

IN THE SUPREME COURT OF APPEALS
OF THE
STATE OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Appellee/Plaintiff below,

vs.

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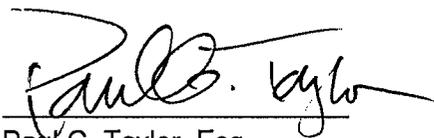
No. 35275

MARA SPADE,

Appellant/Defendant below.

BRIEF OF APPELLANT

FROM THE CIRCUIT COURT OF BERKELEY COUNTY



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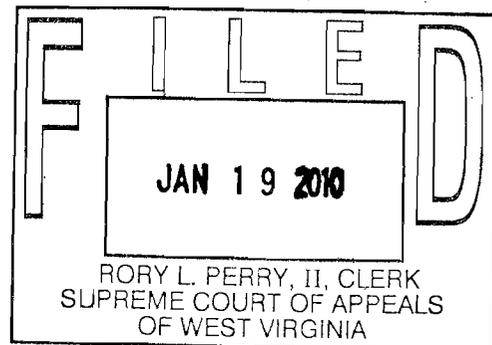


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II. KIND OF PROCEEDING AND NATURE OF RULING BELOW

This appeal arises from the Order Dismissing Appeal entered by the Circuit Court of Berkeley County on August 11, 2008.

The subject order dismissing appeal arose as follows:

1. On or about June 29, 2006, Appellant was charged with one count of animal cruelty.
2. On December 3, 2007, a plea agreement was reached between Appellant and the State whereby Appellant would plead no contest to the single charge of animal cruelty in exchange for a restitution hearing.
3. On February 4, 2008, Appellant changed her plea from not guilty to no contest in reliance upon the plea agreement. Prior to ruling on the State's recommendation for probation, the Magistrate Court of Berkeley County ordered Appellant to undergo a psychological evaluation at her expense. A restitution/probation hearing was to be scheduled in due course, as reflected in the change of plea form. See Appendix, Ex. A
4. After filing of the court ordered psychological evaluation, the matter came on for hearing on February 4, 2008. At that time, the Magistrate Court of Berkeley County sentenced Appellant to ninety (90) days incarceration, with eighty-six (86) days suspended. Appellant was then placed on unsupervised probation for a period of two (2) years under certain terms and conditions. It is clearly reflected on both pages of the Magistrate Court's February 4, 2008 Probation Order that a restitution hearing was to be held in the future at which point the amount of restitution would be determined. See Appendix, Exhibit B.
5. On March 26, 2008, Appellant appeared in Berkeley County Magistrate Court for the agreed upon restitution hearing.
6. Contrary to the agreement to hold a restitution hearing, the Magistrate ruled in favor of the State's argument that Appellant was not entitled to a restitution hearing.
7. On March 28, 2008, Appellant filed her Notice of Appeal.

8. On August 11, 2008 the Circuit Court of Berkeley County entered the previously mentioned Order Dismissing Appeal.

The Order Dismissing Appeal contained the following conclusion of law:

"...[T]he legislature likely intended for no contest pleas to be included ... [in the exception preventing criminal appeals from magistrate court to circuit court contained in Rule 20.1 (a) of the West Virginia Rules of Criminal Procedure for the Magistrate Courts of West Virginia]." The Circuit Court further opined that "...[i]f the legislature intended for a separate appellate procedure for no contest pleas, then it would have provided language indicating this." The Circuit Court went on to affirm the actions of the magistrate court and dismissed the petition for appeal without a hearing.

III. STATEMENT OF THE FACTS OF THE CASE

In September 1996, Appellant Mara Spade started Second Chance Rescue, a non-profit, no-kill dog rescue/shelter dedicated to sheltering, caring for, and placing abandoned and homeless dogs. As the name suggests, Second Chance Rescue often took in dogs refused by other shelters. Quite frequently, the dogs taken in by Appellant had health problems upon their arrival at the rescue. Appellant would attempt to nurse these animals back to health at her own expense.

Between April 2006 and July 2006, Berkeley County Animal Control officers, initially claiming anonymous complaints, made several visits to the premises of Second Chance Rescue. Armed on at least three occasions with three separate search warrants, animal control officers began seizing dogs with various health problems from the premises. Eventually, animal control officers seized all 149 dogs from the premises whether they had health problems or not. The animal control officers testified at the July 12, 2006 civil probable cause hearing

that they did not know the health conditions of any dogs upon the arrival of those dogs at the premises.¹

On or about June 29, 2006, Appellant was charged with one (1) count of animal cruelty, pursuant to WV Code § 61-8-19(a).² A condition of Appellant's bond was that she was not to have any dogs in her possession. This bond condition effectively closed Second Chance Rescue.

