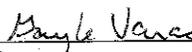


CERTIFICATE OF SERVICE

I, Gayle Vanac, have submitted a copy of this Memorandum in Support of Jurisdiction in its entirety to counsel for the appellee, Edward C. Powers via U.S. Mail at the address:

Edward C. Powers,
Painesville City Prosecutor
270 East Main Street, Suite 360
Painesville, Ohio 44077
COUNSEL FOR APPELLEE



Gayle Vanac
APPELLANT

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STATEMENT OF CASE AND FACTS

At no time in the courtroom of Judge Cicconetti from the period October 10, 2010 (the date of the incident that brought the criminal charge) to the conviction on March 7, 2011, had there been any discussion or statement concerning Gayle Vanac's right to a jury trial. No one asked Gayle Vanac if she wanted to waive a jury trial.

This was Gayle Vanac's recollection. She wasn't asked in open court if she waived her right to a trial jury.

In looking at the transcripts of the open court proceedings, Gayle Vanac was not asked about waiving her right to a jury trial. She wasn't asked if she waived her right to a jury trial.

Three Open Court Hearings (Oct 19, 2010; Dec 6, 2010; Mar 7, 2011)

On October 19, 2010, Gayle Vanac was arraigned in Painesville Municipal Court with a first degree misdemeanor crime of failing to control a vicious dog, in violation of section 518.18 of the Codified Ordinances of the City of Painesville. On December 6, 2010, a pre-trial hearing was held at which she learned her attorney had withdrawn from the case. On March 7, 2011, the trial was held, at which Gayle Vanac was convicted.

The transcripts for these sessions in the trial court were included in the appeal to the Eleventh District Court of Appeals. The appellant compared her copy of these transcripts to the official copy at the office of the Clerk of Lake County Court, before it was sent to the Eleventh District Court. The appellant's copy of these transcripts is no different from the copy that was submitted by the Clerk of Lake County Court to the Eleventh District Court of Appeals.

The appellant Gayle Vanac did raise the question in April 2011 with Judge Cicconetti and Prosecutor Powers as to the veracity of the transcript, after looking at the copy that was at

the office of the Clerk of Lake County Court. The trial transcript contained a statement by Mrs. Murphy that my dog had brought about “four [stitches] in the elbow and two [stitches] in the finger, I believe.” In the trial, Mrs. Murphy had said “a couple stitches.” Moreover, her testimony to the events on October 10, 2010, the day of the incident, had been changed. The transcript was different from her courtroom testimony. Judge Cicconetti allowed me to listen to the tapes. The problem was not in the court reporter's transcription. The problem was that the tape had been edited.

Right to a Jury Trial

I was not asked in the Painesville Municipal courtroom, at any of the three sessions, if I waived my right to a jury trial. As evidence, I point to the three transcripts.

ARGUMENT IN SUPPORT OF APPEAL

Given the rights put forth in Ohio Constitution (Section 5, Article 1) and in the U.S. Constitution (Amendment 6 and Amendment 14), the appellant Gayle Vanac, in criminal trial in Painesville Municipal Court has a constitutional right to trial by jury

Given the decision in *State v. Lomax (2007)*, “Syllabus of the Court: (1) A waiver of the right to a trial by jury must not only be made in writing, signed by the defendant, and filed as part of the record, but must also be made in open court. (R.C. 2945.05 applied). (2) To satisfy the 'in open court' requirement in R.C. 2945.05, there must be some evidence in the record that the defendant while in the courtroom in the presence of counsel, if any, acknowledged the jury waiver to the trial court.”, the right to trial by jury was not waived in open court by Gayle Vanac.

Therefore, appellant Gayle Vanac petitions the Ohio Supreme Court to return this case to Painesville Municipal Court so that Gayle Vanac can face criminal charges.

TABLE OF AUTHORITIES

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State v. Lomax, (2007)-Ohio-4277.6

Hamilton App. No. C-040450, 166 Ohio App.3d 555, 2006-Ohio-1373. Judgment affirmed.

