsections (B) and (C): Any person who provides food, water, or shelter to any at-large or feral animal for immediate humane purposes and only long enough to notify Animal Control for the capture and removal of the at-large or feral animal shall not be considered the animal’s owner. (Ord. No. 1033, Sec. 2-129, 4-24-02).

Relying on Section 210.270, the Defendant argues that she did not constitute an “owner” of the third dog because there is no evidence that she provided food, water or shelter, or kept, harbored or offered refuge to the animals for three consecutive days. See Section 210.270. However, the Plaintiff has not introduced evidence of such activity in this case because the application of Section 210.270 is limited to at-large or feral animals. Section 210.010 provides the following definition for the term “at-large”:

AT-LARGE: To be outside the actual border or actual property lines of any privately-owned property or outside of a fence or other enclosure which restrains an animal to a particular premises or an animal that is not under the control by way of a muzzle, harness or lead which is securely attached to a leash of sufficient strength to hold the animal and that the owner or other authorized person is capable of maintaining full and immediate physical control and restraint of this animal. Any animal which is tethered to a stationary object within the range of any public access, sidewalk, thoroughfares or other private property not owned by the keeper, harbinger or owner of the animal will be deemed to be at large.

As the Defendant acknowledges in her brief, the dogs in this case are neither feral nor at-large. As a result, the specific ownership scenarios described in Section 210.270 simply do not apply. The provision merely offers three narrow and non-inclusive means by which ownership can be assigned to a person.

In arguing that Section 210.270 is the sole means with which to determine ownership of an animal, the Defendant completely disregards the statutory definition of “own” in Section 210.010. As previously mentioned, “own” is defined in Section 210.010 to include persons who “own, keep, harbor, shelter, manage, possess or have a part interest in any animal.” As the general “Definitions” provision for the Mission Domestic Animals Ordinances, Section 210.010 serves as the primary resource for interpreting the language used in each provision of the Ordinances. Thus, the Section 210.010 definition of “own” remains the primary and, in this case, only resource for defining the terms relevant to this case.

Because the Section 210.010 definition of “own” explicitly encompasses “any animal,” it is not limited in its application. This differs dramatically from Section 210.270, which solely addresses the ownership of at-large or feral animals. Considering the facts of this case do not involve at-large or feral animals, there is no question that Section 210.010 is the sole provision within the Mission Domestic Animals Ordinances that applies.

The Defendant also asserts that the Court inappropriately relied on the Designation of Animal Ownership provision in Section 210.270 to find the Defendant guilty of owning, harboring, keeping, sheltering or licensing more than two canines. However, the Defendant is mistaken that the Court's ruling was based on that provision. As the Court indicated in its holding, it relied on the harboring statute in Section 210.090 and its accompanying definitions when finding the Defendant guilty: "On the other hand, the harboring statute is quite specific. The definitions are quite inclusive, and as to owning, harboring, keeping or sheltering multiple dogs, I find the defendant guilty of violating that ordinance." (II, p. 30, l. 14-18).

As the District Court's holding indicates, Section 210.090 specifically prohibits the Defendant's conduct in this case. The Ordinance indicates the prohibited behavior with unambiguous terminology, and the definition of "own" provided in Section 210.010 further clarifies that the Defendant's possession of more than two canines constitutes a violation of the Ordinance. As a result, this Court should uphold the district court's finding that that the Defendant was guilty of harboring or owning more than two canines.

III. The definitions contained in Domestic Animals Ordinance Section 210.010 are constitutional.

The Defendant also argues that the definitions contained in Section 210.010 of the Domestic Animals Ordinances are unconstitutional. The test to determine whether a criminal statute is unconstitutionally vague and indefinite is whether its language conveys a sufficiently definite warning as to the conduct proscribed when measured by common understanding and practice. *State v. Huffman*, 228 Kan. 186, 192 (1980). A statute should be presumed constitutional and if there is any reasonable way to construe the statute as constitutionally valid,

that should be done. *Id.* The *Huffman* Court elaborated on the Court's duty in assessing the constitutionality of a statute:

This court adheres to the proposition that the constitutionality of a statute is presumed, that all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. Moreover, it is the court's duty to uphold the statute under attack, if possible, rather than defeat it, and if there is any reasonable way to construe the statute as constitutionally valid, that should be done." *Id.* at 189.

Applying these rules of construction, the Court must uphold the Domestic Animals Ordinances in this case. As the District Court recognized, the language utilized in Section 210.090 is quite specific. (II, p. 30, l. 14-18). It provides that a person cannot "own, harbor, keep, shelter or license" more than two canines. Contrary to the Defendant's assertions that such language is confusing or conflicting, the terminology used in Section 210.090 represents commonly used language and provides sufficient warning as to what behavior is prohibited by the Ordinance.

There is additional clarification within the Definitions provision of Section 210.010, which defines several of the terms used in the Ordinances' prohibition on too many canines. By using specific terminology, the Ordinances' definitions indicate exactly what behavior constitutes a violation of Section 210.090. Such language plainly and unambiguously conveys a warning to persons of ordinary intelligence as to the conduct proscribed by the Ordinances. Specifically, Section 210.010 defines the terms "harborer," "keeper," "owner," and "own," to include the following:

HARBORER OR KEEPER: Any person who shall allow animals to habitually remain or lodge or to be fed within his/her home, store, yard, enclosure or place of business or any other premises where he/she resides or controls.