After the civil probable cause hearing held on July 12, 2006, Appellant was ordered by the presiding magistrate to post a twenty-five thousand dollar (\$25,000.00) bond for the care of the dogs seized from Second Chance Rescue and in the custody of Berkeley County Animal Control. Appellant timely posted the bond, at least in part, to prevent euthanasia of any of the canines.³

By order entered August 22, 2006, the magistrate court of Berkeley County granted the ex parte request of a former assistant prosecuting attorney to disburse the \$25,000.00 bond to Berkeley County animal control "...for all reasonable costs for the care, medical treatment and maintenance of the seized canines while they remain in the possession of Berkeley County Animal Control." (emphasis added) (first disbursement order). Appellant was never given notice of the State's intent to seek disbursement of the bond. Likewise, Appellant was never given an opportunity to be heard on the necessity nor reasonableness of the costs allegedly incurred by animal control.

The same August 22, 2006 ex parte order of the magistrate also required Appellant to post an additional twenty-five thousand dollar (\$25,000.00) bond for the care of the seized dogs. Again, to prevent euthanasia of any of the canines, Appellant posted an additional \$25,000.00 bond.

On February 21, 2007, the Circuit Court of Berkeley County entered an Order Granting Disbursement of

¹ The civil proceedings below were initiated by the state pursuant to WV Code §7-10-4(b). §7-10-4(b) provides for a probable cause hearing, if requested, upon seizure of animals. See generally, Berkeley County Magistrate Court Case No's 06-C-1860, 2305 and 2369.

² Berkeley County Magistrate Court Case No. 06-M-3271.

³ WV Code §§7-10-4(e), (f) & (g) provide for euthanasia of seized animals under certain conditions.

Funds and Requiring New Bond (second disbursement order). This order disbursed to Berkeley County Animal Control the second twenty-five thousand dollar(\$25,000.00) bond posted by Appellant. It also required Appellant to post an additional bond of One Hundred Thirty Nine Thousand Eight Hundred Eighty Three Dollars and seventy-seven cents (\$139,883.77). Appellant, unable to post such a prohibitive bond, was forced to relinquish ownership of the dogs to animal control.

The second disbursement order was based, in part, on the August 22, 2006 ex-parte order from the Magistrate Court granting disbursement of the first twenty five thousand dollar bond posted by Appellant. The February 21, 2007 order of the Circuit Court of Berkeley County went on to find that Berkeley County Animal Control had incurred actual expenses for the care of the seized dogs. However, this finding was based on the proffer of an assistant prosecuting attorney. Despite Appellant's protests, no evidence was actually taken by the Circuit Court on the issue of the necessity of the alleged expenses nor whether those expenses were reasonable.

On December 3, 2007, a plea agreement was reached between Appellant and the State whereby the Appellant would plea no contest to one count of animal cruelty in exchange for a restitution hearing. The no contest plea form signed by Appellant and the Magistrate clearly indicates on its second page that a "restitution/probation hearing (was) to be held in due course" See Appendix, Exhibit A.

On February 4, 2008, the parties appeared before the Berkeley County Magistrate Court for further proceedings as contemplated by the plea agreement. At that time, Appellant was granted probation. Both the first and second page of the Probation Order clearly indicate that the amount of restitution was to be determined at a later hearing. See Appendix, Exhibit B.

On March 24, 2008, just two days before the agreed upon restitution hearing was to be held on March 26, 2008, the State served the undersigned by facsimile with a document entitled Motion for Order of Restitution as Res Judicata. Contrary to the plea agreement, the State essentially argued that (1) the issue of actual expenses

had already been decided; (2) there had already been "...a final adjudication on the merits of the prior action"; and (3) Appellant "...had a full and fair opportunity to litigate the issue in the prior action." The State's arguments are not supported by either the facts nor the record.

On March 26, 2008, the day scheduled by the magistrate court for restitution hearing, instead of the hearing where it had been agreed Appellant would be given the long promised opportunity to be heard on the reasonableness and necessity of the costs allegedly incurred by animal control, the Magistrate Court of Berkeley County ordered Appellant to pay restitution of One Hundred Fourteen Thousand Eight Hundred Eighty Three Dollars and seventy-seven cents (\$114,883.77). At no time has there ever been a hearing, either in magistrate court or circuit court, where admissible evidence and sworn testimony was produced as to the actual expenses incurred or whether those expenses were reasonable. Appellant has never had a full and fair opportunity to litigate the issue of restitution.