Moyer, C.J., Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger and Cupp, JJ., concur.

Opinion: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2007/2007-Ohio-4277.pdf>

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IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

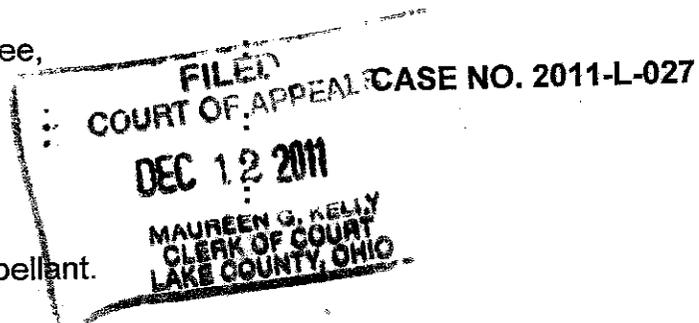
STATE OF OHIO, : OPINION

Plaintiff-Appellee,

- vs -

GAYLE A. VANAC,

Defendant-Appellant.



Criminal Appeal from the Painesville Municipal Court, Case No. CRB 1002395.

Judgment: Affirmed.

Edward C. Powers, Painesville City Prosecutor, 270 East Main Street, Suite 360, Painesville, OH 44077 (For Plaintiff-Appellee).

Gayle A. Vanac, pro se, 169 S. St. Clair Street, Painesville, OH 44077 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Gayle A. Vanac, appeals her conviction in the Painesville Municipal Court, following a bench trial, of failing to control a vicious dog. Because appellant has failed to demonstrate any error in the trial court's proceedings, we affirm.

{¶2} On October 12, 2010, appellant was charged, by way of citation, in the Painesville Municipal Court with failing to control a vicious dog, in violation of section 518.18 of the Codified Ordinances of the City of Painesville, a misdemeanor of the first degree. The ordinance provides that the owner of any vicious dog that is outside the

premises of the owner shall keep the dog on a leash and muzzled until the dog's return to the owner's premises. Appellant pled not guilty.

{¶3} On December 2, 2010, appellant's attorney filed a motion to withdraw as her counsel due to "irreconcilable differences" between him and appellant. He stated that appellant had ignored his advice and insisted that he subpoena certain witnesses, including police and emergency personnel, who, according to counsel, were "completely unnecessary." Counsel stated that there were no factual issues in this case and that appellant refused to follow his advice that she enter a proposed plea bargain in which, in exchange for her no contest plea, the prosecutor agreed to recommend a \$50 fine. The trial court granted counsel's motion to withdraw. The trial court continued the case twice to allow appellant to retain new counsel. Further, the court gave appellant three months in which to retain substitute counsel; however, she failed to retain new counsel and ultimately chose to represent herself. The case proceeded to trial on March 7, 2011.

{¶4} Janet Murphy testified that on Sunday morning, October 10, 2010, at about 11:00 a.m., she was walking with her husband on the sidewalk on St. Clair Street in Painesville, Ohio, when she saw a woman holding a leash to which a dog was tethered. The woman, later identified as appellant, was talking to a male who was gardening in his front yard. Appellant was standing on the male's tree lawn with her dog. As Mrs. Murphy walked by, she made a friendly gesture with her hand to the dog and said, "Hi, doggie." The dog attacked Mrs. Murphy, clamping onto her hand and then onto her elbow.

{¶5} Mrs. Murphy was screaming and extremely frightened. She was bleeding profusely from the two dog bites. Her husband was eventually able to get the dog to release her and walked her to the front porch of a nearby duplex.

{¶6} Police responded to the scene followed by an ambulance. The emergency workers were unable to stop Mrs. Murphy's bleeding. They took her to Tri Point Medical Center, where she received stitches to her elbow and finger.

