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9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11
12 **IN AND FOR THE COUNTY OF WASHOE**

13 STATE OF NEVADA,

14 Plaintiff/Respondent,

Case No.: CR19-1821A

Dept. No.: 9

15 v.

16 MICHAEL DURAND SCHNEIDER,

17 Defendant/Petitioner.
18 _____ /

19 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR**
20 **WRIT OF HABEAS CORPUS (PRE-TRIAL)**

21 **I.**
22 **STANDARD OF REVIEW**

23 A finding of probable cause may be based on slight, even “marginal” evidence, because it
24 does not involve the determination of the guilt or the innocence of an accused. Thus, the State need
25 not produce the quantum of proof required to establish the guilt of the accused beyond a reasonable
26 doubt. Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178 (1980).

27 Even so, it remains incumbent upon the State to produce some evidence on each element of
28 the offense to support the accusation. Grant v. Sheriff, 95 Nev. 211, 212, 591 P.2d 1145 (1979).

If evidence of the one of the *prima facie* elements of the offense ultimately is based upon

1 speculation, such evidence cannot sustain the requisite probable cause to hold the accused for trial.
2 Glispey v. Sheriff, 89 Nev. 221, 224, 510 P.2d 623, 624-25 (1973); See also: Hooker v. Sheriff, 89
3 Nev. 89, 92, 506 P.2d 1262, 1263-64 (1973); Oxborrow v. Sheriff, 93 Nev. 321, 322-23, 565 P.2d
4 652, 653 (1977).

5
6 Only legal, competent evidence can be admitted and considered by the grand jury. NRS
7 172.135(2). Where inadmissible evidence has been adduced contrary to NRS 172.135, the court
8 looks to whether the slightest sufficient legal evidence and best in degree has been presented to the
9 grand jury, not considering the inadmissible evidence. Franklin v. State, 89 Nev. 382, 387, 513 P.2d
10 1252, 1255 (1973).

11
12 While petitions for pretrial habeas typically are based on alleged lack of probable cause, they
13 also can be based on a challenge to the court's right or jurisdiction to proceed. NRS 34.700(1).

14
15 When interpreting a criminal statute, legislative intent is the controlling factor. The starting
16 point for determining legislative intent is the statute's plain meaning. When it is clear on its face, the
17 court cannot beyond the statute in determining legislative intent. When the statutory language lends
18 itself to two or more reasonable interpretations, the statute is ambiguous, and the Court may look
19 beyond the statute in determining legislative intent. To interpret an ambiguous statute, this Court
20 looks to the legislative history and construes the statute in a manner that is consistent with reason
21 and public policy. The "rule of lenity" is a rule of construction that demands that ambiguities in
22 criminal statutes be liberally interpreted in the accused's favor, and it applies not only to the
23 interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they
24 impose. Because ambiguity of a penal statute is the cornerstone of the rule of lenity, the rule only
25 applies when other statutory interpretation methods, including the plain language, legislative history,
26 reason, and public policy, have failed to resolve a penal statute's ambiguity. State v. Lucero, 127
27
28

1 Nev. 92, 95-96, 99, 249 P.3d 1226, 1228, 1230 (2011).

2
3 **II.**
STATEMENT OF FACTS

4 **Ashley Margarita Perez** testified. She worked for the Petitioner at “Puppies Plus,”
5 Petitioner’s business on South Virginia Street in Washoe County, as the store manager between June
6 and September of 2017. (TR:17-20) Puppies would be delivered to the store by truck. They came
7 from different parts of the nation. One of them was J.A.K. Puppies, Inc., “which she heard was a
8 puppy mill.” They would get dogs who were really sick. She remembered a golden retriever that was
9 bleeding from behind. Sometimes they got dogs that had kennel cough. Sometimes they got dogs that
10 had giardia. A lot of the dogs came looking lethargic. Some were really scared. (TR:20-21)

11
12 She would check the dogs in. They would come with collars. She’d cut the collars off and
13 then load them into kennels that were out in the showroom and made sure that the dogs had food
14 water. (TR:22)

15
16 If a dog was sick or coughing, they would pull the dogs back into the back room, where they
17 would be in isolation. Sometimes they would put them in a “nebulizer” to help open up their
18 breathing. (TR:23)