On March 28, 2008, Appellant filed her notice of appeal pursuant to Rule 20.1 of the WV Rules of Criminal Procedure for the Magistrate Courts of West Virginia.

On August 11, 2008, without first holding a hearing, the Circuit Court of Berkeley County entered its Order Dismissing Appeal. The Order does not indicate what, if anything, the Circuit Court reviewed and/or considered prior to its ruling. Neither the plea agreement nor the restitution issue are mentioned in the order.

The conclusion of law upon which the order is based is, essentially, that no contest pleas are included in the exception prohibiting appeals contained in Rule 20.1(a) of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia. The order reads in pertinent part as follows:

"Even though Rule 20.1 does not state that a no contest plea is included in the exception, the legislature likely intended for no contest pleas to be included in this language. Appeals of magistrate court jury trials and bench trials are anticipated in Rule 20.1 (d). If the legislature intended for a separate appellate procedure for no contest pleas, then it would have provided language indicating this."

In conclusion, the following facts should not be lost upon the Court: (1) the State has not and cannot prove the health condition of any dog upon its arrival at the rescue. In other words, the State cannot prove that any act or omission on the part of Appellant caused the ill health of any dog found at the rescue; (2) Animal Control seized all dogs from the rescue, whether they had health issues or not. These actions by animal control caused and created unnecessary expense which the State now seeks to shift to Appellant; (3) There has never been a hearing where the necessity and reasonableness of the costs allegedly incurred by animal control has been addressed, explored or otherwise subjected to the rigors of confrontation, cross-examination and evidentiary scrutiny.

IV. ASSIGNMENTS OF ERROR RELIED UPON ON APPEAL AND THE MANNER IN WHICH THEY WERE DECIDED IN THE LOWER TRIBUNAL.

1. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE MAGISTRATE COURT OF BERKELEY COUNTY TO REFUSE APPELLANT A RESTITUTION HEARING AS HAD BEEN AGREED UPON BETWEEN THE STATE AND APPELLANT.
2. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE CIRCUIT COURT OF BERKELEY COUNTY TO DISMISS APPELLANT'S APPEAL FROM MAGISTRATE COURT ON THE BASIS THAT A PLEA OF NO CONTEST FALLS WITHIN THE EXCEPTION UNDER RULE 20.1(a) OF THE RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS OF WEST VIRGINIA WHEN APPELLANT WAS APPEALING THE DENIAL OF A RESTITUTION HEARING, NOT HER CONVICTION.
3. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE MAGISTRATE COURT OF BERKELEY COUNTY TO GRANT THE STATE'S EX PARTE REQUEST FOR THE DISBURSEMENT OF FUNDS FROM A BOND POSTED BY APPELLANT WITHOUT FIRST GIVING APPELLANT NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE ISSUE.

V. POINTS AND AUTHORITIES

1. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE MAGISTRATE COURT OF BERKELEY COUNTY TO REFUSE APPELLANT A RESTITUTION HEARING AS HAD BEEN AGREED UPON BETWEEN THE STATE AND APPELLANT.

It is clearly indicated on the last page of the change of plea form (Appendix Exhibit A), and on both pages of the probation order (Appendix Exhibit B) that the parties and the magistrate understood, agreed and

anticipated the convening of a hearing where restitution, including the necessity and reasonableness of the costs allegedly incurred by animal control, would be addressed. However, in violation of the plea agreement, Appellant was never given a restitution hearing.

Appellant's plea was contingent upon the convening of a restitution hearing. As a result of what she thought was an agreement, Appellant gave up valuable rights. There may never have been a plea except for the agreement for a restitution hearing.

As a matter of criminal jurisprudence, a plea agreement is subject to principles of contract law insofar as its application insures the Defendant receives that to which she is reasonably entitled. State v. Myers, 513 S.E.2d 676 (WV 1998). Such agreements require ordinary contract principles to be supplemented with a concern that the bargaining and execution process does not violate the Defendant's right to fundamental fairness. State v. Gray, 619 S.E.2d 104 (WV 2005) (per curiam). When a Defendant enters into a valid plea agreement with the State, an enforceable right inures to both the State and the Defendant not to have the terms of the plea agreement breached by either party. Id. Because a plea agreement requires the Defendant to waive fundamental rights, we are compelled to hold prosecutors and the courts to the most meticulous standards of both promise and performance. SER Brewer v. Starcher, 465 S.E.2nd 185 (WV 1995). Permitting the prosecution to breach a plea bargain agreement has been characterized as extremely detrimental to the administration of justice if it should be established. Myers, supra. The undersigned suggests that at least part of the consideration advanced by the State in a plea agreement is that "the prosecutor pledges the public faith, and this pledge must be honored by the State." SER Gray v. McClure, 242 S.E.2d 704, 707 (WV 1978).