OWNER: Any person, firm, corporation, employee, agent or guardian who keeps, harbors, shelters, feeds, waters, offers refuge or asylum to or for any animal or who permits same for any animal.

OWN: Includes own, keep, harbor, shelter, manage, *possess* or have a part interest in any animal. (emphasis added).

As previously discussed, the definition of “own” includes the act of possessing an animal. That definition alone provides the guidance necessary in determining that the Defendant is guilty of violating Section 210.090. There is no need to additionally prove that the Defendant could be considered a harbinger or keeper under the Ordinance. The Defendant’s behavior in possessing the animals fits directly within the plain and unambiguous definition of “own” in Section 210.010.

The Defendant also argues that the Section 210.010 definition of “owner” conflicts with the statutory definition of “own.” However, the conduct described in both definitions is entirely consistent. The definition of “owner” employs almost identical terminology as the definition of “own.” It is unnecessary for both definitions to repeat the identical language used in the other, and any words that are not repeated within both definitions are reflected by the use of similar terminology. Furthermore, it is evident that the definition of “owner” is designed to address the types of entities that can be considered owners, rather than serve as an exhaustive list of conduct that an owner would demonstrate. Thus, the Defendant’s argument that there is conflict between the Ordinances’ definitions is without merit.

Additionally, in her argument that the Ordinances are unconstitutionally vague, the Defendant presents a scenario in which a visitor enters a person’s home with three dogs and the homeowner provides water to the animals. The Defendant argues that under the Domestic Animals Ordinances, the homeowner would be guilty of owning, harboring, keeping, sheltering or licensing more than two canines. However, the Defendant is wrong in her assumption that the homeowner would have violated the Ordinances.

The Designation of Animal Ownership provision in Section 210.270 would not apply in this hypothetical because the animals are neither at-large nor feral. Section 210.270 assigns ownership to any person who provides food, water, shelter or who keeps, harbors or offers refuge or asylum to at-large or feral animals for three consecutive days. Rather than at-large or feral animals, the animals in this scenario are domesticated and kept within the control of their owner during the visit. Thus, the homeowner would not be deemed the animals' owner under Section 210.270.

Similarly, the homeowner in this hypothetical is not owning, harboring, keeping, sheltering or licensing the canines, any of which would constitute a violation of Section 210.090. The homeowner's conduct does not represent the behavior described in the definition of "own," which includes the management of, possession of, or part interest in an animal. See Section 210.010. In the Defendant's hypothetical, the canines are temporarily on the homeowner's property and remain in the control of their visiting owner. Unlike the Defendant in this case, the hypothetical homeowner never takes possession of the animals. The animals' owner in the hypothetical remains at the residence while maintaining possession and control of the canines.

This differs dramatically from the conduct prohibited by Section 210.090 and demonstrated by the Defendant in this case. When Officer Loomis arrived at the Defendant's residence on January 12, 2008, he spoke directly with the Defendant regarding the presence of the three canines on her property. (II, p. 26 1. 12-17). There is no evidence of a visiting owner or additional party who was in possession of the dogs. As Loomis' testimony indicates, only the Defendant was in possession of all three dogs and managing them in her backyard. *Id.*

Additionally, in arguing that the Ordinances are subject to uneven application, the Defendant asserts that she could not have owned, harbored, kept, sheltered or licensed the

canines because one of the dogs was registered in the City of Roeland Park. In fact, the Defendant would have the Court believe that the determining factor in this case is that one of the three dogs in the Defendant's possession was registered to an owner in a different municipality. However, the municipality in which a dog is registered is irrelevant in determining the conduct prohibited by Section 210.090. If ownership were determined solely by where an animal is registered, a person could possess as many canines as he or she wanted without violating Section 210.090, as long as the animals were registered elsewhere. This only lends more support to the specificity and detail with which Sections 210.090 and 210.010 were drafted.

The plain and unambiguous language of Section 210.090 and its accompanying definitions set forth the specific conduct prohibited by the Ordinances. By using definite and commonly understood terminology, it is clear to a person of ordinary intelligence that the possession of more than two canines is a violation of the Ordinances. As a result, the Defendants argument that such Ordinances are unconstitutional fails and, accordingly, this Court should uphold the District Court's finding of guilty.

CONCLUSION

The Defendant's conduct in this case clearly violated the Section 210.090 prohibition on owning, harboring, keeping, sheltering or licensing more than two canines. Her possession of more the three canines, all of which Animal Control was already familiar with, fits directly within the conduct prohibited by the Mission Domestic Animals Ordinances. Considering the undisputed evidence presented by the Plaintiff, a rational factfinder could easily have found the Defendant to have violated Section 210.090 by possessing three canines. Additionally, the language used in the relevant Ordinance and accompanying definitions plainly and unambiguously indicate what conduct is prohibited. Therefore, considering the argument and

authority previously cited, the Plaintiff requests that the Court of Appeals uphold the District Court's finding of guilty and further hold that the applicable Ordinances are constitutionally valid.

PAYNE & JONES, CHARTERED

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CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the 13th day of October, 2009, the original and two copies of Appellee's brief was mailed, postage prepaid, to

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