19
20 The witness was not a licensed veterinarian. The co-workers were not either. Most of the co-
21 workers were around her age, or 19-years-old. (TR:23, 17)

22
23 When they would sell a dog, the customer would have a week to take the dog to the vet to
24 get it checked out. (TR:24)

25
26 Typically the workers were not allowed to call a vet. The course of treatment was set up by
27 the Petitioners. (TR:25)

28
Almost every dog that came in received some sort of treatment. They would give them

1 medicine orally or give them an injection. Co-Petitioner, Leilani Tau-Schneider, provided the
2 equipment and medicine. (TR:26)

3 The witness would do subcutaneous injections (meaning an injection under the skin) to help
4 hydrate the dog and bring it back to health. They would usually grab the dog underneath the fat of
5 the neck and inject there. Petitioner, Leilani Tau-Schneider typically gave her the fluids. (TR:27)

6 Before injecting a puppy with fluid, the witness would not call a veterinarian and ask if the
7 dog would need that. She learned how to do the procedure from Petitioner, Michael Duran
8 Schneider. The procedure was called "sub-Q." (TR:28) "Sub-Q" consists of sodium chloride. She
9 did not know what that was. About 98% of the dogs received subcutaneous injections. Sometimes
10 they would give multiple injections per day to a dog, depending on how bad off they were or if they
11 weren't eating. (TR:29)

12 The procedure "nebulizing" means putting the dogs in regular plastic tubs (obtainable from
13 Wal-Mart), putting other fluid in a tube and then turning it into mist. Medicine put in the tube was
14 meant for the dogs to inhale. (TR:30-31) They would put doxycycline, tetracycline, or clavamox into
15 the tubes. Petitioner, Leilani Tau-Schneider, taught her how to do that. They would routinely put
16 dogs into a nebulizer. (TR:32)

17 The purpose of doing that was to help the dog clear kennel cough and clear their breathing
18 airways. Typically they would leave a dog in a nebulizer for five to twenty minutes. (TR:31)

19 The witness would never call a veterinarian before doing the nebulizing. (TR:33-34)

20 Typically the nebulizing ranged from five to twenty minutes, depending on how sick the dog
21 was. Almost every dog received nebulization. (TR:35)

22 She was taught the nebulization procedure by Leilani Schneider, and Mrs. Schneider
23 provided the medicine. The witness discussed the course of treatment with both Petitioners. (TR:36)

1 The medicine that she put inside the nebulizers came from the same bag as the "sub-Q." The
2 witness mixed the "sub-Q" herself, but the nebulizer medicine already came as it was. (TR:37)

3 Her procedure as manager was to write down for the others what dogs needed medicine and
4 what dogs needed to be nebulized. (TR:37-38)

5 On one occasion, she adopted an English bulldog from the store. The dog got a nasty eye
6 infection. Michael Schneider told her to give the dog some doxycycline for seven days. Michael gave
7 her 14 pills. She did not take the dog to the vet. (TR:38-39)

8 While the witness worked at the store between June and September of 2017, she saw three
9 or four puppies die. In September of 2017, she saw a cocker spaniel get sick. (TR:39) She and the
10 others who worked there were concerned about the sickness of the cocker spaniel. The dog was there
11 not even a week before she left. (TR:40)

12 The witness's co-worker, Karissa Dunn, was also concerned. (TR:41) The witness told
13 Karissa to tell Michael and Leilani. The others said Leilani already knows. Leilani told her (Karissa)
14 to keep a close eye on the dog, to force feed her every hour because she was really bad. (TR:42)

15 Leilani stated (to Karissa) "Okay. That's good. It's a process. And as long as we're doing all
16 that throughout the day, we are doing what we can. Make sure to leave food with Karo syrup
17 overnight and to force feed a little bit before closing." (TR:43-44)

18 Karissa complained to the witness that the dog looked so bad that she (Karissa) can't keep
19 a good eye on the other dogs. The dog's legs looked broken. Karissa texted, "Leilani saw how bad
20 she was yesterday and didn't want to anything. She [the dog] literally lays her head in the water bowl
21 I gave her because she has no energy." (TR:44-45) Leilani instructed Karissa just to pay close
22 attention to the dog. (TR:45)