This case presents a situation where an agreement for a restitution hearing had clearly been reached. The State then chose to breach this agreement at the last moment, with scant notice to Appellant, by arguing that the issue of restitution was *res judicata*. To argue that *res judicata* applies when: 1) a final hearing in the matter has not yet taken place; and 2) there had never been an evidentiary hearing on the necessity and

reasonableness of the alleged costs incurred merely adds insult to injury.

This factual scenario raises the following rhetorical question: if the issue of restitution was already *res judicata*, why did the state, in multiple documents, agree to a restitution hearing?

The State's actions violate not only Appellant's right to fundamental fairness, but also both call into question the administration of justice and violate the public trust. Such conduct cannot be condoned. Appellant prays for the long promised restitution hearing for which she bargained.

2. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE CIRCUIT COURT OF BERKELEY COUNTY TO DISMISS APPELLANT'S APPEAL FROM MAGISTRATE COURT ON THE BASIS THAT A PLEA OF NO CONTEST FALLS WITHIN THE EXCEPTION UNDER RULE 20.1(a) OF THE RULES OF CRIMINAL PROCEDURE FOR THE MAGISTRATE COURTS OF WEST VIRGINIA WHEN APPELLANT WAS APPEALING THE DENIAL OF A RESTITUTION HEARING , NOT HER CONVICTION.

The Circuit Court of Berkeley County dismissed Appellant's appeal from magistrate court on the sole ground that, in the Circuit Court's opinion, "...[T]he Legislature likely intended for no contest pleas to be included in [the exception to Rule 20.1(a) of the Rules of Criminal Procedure for the Magistrate Courts of West Virginia]."

Rule 20.1(a) reads as follows:

Except for persons represented by counsel at the time a guilty plea is entered, any person convicted of a misdemeanor in a magistrate court may appeal such conviction to the circuit court as a matter of right.

With all due respect, Appellant wishes to point out the following:

1. The Supreme Court of Appeals of West Virginia, not the Legislature, promulgated the rules of court;
2. The circuit court has avoided the issue; and,
3. The Rule 20.1(a) exception is not applicable to the facts of this case.

Regardless of which entity promulgated the rule or whether the facts of her case fall within some exception

to the right of appeal under the rule, Appellant does not challenge her conviction.⁴ Rule 20.1 is inapplicable to Appellant's basic argument. She is appealing the fact that she has been denied the due process to which she is entitled by the actions of the prosecuting attorney, first in seeking ex parte relief from the court, then later in sullyng the public faith and administration of justice by breaching the plea agreement.

To carry the circuit court's position on this issue to its logical conclusion would be tantamount to holding that a prosecutor can breach a plea agreement, but the circuit court is powerless to address the situation. Certainly this cannot be what the Supreme Court of Appeals intended in promulgating the rules of court. Appellant respectfully invites the court to address this gap in the law.

3. IT WAS REVERSIBLE AND PREJUDICIAL ERROR FOR THE MAGISTRATE COURT OF BERKELEY COUNTY TO GRANT THE STATE'S EX PARTE REQUEST FOR THE DISBURSEMENT OF FUNDS FROM A BOND POSTED BY APPELLANT WITHOUT GIVING APPELLANT NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE ISSUE.

The actions of a former assistant prosecuting attorney in securing an ex parte order granting disbursement of funds from a bond posted by Appellant, and the actions of the Circuit Court of Berkeley County in finding (without an evidentiary hearing) that certain additional expenses had been incurred which justified disbursement of funds from a second bond posted by Appellant, violated Appellant's right to due process.⁵

"No person shall be deprived of ...property without due process of law and the judgment of his peers." Const. of WV, Art. III, Section 10.

It is axiomatic that due process encompasses the right to notice and opportunity to be heard on a given issue.

Regarding the first bond, the order granting disbursement of funds to Berkeley County Animal Control

⁴ In any event, Appellant contends that Rule 20.1 (a) is inapplicable to her case because she never pled guilty to the charge against her.