{¶7} John Balch testified that he lives next door to appellant on St. Clair Street. He said that on October 10, 2010, while he was gardening, appellant was in his front yard with her dog talking to him. Suddenly, he saw appellant's dog clamped onto Mrs. Murphy's hand biting her. He went into the house to get some ice to try to slow down Mrs. Murphy's bleeding. The dog was on a leash, but it had pulled the leash out of appellant's hand. While appellant's dog was biting Mrs. Murphy, the leash was dangling from it. He said that appellant did not have control of her dog.

{¶8} Painesville City Police Officer, Brenda McNeely, testified that she responded to the scene on a call of a dog bite with the victim still present. While questioning Mrs. Murphy, the emergency rescue squad arrived. Officer McNeely testified that when the EMT workers were walking toward Mrs. Murphy, appellant's dog went after them. She said the dog was so aggressive, she believed the dog was going to bite the EMT workers, and she was prepared to shoot the dog.

{¶9} Officer McNeely testified that appellant was holding onto the dog, which weighed about 75 pounds, with a thin cloth leash, and the officer was concerned it would break. She yelled at appellant to get control of her dog and to take it inside her

home. After telling appellant to take the dog inside three times, appellant finally followed the officer's instructions and took the dog into her house.

{¶10} Officer McNeely testified that after Mrs. Murphy left with the rescue squad, appellant came outside and Officer McNeely questioned her. With respect to the attack on Mrs. Murphy, appellant said that when Mr. and Mrs. Murphy walked by her, Mrs. Murphy swung her arm, which enticed the dog to attack her. Appellant implied the attack was Mrs. Murphy's fault.

{¶11} With respect to the dog's aggression toward the rescue workers, appellant said that the police and emergency workers had brought too much energy to the area and that it was the rescue workers' fault her dog went after them.

{¶12} Officer McNeely testified that she started to explain to appellant her obligations under the vicious dog law, but the officer said she did not believe appellant was understanding what the officer was saying.

{¶13} Officer McNeely testified that Mr. Balch reported to her that when appellant and her dog were in his front yard, the dog bit Mrs. Murphy. Mr. Balch told Officer McNeely that appellant's dog had previously bitten him and, in another incident, appellant's dog had bitten the mailman.

{¶14} Appellant testified on her own behalf. She said that on August 31, 2010, there was an allegation made by someone that someone else had sprayed her dog with a noxious substance. Without offering any evidence in support, appellant suggested that Mrs. Murphy might have been involved in this earlier spraying incident and that her dog might have attacked Mrs. Murphy in retaliation for her possible involvement in this earlier alleged incident.

{¶15} With respect to the instant offense, appellant testified that she walked to Mr. Balch's home with her dog, which, she said, was on a leash. She said that as Mr. and Mrs. Murphy walked by, Mrs. Murphy offered her hand to the dog and he snapped at her. Appellant said that, while it was not right for her dog to do that, her dog did not bite Mrs. Murphy. She said that if Mrs. Murphy was injured, it must have been from a prior incident or from self-mutilation. Appellant said that after the incident, her dog lunged forward forcing her to the ground because she never released the leash. Appellant said that if anyone sustained elbow injuries, it must have been her rather than Mrs. Murphy. Appellant said that when the police and ambulance arrived, her dog was not aggressive toward anyone. Appellant did not dispute that at the time her dog went after Mrs. Murphy, the dog was not on her property; the dog was not muzzled; and the dog had previously bitten her neighbor and the mailman.

{¶16} Following the presentation of the evidence, the court found appellant guilty of the charge. The court sentenced appellant to 30 days in jail suspending all time, six months community control sanctions, and a fine of \$50.

{¶17} Appellant appeals her conviction, alleging four assignments of error. Because the same legal analysis applies to each of her assigned errors, we shall consider them together. They allege:

{¶18} "[1.] The voice recording of court proceedings in the trial court for this case on the dates October 19, 2010, December 6, 2010, and March 7, 2011 was edited and re-recorded.