23 The cocker spaniel died on September 27, 2017. No licensed vet ever diagnosed the dog. The
24
25
26
27
28

1 dog was in pain, had a really hard time breathing and was suffering. After that she quit. The witness
2 **has no idea whether Leilani knows anything about the dog.** (TR:46-47)

3
4 The witness and Michael Schneider administered rabies vaccines to the dog. **Whenever the**
5 **vet was unable to come, Michael would have all of the rabies papers pre-signed,** and they would
6 go ahead and administer the vaccine into the back legs of the dogs. Michael showed her how to do
7 that. (TR:49) The day she gave rabies vaccines, and Michael did so, there was no vet or veterinary
8 technician present. (TR:50)

9
10 When the cocker spaniel was dying, Karissa said that Leilani told her that there was nothing
11 that could be done, so not to contact a vet. The sub-Q injections and nebulizing helped the dogs who
12 weren't too sick, but did not help the others. (TR:51)

13 She had never seen the Schneider's send a sick dog back. She knew that when dogs got sent
14 back, they were usually put down. That's why she always tried to adopt the dogs if possible. (TR:52)

15 When they were injecting the dogs, they would use a new needle for each dog.

16
17 **The vet who pre-signed the rabies papers was Fernando Cruz.** He worked there about
18 the last month that she was there. (TR:53-54) **They used to have a vet come in. The vet had been**
19 **"All Creatures" previously. She did not know what happened. Dr. Cruz was a "mobile vet"**
20 **who came in on Sunday's and Monday's to check on the dogs and sign their papers to ready**
21 **them to go home. The witness wasn't sure whether Dr. Cruz saw the cocker spaniel.** (TR:53-54,
22 55, 56)

23
24 **Typically, when they would get a shipment of dogs they'd have to wait until they were**
25 **seen by the vet, so the dogs would usually be on hold for seven days.** (TR:56)

26
27 **Before Dr. Cruz, they would take the dogs over to "All Creatures."** She had no
28 **knowledge on what would happen between them.** (TR:57-58)

1 **Kassandra Schanall** is an animal control officer with Washoe County Regional Animal
2 Services. (TR:62) On October 29, 2017 she assisted with executing a search warrant at “Puppies
3 Plus, Inc.” 6405 South Virginia Street, Washoe County. They were there to execute the search
4 warrant for a sick puppy, as well as multiple forms of alleged medical equipment in the form of
5 nebulizer, large plastic totes, and medications. (TR:63)

7 They found doxycycline, which is normally used for upper respiratory infection, and is
8 something generally prescribed by a veterinarian. (TR:65) They found medical logs referencing the
9 french bulldog in the nebulizing chamber. (TR:65-66) They also found a tan-colored or fawn-colored
10 french bulldog puppy in a plastic tote that had large rocks on it to prevent it from escaping. (TR:64)
11 They seized the nebulizing machine and the large totes on the scene. They also seized some
12 unlabeled or poorly labeled jars. They seized jars that were a mix of Chinese herbs and doxycycline.
13 (TR:65-66, 66-67, 67-68)

15 Washoe County does not issue permits to allow individuals to administer medication. That
16 has to be through a veterinarian. (TR:68)

18 **Jennifer Pedigo**, the Executive Director for the Nevada State Board of Veterinary Medical
19 Examiners (TR:71-72), testified that neither Michael Schneider nor Leilani Tau-Schneider has a
20 license to practice veterinary medicine. (TR:73)

22 **Jessica Slatin, DVM**, is a licensed veterinarian who works at the Nevada Humane Society
23 as the surgical director. She cares for all the in-house shelter animals, ensuring that they are healthy.
24 (TR:74-75)

25 If the owner of a pet store who is not a licensed veterinarian engages in subcutaneous
26 injections of dogs without consulting a veterinarian, he would be practicing veterinary medicine.
27 (TR:76)

1 If a veterinarian advises a pet store owner to give a sick bulldog doxycycline, and the pet
2 store owner gives doxycycline to a cocker spaniel without consulting with a veterinarian, that is
3 practicing veterinary medicine. (TR:76-77)
4

5 The best practices for a vet is to make individual determinations for each dog. One doesn't
6 make big broad generalizations, especially for treatment. The weight of the dog and the severity of
7 the signs may warrant a different type of treatment than would be received by another animal.
8 (TR:77)
9