⁵ Contrary to the suggestion of Appellee in its response to Appellant's Petition for Appeal, Appellant objected on more than one occasion to the denial of an opportunity to address the reasonableness of the expenses claimed by Animal Control. See Appendix, Exhibit D. In fact, there has never been a hearing where testimony and evidence was produced in support of the expenses claimed by Animal Control.

attached hereto as Appendix Exhibit C was entered by the magistrate court without Appellant ever having been given notice and an opportunity to be heard on the State's intention to seek disbursement of a bond posted by the Appellant for the care of all dogs, including those without health problems, seized by Animal Control. The fact that this order was entered ex parte is further substantiated by the recitation in the first paragraph of the order that the assistant prosecuting attorney appeared alone before the magistrate.

The actions of the former assistant prosecuting attorney and the magistrate appear to have started a course of conduct where the circuit court itself took action against the second twenty-five thousand dollar bond (\$25,000.00) without an evidentiary hearing. The circuit court chose instead to accept the proffer of yet another assistant prosecuting attorney that certain additional costs had been incurred by animal control. Despite her protests, Appellant was never given an opportunity to address the necessity and reasonableness of these purported expenses.

The assistant prosecuting attorneys cited West Virginia Code Section 7-10-4(c)(2) as authority for their actions in seizing Appellant's property without due process. West Virginia Code Section 7-10-4(c)(2) reads as follows:

If a bond has been posted in accordance with subdivision (1) of this subsection, the custodial animal care agency may draw from the bond the actual reasonable costs incurred by the agency in providing care, medical treatment and provisions to the impounded animal from the date of the initial impoundment to the date of the final disposition of the animal. WV Code §7-10-4(c)(2). (emphasis added)

It should be noted that a prior version of this statute was declared unconstitutional by this court because it failed to provide for notice and an opportunity to be heard on the issue of the validity of a humane officer's exercise of his statutory powers to seize animals under certain conditions.

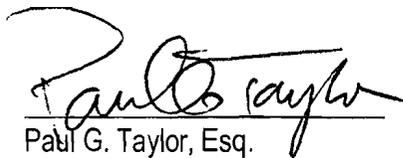
West Virginia Code, 7-10-4 [1923] is unconstitutional because it fails to provide a pre-seizure hearing or an expeditious post-seizure hearing for judicially determining the validity of a designated humane officer's exercise of his statutory powers to seize abandoned, neglected, or cruelly treated animals. Syllabus of the court, Anderson v. George, 233 S.E.2d 407 (WV 1977).

Appellant suggests that the statute continues to suffer from constitutional infirmities. That is, it fails to insure that a property owner is given notice and an opportunity to be heard on the additional seizure of the bond posted by the property owner based on the unsubstantiated proffer of law enforcement officials. How are “---the actual reasonable costs...” to be determined and by whom? Such unilateral discretion granted to law enforcement by judicial officers that does not permit notice and an opportunity to be heard on the reasonableness of costs incurred by law enforcement very similar to the problem the court sought to remedy in George, supra.

VI. CONCLUSION AND PRAYER FOR RELIEF

For the reasons set forth above, Appellant respectfully requests that WV Code §7-10-4(c)(2) be declared unconstitutional insofar as it allows the taking of property without due process; that the judgement of the Circuit Court of Berkeley County, both to disbursement of Appellant’s bond and denial of Appellant’s appeal from magistrate court, be REVERSED; that the judgement of the Magistrate Court of Berkeley County both to the denial of a restitution hearing, and as to disbursement of the first bond be REVERSED; that this matter be remanded to the Magistrate Court of Berkeley County in order for Appellant to be afforded a full restitution hearing where the Magistrate Court considers and addresses the necessity and reasonableness of the costs allegedly incurred by Berkeley County Animal Control; and for such other relief as the Court deems just.

Mara Spade
By Counsel



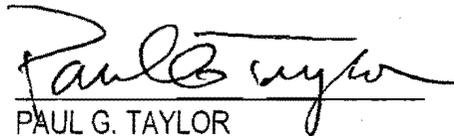
Paul G. Taylor, Esq.
WV State Bar No. 5874
134 West Burke Street
Martinsburg W VA 25401
(304) 263-7900

VII. CERTIFICATE OF SERVICE

I, Paul G. Taylor, counsel for Appellant /Defendant, do hereby certify that I have served a true copy of the foregoing BRIEF OF APPELLANT on the following named counsel of record, by first class United States mail, postage prepaid, this 14th day of January 2010.