{¶19} "[2.] Gayle Vanac pursued this case through trial court for two reasons: (1) The police report(s) presented a serious risk of insurance fraud; (2) The police report

that was written on October 10, 2010 puts Gayle Vanac at risk of harm, giving any person license to assault Gayle Vanac with immunity [sic]. When Gayle Vanac asked on December 6, 2010--the point at which she no longer had representation--for a copy of the complaint filed by the prosecutor, the first response was a copy of the citation. The second response of the prosecutor, a few days before the trial on March 7, 2010, was a copy of the latest version of the police report written for the October 10, 2010 incident.

{¶20} “[3.] Painesville Police Officer McNeely thinks that the status of ‘vicious dog’ is a fact established in the writing of a police report. Gayle Vanac thinks that the status of ‘vicious dog’ is an adjudication. Consequently, Gayle Vanac has been looking at the Painesville City Ordinances and the definition of vicious dog in the Ohio R.C. 955.11. Similarly, Police Officer McNeely has worked throughout the period from the citation to the trial to attribute behaviors to the dog in the writing of police reports that she believes will establish the dog as vicious. In this attribution, Officer McNeely is venturing into the area of libel and insurance fraud. Unfortunately, were Gayle Vanac to call her veterinarian to testify on her behalf, this professional and his attorney prudently would seek police reports as a source of information. Officer McNeely’s efforts to characterize the dog as vicious will be taken as factual observation, thereby reducing the chance of the veterinarian serving reliably in the capacity of witness.

{¶21} “[4.] In carefully working [sic] the Lake County Health District, together with reviewing police reports and listening carefully at the arraignment, Gayle Vanac found two incidents in which the dog might fit the Ohio R.C. 955.11 definition of vicious: (1) August 31, 2010 and (2) October 10, 2010. The first incident occurred when Gayle

Vanac's mother made an allegation of animal abuse concerning the dog on August 31, 2010. Police Officer Nagy took the report. However, he not only took the report, he attempted to touch the dog. The dog was with Gayle Vanac's mother, on the driveway of Gayle Vanac's home, nowhere near the sidewalk, sturdily tied to the tree that faces the side entrance to Gayle Vanac's home."

{¶22} As a preliminary matter, we note that appellant does not challenge on appeal the sufficiency or weight of the evidence. She therefore does not challenge the adequacy or credibility of the evidence presented in support of the trial court's finding that she failed to control a vicious dog. Instead, she raises four other issues on appeal in an effort to challenge her conviction. For the reasons discussed below, her assigned errors lack merit.

{¶23} First, appellant fails to present any argument containing her contentions with respect to any of her assignments of error or the reasons in support of these contentions with citations to any pertinent authority on which she relies, in violation of App.R. 16(A)(7). For this reason alone, her assignments of error lack merit.

{¶24} Second, appellant fails to reference the place in the record where her assigned errors are allegedly reflected, in violation of App.R. 16(A)(3). For this additional reason, her assignments of error lack merit.

{¶25} Third, appellant failed to raise the issues asserted in her assignments of error in the trial court by way of objection, motion, or argument prior to final judgment. They are therefore waived for purposes of appeal. In *State v. Awan* (1986), 22 Ohio St.3d 120, the Supreme Court of Ohio held:

{¶26} “The general rule is that ‘an appellate court will not consider any error which counsel for a party complaining of the trial court’s judgment could have called but did not call to the trial court’s attention at a time when such error could have been avoided or corrected by the trial court.’ *State v. Childs* (1968), 14 Ohio St.2d 56, paragraph three of the syllabus; *State v. Glaros* (1960), 170 Ohio St. 471, paragraph one of the syllabus; *State v. Lancaster* (1971), 25 Ohio St.2d 83, paragraph one of the syllabus; *State v. Williams* (1977), 51 Ohio St.2d 112, 117. Likewise, ‘[c]onstitutional rights may be lost as finally as any others by a failure to assert them at the proper time.’ *State v. Childs*, supra, at 62, citing *State v. Davis* (1964), 1 Ohio St.2d 28; *State ex rel. Specht, v. Bd. of Edn.* (1981), 66 Ohio St.2d 178, 182, citing *Clarington v. Althar* (1930), 122 Ohio St. 608, and *Toledo v. Gfell* (1958), 107 Ohio App. 93, 95. ***.” (Footnote omitted.) *Awan*, supra, at 122.