10 A subcutaneous injection puts fluid into the animals right under the skin and the animals
11 absorb it over 24-48 hours. It's another form of giving hydration boost. It is an approved, regularly
12 used veterinary practice. (TR:77-78)
13

14 For giving a subcutaneous injection, one doesn't necessarily have to have the animal
15 hospitalized to do so. It can be an outpatient procedure. A veterinarian can also teach owners how
16 to do it as well. If the animal is not critically ill and does not require hospitalization, but can benefit
17 from a hydration boost, that is one route to go. A subcutaneous injection can be a treatment for
18 kennel cough if the dog is dehydrated as a result of the kennel cough. The same is true for
19 dehydration from diarrhea caused by giardia. A veterinarian is the one who diagnoses giardia.
20 (TR:78)
21

22 Diagnosing a dog with kennel cough is practicing veterinary medicine. Telling an employee
23 when the employee sees the dog cough or act lethargic to give a subcutaneous injection is also
24 practicing veterinary medicine. (TR:79) Nebulizing is a routine veterinary practice. Generally, the
25 fluid used is a sterile saline solution. The amount of fluid injected depends on the weight and size
26 of the animal. A veterinarian makes that decision. (TR:79-80)
27

28 Generally, the witness does not use medication in nebulizing. It's usually just a saline

1 solution. The effectiveness of antibiotics with nebulizing is not proven for a lot of them. It's not
2 always recommended to use antibiotics, because it can cause further irritation to the airways. (TR:80-
3 81)

4 Doxycycline is an antibiotic commonly used for upper respiratory diseases. (TR:81)
5 Clavamox is another antibiotic used for a variety of conditions: upper respiratory, skin, urinary tract
6 infection, oral disease. (TR:81-82)
7

8 Tetracycline is in the same drug class as doxycycline, another generic name for an antibiotic
9 with broad uses. (TR:82)
10

11 Giving doxycycline and/or clavamox and/or tetracycline without consulting a licensed
12 veterinarian is practicing veterinary medicine without a license. (TR:82)

13 The nebulizing chamber in this case looked homemade, not one that would be seen in most
14 veterinary practices. (TR:82-83) A homemade nebulizer could be done in the right way, however.
15 But a homemade nebulizer to administer doxycycline, tetracycline, or clavamox is not used. (TR:83)
16

17 A lay person should not make the determination about the measurement of the dosage of the
18 medication. If a lay person makes that determination or instructs employees to administer, he is
19 practicing veterinary medicine without a license. (TR:83)

20 Rabies vaccinations should only be administered by a veterinarian because rabies is a
21 communicable disease and can be very fatal. A licensed veterinarian or veterinary student or technician
22 may also administer them under the direct supervision of licensed veterinarian. (TR:84-85)
23

24 A pet store owner who administers rabies vaccinations and does not have a vet anywhere near
25 him, and is otherwise not a licensed veterinarian, veterinary student, or veterinary technician, is
26 practicing veterinary medicine without a license. (TR:86)
27

28 One who has a sick cocker spaniel with all of the symptoms in question and decides to force-

1 feed it, give it Karo syrup and give it subcutaneous injections, and has not consulted with a
2 veterinarian about what to do, would be practicing veterinary medicine without a license. (TR:86-87)

3 If there is a sick puppy who has not been receiving veterinary treatment over a course of days,
4 appears to be very sick, starts to become unresponsive and is continually being force-fed and giving
5 subcutaneous injections and eventually dies, that dog has been suffering and experiencing pain.
6 (TR:87-88)
7

8 **III.**
9 **ARGUMENT**

10 **A. PETITIONER IS EXEMPT FROM THE CHARGES CONTAINED IN COUNTS I, II,**
11 **AND III. THEREFORE, THE COURT HAS NO JURISDICTION TO PROCEED ON**
12 **THOSE COUNTS AND THEY MUST BE DISMISSED WITH PREJUDICE.**

13 NRS 638.015 specifically states:

14 **“Nothing in this chapter applies...**

15 **5) To the owner of an animal or full-time regular employee of the owner who**
16 **is caring for and treating an animal which belongs to the owner unless the ownership**
17 **of the animal is transferred for the purposes of circumventing this chapter, except**
that all vaccinations for zoonotic diseases must be administered by a licensed
veterinarian or a person under the direct supervision of a licensed veterinarian.”