Christopher Quasebarth, Esq.
Assistant Berkeley County Prosecuting Attorney
380 West South Street, Suite 1100
Martinsburg, WV 25401

Mara Spade
386 Gunpowder Lane
Inwood WV 25428


PAUL G. TAYLOR

IX Appendix

06-104

STATE OF WEST VIRGINIA

v.

Criminal Case No. 06M-3271

Mara Spade
Defendant

Complaint Date 7/12/06

GUILTY OR NO CONTEST PLEA

1. The magistrate has informed me that I am charged with the offense(s) of Animal Cruelty
*300 to *2000 fine and/or up to 6 months in jail

and that the possible penalties are: _____

(state mandatory minimum penalty, if any, and maximum penalty). I understand the charge(s) and the penalties that the court may impose.

2. The magistrate has informed me that I have the right to be represented by an attorney at every stage of the proceeding. If the West Virginia Code provides for a possible jail sentence, and if a cannot afford to hire an attorney, and I qualify, one will be appointed to represent me.

DEFENDANT MUST INITIAL THE APPROPRIATE LINE:

- (a) I give up my right to have any attorney represent me.
- (b) I have an attorney, who is present and is representing me.
- (c) I want to hire an attorney to represent me.
- (d) I want an attorney appointed to represent me.

NOTE: If I have initialed (c) or (d), I request that this plea proceeding be postponed so that I can talk with an attorney and have an attorney representing me for the rest of this proceeding.

3. The magistrate has informed me that I have a right to plead not guilty (or to maintain a plea of not guilty if it has already been made). I understand this right.

4. The magistrate has informed me that I have a right to be tried by a jury or by a magistrate without a jury, and at that trial I have the right to be represented by an attorney, the right to confront and cross-examine witnesses against me, the right not to be forced to incriminate myself, the right to call witnesses on my own behalf, and the right to testify on my own behalf or to be silent. I understand these rights.

5. The magistrate has informed me, and I understand, that if I plead guilty or no contest I give up my right to a trial.

6. The magistrate has informed me, and I understand, that if I plead guilty or no contest, the court may ask me questions while I am under oath about the offense(s) to which I plead. I further understand that if I answer these questions under oath, my answers may later be used against me in a prosecution for false swearing.

Mara Spade
Defendant's Signature
(Continued on next page)



7. The magistrate has informed me, and I understand, that the magistrate may neither entertain nor grant a request to withdraw this plea once the magistrate has accepted it.

8. I am entering this plea voluntarily, and not as a result of force or threats or of promises apart from a plea agreement. I have informed the magistrate of any prior discussions between the prosecuting attorney and me or my attorney that led to my willingness to plead guilty or no contest.

9. I plead as follows (*initial one*): _____ guilty; M.S. no contest.

12/3/07

Date

Mara Spade

Defendant's Signature

Paul E. Taylor

Counsel's Signature (if applicable)

I have addressed the defendant personally in open court and have informed the defendant of the matters set out above, and find that the defendant understands. I find further that the foregoing waiver of rights and plea are made knowingly and voluntarily by the defendant, and I accept the defendant's plea.

12/3/07

Date

Joan V. Bragg

Magistrate's Signature

State recommends Probation, before deciding to place def on probation defendant must undergo a psychological evaluation at her expense. Restitution/Prob hearing to be scheduled in due course
~~in due course~~

IN THE MAGISTRATE COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

Case No(s): 06M-3271

Mara Spade
Defendant.

Presiding
Magistrate: J Bragg

PROBATION ORDER

This 4th day of February, 20 08 comes the State of West Virginia, by Assistant Prosecuting Attorney, Paul Taylor, and the defendant, in person and by counsel, Paul Taylor for the purpose of a hearing.

The Court hereby acknowledges that the Defendant has:

- (1) Been found guilty or has pled guilty or no contest in the above-styled cases to the charge(s) of Animal Cruelty;
- (2) Been sentenced by this Court to a term of incarceration of 90 days;
- (3) Moved this Court, or made a plea agreement that 86 shall be suspended and the defendant shall alternatively be placed on unsupervised probation;
- (4) Not been convicted of an offense which requires mandatory incarceration by statute; and
- (5) Not been convicted of offenses codified at West Virginia Code §61-8B-8, § 61-8B-9 or §61-8D-5.