{¶27} Fourth, with respect to each of appellant’s assignments of error, she fails to argue that the trial court erred or that she was prejudiced by any such error. “An appellant, in order to secure reversal of a judgment against him, must not only show some error but must also show that that error was prejudicial to him.” *Wagner v. Roche Laboratories*, 85 Ohio St.3d 457, 460-461, 1999-Ohio-309, quoting *Smith v. Flesher* (1967), 12 Ohio St.2d 107, 110. Thus, it is the appellant’s burden to demonstrate that the trial court erred in entering its judgment and that he or she was prejudiced by the trial court’s alleged errors. Here, appellant has failed to argue, let alone demonstrate, any error on the part of the trial court or that she was prejudiced as a result of any such errors.

{¶28} In her first assigned error, appellant simply alleges the audio recordings of the trial court's proceedings were edited and re-recorded. However, she does not cite even one example of an alleged inconsistency between the audio recordings, as reflected in the transcripts, and any aspect of the trial court's proceedings. She therefore does not allege error on the part of the trial court. In her second assigned error, her contention that the police reports presented a risk of insurance fraud and exposed her to a risk of assault does not allege error committed by the trial court. In her third assigned error, her contention that the police reports have reduced the chance that her veterinarian could be a reliable witness in her favor does not allege error on the part of the trial court. In her fourth assignment of error, appellant's concession that she has found two incidents that would support a finding that her dog is vicious could hardly amount to error by the trial court. For this additional reason, appellant's assignments of error lack merit.

{¶29} Fifth, even if any of appellant's assignments of error alleged errors, appellant fails to reference any evidence in the record in support of any of her assignments of error, in violation of App.R. 16(A)(7). For example, with respect to her first assigned error, appellant fails to reference any evidence that the audio recordings of the trial court's proceedings were edited and re-recorded or that there are any discrepancies between the actual proceedings below and the transcripts of the audio recordings. Appellant's second, third, and fourth assignments of error challenge the accuracy of police reports. However, she fails to reference any police reports in the record. Further, with respect to appellant's second assigned error, she fails to reference any evidence that the police reports presented a risk of insurance fraud or subjected her

to a risk of assault. With respect to her third assigned error, she fails to reference any evidence that the police reports had any effect on whether appellant's veterinarian could serve as a reliable witness. We note that appellant failed to call her veterinarian as a witness to testify that his ability to testify as an expert was in any way affected by the police reports.

{¶30} An appellate court in determining the existence of error is limited to a review of the record. *State v. Sheldon* (Dec. 31, 1986), 11th Dist. No. 3695, 1986 Ohio App. LEXIS 9608, *2; *Schick v. Cincinnati* (1927), 116 Ohio St. 16, paragraph three of the syllabus. On appeal, it is the appellant's responsibility to support his or her argument by evidence in the record that supports his or her assigned errors. *Columbus v. Hodge* (1987), 37 Ohio App.3d 68-69. Because appellant referenced no record evidence in support of her assignments of error, they are not well taken.

{¶31} For the reasons stated in this opinion, the assignments of error are overruled. It is the judgment and order of this court that the judgment of the Painesville Municipal Court is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

STATE OF OHIO,
Plaintiff-Appellee,

JUDGMENT ENTRY

CASE NO. 2011-L-027

- vs -

GAYLE A. VANAC,
Defendant-Appellant.

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Painesville Municipal Court is affirmed.

Costs to be taxed against appellant.



JUDGE THOMAS R. WRIGHT

FOR THE COURT