18 In other words, pet shop owners are exempt from prosecution under NRS 638.090 and
19 638.170. This exemption was passed into law by the Nevada legislature in 1965, 1965 STATS of
20 NV ch. 212, SB 245 at 366. It was given grammatical but not substantive amendments at 1983
21 STATS of NV ch. 574, AB 553 at 1675.
22

23 Then in 1995, the legislature created the exception to the exception for treatment of zoonotic
24 diseases. 1995 STATS of NV ch. 510, SB 536 at 1676-77. While NRS 638.001 et. seq. does not
25 define “zoonotic diseases,” the standard “CDC” definition is “a disease caused by infections that
26 spread between animals and people.” Rabies is a common zoonotic disease. Others include: anthrax;
27 ascariasis; brucellosis; plague; echinococcosis; Lassa fever; listeriosis; Lyme disease; monkeypox;
28

1 psittacosis; salmonellosis; trichinosis; toxoplasmosis; typhus; and West Nile Fever.

2 Of these diseases, only Count IV references vaccinations for rabies, i.e., references a zoonotic
3 disease. Count I, II, III and V do not reference any zoonotic disease. Therefore, the opinion of Dr.
4 Slatin is irrelevant. It does not matter whether she or any other veterinarian believes that the
5 Schneider's were practicing veterinary medicine without a license. As pet shop owners, they are
6 exempt from that, except for the treatment and prevention of zoonotic diseases.
7

8 Therefore, Counts I, II, and III must be dismissed with prejudice. The Court has no
9 jurisdiction to enter a judgment on them.
10

11 **B. THE CHARGE AGAINST PETITIONER, MICHAEL SCHNEIDER, RELATIVE TO**
12 **COUNT IV, MUST BE PROSECUTED AS A GROSS MISDEMEANOR, NOT AS A**
13 **FELONY**

14 The evidence presented before the grand jury reflects that Mr. Schneider contracted with
15 several different veterinarians, who provided the rabies vaccinations for him to administer¹.

16 A veterinary technician is one who is licensed by the board pursuant to NRS 638.122 and is
17 formally trained for the specific purpose of assisting a licensed veterinarian in the performance of
18 professional or technical services in the field of veterinary medicine. NRS 638.013. The Petitioners
19 are not licensed by the board in any capacity, but quite obviously they were acting for the purpose
20 of assisting a licensed veterinarian in the performance of rabies vaccinations.
21

22 NRS 638.170 provides:

23 "2) A person who practices veterinary medicine without a license issued
24 pursuant to the provisions of this chapter is guilty of a Category D felony
and shall be punished as provided in NRS 193.130.

25 3) A person who practices as a veterinary technician without a license
26

27 ¹For trial purposes, we do not stipulate to the truth of that matter whatsoever. But for
28 grand jury purposes, we are forced to accept it as true.

1 issued pursuant to the provisions of this chapter is guilty of a gross
2 misdemeanor, and shall be punished by imprisonment in the county
3 jail for not more than 364 days, or by a fine of not more than \$2,000,
or by both fine and imprisonment.”

4 Thus, if the State wishes to prosecute Count IV, it must re-present the charge to the grand
5 jury under NRS 638.170(3), and have him re-indicted for the same.

6
7 **IV.**
CONCLUSION

8 No Count of the Indictment can legally survive this Petition. This Petition must be granted.
9 If the State wishes to go back to the grand jury and have it recharge Mr. Schneider with a gross
10 misdemeanor, it can; but by no means will the entirety of the evidence support that charge at the end
11 of the day.
12

13 **AFFIRMATION**
14 **Pursuant to NRS 239B.030**

15 This document does not contain the social security number of any person.

16 DATED this 18th day of September, 2019.

17 Respectfully submitted,

18
19 By: /s/CarterRKing
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3 **CERTIFICATE OF SERVICE**

4 The undersigned does hereby certify that they are an employee of Carter R. King, Esq., and
5 that on the 18th day of September, 2019, they caused a true and correct copy of the preceding
6 document to be served electronically upon the necessary parties in interest by way of the Court's E-
7 Flex filing system, addressed as follows:

8
9 Christopher Day, Deputy DA
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