Pursuant to West Virginia Code § 50-2-3a, this Court does hereby place the defendant on unsupervised probation for a period of 2 yrs, not to exceed two years. The probation period begins as of the date of this Order. If incarcerated as of the date of this Order, the probation period begins upon release from jail or prison.

Probation is subject to the following express terms and conditions (mark all that apply):

- The probationer shall not violate any criminal law of this state, any other state of the United State or the United States;
- The probationer shall not leave the state without the consent of the court, which placed him or her on probation;
- The probationer shall not move out of the state without the consent of the court, which placed him or her on probation; until restitution hearing is held
- The probationer shall pay any fine and costs assessed as the court may direct, within 180 days of this Order;



- The probationer will complete _____ hours of community service at the direction of Lt. Scott Richmond (304-267-7000). Further, the probationer will report to Lt. Scott Richmond at 802-C Emmit Roush Drive, Martinsburg, WV 25401 within five (5) business days of the entry of this Order;
- The probationer shall serve _____ days home confinement pursuant to the terms and conditions of the Berkeley County Alternative Sentencing Program - Lt. Scott Richmond, complete the full term of home confinement and pay all costs of same;
- The probationer shall have make NO CONTACT whatsoever, direct or indirect, neither with the victim of his/her crime nor with any material witness in this matter. Nor shall the probationer go to the home or place of employment of any victim or material witness;
- The probationer shall make total restitution in the amount specified by the attached Restitution Order; *To be determined*
- The probationer shall report to _____ counseling service within seven (7) business days of this Order. Further, the probationer must provide proof of enrollment within ten (10) business days of this Order AND the probationer must provide proof of successful completion within three (3) months of this Order OR the probationer must provide proof of continual enrollment without any lapse in attendance within three (3) months of this Order.
- The probationer shall comply with the following additional rules or terms prescribed by the court:

He/she shall be prohibited from possessing, owning or residing with any animal or type of animal for a period of 5 yrs

All rules and conditions shall be satisfied by the end of the probation period or as otherwise directed by this Court. Any violation of this Order shall nullify the effect of this probation order, and shall result in a reinstatement of the original sentence.

It is further ORDERED that a certified copy of this Order, once entered, be provided to counsel of record.

Joan v. Bragg
 Magistrate of Berkeley County, West Virginia
 Joan Bragg
 Jim Humphrey
 Sandra Miller
 Jo Ann Overington
 Harry Snow

Endorsed by:

MS [Signature]
 Assistant Prosecuting Attorney

Marade [Signature]
 Defendant

Paul Taylor [Signature] Mark with an "X" if Pro Se.
 Counsel for Defendant

STATE OF WEST VIRGINIA,
Petitioner,

v. Magistrate Court Civil Action No. 06-C-1860, 2305 & 2369
Circuit Court Case No. 06-C-495

MARA SPADE,
Respondent.

*Originals
for file*

**ORDER GRANTING DISBURSEMENT
OF FUNDS TO BERKELEY COUNTY ANIMAL CONTROL**

On this the 18th day of August, 2006, came the Berkeley County Animal Control by Assistant Prosecuting Attorney, Betsy K. Giggenbach pursuant to West Virginia Code §7-10-4 (c)(2), wherein Berkeley County Animal Control is authorized to draw from a bond that was posted by the Respondent, Mara Spade in the amount of Twenty-Five Thousand Dollars (\$25,000.00) in the above referenced case to be utilized for the actual reasonable costs incurred in providing care, medical treatment and maintenance of the canines seized herein that are in the custody of the Berkeley County Animal Control.

Attached hereto is an invoice from the Berkeley County Animal Control setting forth the actual expenses incurred by Berkeley County Animal Control for the care, medical treatment and maintenance of said canines as of August 8, 2006 in the amount of Thirty-Five Thousand Seven Hundred and Fourteen Dollars and Ninety-Eight Cents (\$35,714.98).

WHEREFORE, the State respectfully requested that the Court authorize the disbursement of the Twenty-Five Thousand Dollar (\$25,000.00) bond posted herein to the Berkeley County Animal Control in partial payment of said invoices.

WHEREFORE, Upon review of said invoices, the Court finds that the invoices are actual reasonable expenses incurred by the Berkeley County Animal Control herein and that pursuant to W.V. Code § 7-10-4(c) the Respondent is liable for all reasonable costs for the care, medical treatment and maintenance of the seized canines while they remain in the possession of the Berkeley County Animal Control.



THFORE, the Court FINDS that Berkeley County Animal Control may draw Twenty-Five Thousand Dollars from the bond posted herein for the actual reasonable costs incurred in providing care, medical treatment and provisions to the impounded canines from the date of the initial impoundment until the date of the final disposition of the canines as evidenced by the attached invoices.

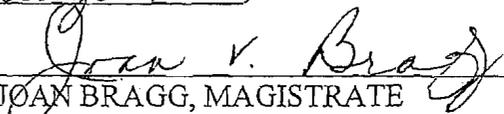
THEREFORE, the Court ORDERS the Berkeley County Circuit Clerk's Office to issue a check in the amount of Twenty-Five Thousand Dollars (\$25,000.00) made payable to the Berkeley County Animal Control for partial payment of the attached invoices

ADDITIONALLY, the Court ORDERS the Respondent to post a second bond in the amount of Twenty-Five Thousand Dollars (\$25,000) by 5:00 p.m. on Friday, August 25, 2006 with the Clerk of the Berkeley County Magistrate Court to provide for the maintenance of the dogs for an additional thirty day period. Berkeley County Animal Control may draw from the bond the actual reasonable costs incurred in providing care, medical treatment and provisions to the impounded canines from the date of the initial impoundment until the date of the final disposition of the canines. Upon acquittal or withdrawal of the complaint, any unused portion of the posted bond shall be returned to the Respondent.

Failure of the Respondent to post said bond by 5:00 p.m. on Friday, August 25, 2006, shall result in disposition of the canines at the discretion of the Berkeley County Animal Control Office in accordance with the reasonable practices of humane treatment of animals.

It is further ordered that the Clerk of the Berkeley County Circuit Court shall forward a copy of this Order to Berkeley County Animal Control, the Berkeley County Prosecuting Attorney's Office and Paul Taylor, counsel for Respondent.

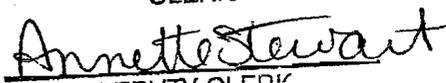
ENTERED this the 22nd day of August, 2006


JOAN BRAGG, MAGISTRATE

Prepared by: _____

Betsy K. Giggenbach, APA

A TRUE COPY
ATTEST
CLERK MAGISTRATE
RUBY KAY HAWKINS
CLERK


ANNETTE STEWART
CLERK

Paul G. Taylor

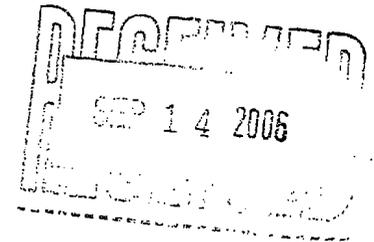
Attorney at Law, PLLC

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Martinsburg WV 25402
TaylorPaulG@aol.com

COPY

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September 13, 2006

Honorable David H. Sanders, Judge
Berkeley County Circuit Court
100 West King Street
Martinsburg, WV 25401

Re: State of West Virginia v. Mara Spade
Berkeley County Magistrate Case No. 06-C-1860, 2305 & 2369

Dear Judge Sanders:

I am in receipt of the proposed Order dated August 22, 2006 regarding the aforementioned matter. Please be advised that my client objects to the entry of this Order because we have not had an opportunity to explore the accuracy, appropriateness and reasonableness of the costs referenced in the proposed order.

If you have any questions or comments, please feel free to call.

Truly yours,

Paul G. Taylor

October 3, 2006
Betsy Giggenbach

cc: Honorable Joan Bragg, Magistrate
Betsy Giggenbach, Esq.
Mara Spade



Number: 0152675

August 30, 2006

8/18/06

Received of PAUL TAYLOR (FOR MARA SPADE)

\$25,000.00

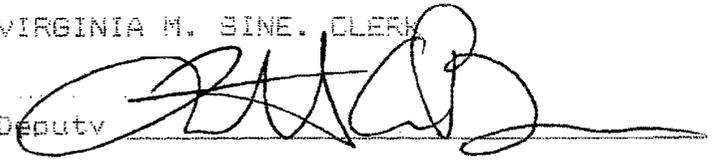
The exact sum of Twenty Five Thousand Dollars and No Cents

For..... BOND/COSTS (06-C-1860, 2306, 2367)
Payment type: CASH
Case number.: 06-P-176
Plaintiff...: STATE OF WEST VIRGINIA
Defendant...: MARA SPADE

Transaction conducted at:
110 W KING ST BERKELEY CO CT HOUSE
MARTINSBURG, WV 25401

VIRGINIA M. SINE, CLERK

Deputy



Distribution to Accounts...
6001 FUNDS AND BONDS 25000.00