

1994

West Valley City v. Lynn Poulsen : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Richard Catten; Senior Attorney; Paul Morris, City Attorney; Attorney for Plaintiff/Appellee.
Lynn Poulsen; Pro Se Appellant/ Defendant.

Recommended Citation

Brief of Appellee, *West Valley City v. Poulsen*, No. 940507 (Utah Court of Appeals, 1994).
https://digitalcommons.law.byu.edu/byu_ca1/6152

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT T
KFU

50

IN THE UTAH COURT OF APPEALS. 10

BUCKET NO. 940507-CA

WEST VALLEY CITY,

Plaintiff/Appellee,

v.

LYNN POULSEN,

Defendant/Appellant.

Case No. 940507-CA

Priority 2

BRIEF OF THE APPELLEE

Appeal from the Third Circuit Court, West Valley Department,
in and for Salt Lake County, State of Utah;
the Honorable William B. Bohling

J. Richard Catten (#4291)
Senior Attorney
WEST VALLEY CITY
3600 Constitution Boulevard
West Valley City, Utah 84119
(801)963-3271

Attorney for Plaintiff/Appellee

Lynn Poulsen
3353 South Main Street, #227
Salt Lake City, Utah 84115
(801)464-5605

Pro Se Defendant/Appellant

FILED

JUL 10 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,	:	
	:	
Plaintiff/Appellee,	:	
	:	Case No. 940507-CA
v.	:	
	:	Priority 2
LYNN POULSEN,	:	
	:	
Defendant/Appellant.	:	

BRIEF OF THE APPELLEE

Appeal from the Third Circuit Court, West Valley Department,
in and for Salt Lake County, State of Utah;
the Honorable William B. Bohling

J. Richard Catten (#4291)
Senior Attorney
WEST VALLEY CITY
3600 Constitution Boulevard
West Valley City, Utah 84119
(801) 963-3271

Attorney for Plaintiff/Appellee

Lynn Poulsen
3353 South Main Street, #227
Salt Lake City, Utah 84115
(801) 464-5605

Pro Se Defendant/Appellant

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUES	1
DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES	2
STATEMENT OF THE CASE	2
<i>NATURE OF THE CASE</i>	2
<i>COURSE OF PROCEEDINGS</i>	2
<i>DISPOSITION IN TRIAL COURT</i>	3
<i>STATEMENT OF FACTS</i>	4
SUMMARY OF THE ARGUMENT	6
DETAIL OF THE ARGUMENT	9
I. THE TRIAL COURT JUDGE PROPERLY DENIED POULSEN'S MOTION TO DISMISS AT THE CONCLUSION OF THE CITY'S CASE IN CHIEF, SINCE SUFFICIENT FACTS HAD BEEN PLACED INTO EVIDENCE TO ESTABLISH A <i>PRIMA FACIE</i> CASE.	9
II. SECTION 23-5-102 OF THE WEST VALLEY CITY MUNICIPAL CODE IS NOT UNCONSTITUTIONALLY OVERBROAD.	12
III. THE ADMISSION OF EVIDENCE REGARDING THE CIRCUMSTANCES OF POULSEN'S ARREST AND INCARCERATION, AND THE PROSECUTOR'S REMARKS RELATING TO THAT EVIDENCE, WERE PROPERLY ALLOWED BY THE TRIAL COURT AT THE SPECIFIC REQUEST OF POULSEN	13
IV. THE JURY INSTRUCTIONS REGARDING STRICT LIABILITY AND THE ELEMENTS OF THE CRIME OF "ANIMALS RUNNING AT LARGE" ACCURATELY REFLECT THE LAW.	20

CONCLUSION 21

CERTIFICATE OF SERVICE 22

ADDENDUM 23

Exhibit A: Record, pp. 290-295

TABLE OF AUTHORITIES

Page

CASES

<i>Broadrick v. Oklahoma</i> , 413 U.S. 601; 93 S. Ct. 2908; 37 L. Ed. 2d 830 (1973)	12
<i>State v. Frampton</i> , 737 P.2d 183 (Utah 1987)	12
<i>State v. Pena</i> , 869 P.2d 932 (Utah 1994)	1
<i>State v. Thomas</i> , 830 P.2d 243 (Utah 1992)	1
<i>West Valley City v. Streeter</i> , 849 P.2d 613 (Utah App. 1993) . .	1

STATUTES

Utah Code Ann. § 76-2-102	21
Utah Code Ann. § 78-2a-3(f)	1
West Valley City Municipal Code § 23-5-102 . 1, 2, 7, 12, 13, 21	

STATEMENT OF JURISDICTION

Appellate jurisdiction over this case is rested in the Utah Court of Appeals pursuant to Section 78-2a-3(2)(f), Utah Code Annotated 1953, as amended.

STATEMENT OF THE ISSUES

I. DID THE TRIAL COURT PROPERLY DISMISS POULSEN'S MOTION TO DISMISS AT THE CLOSE OF THE CITY'S CASE IN CHIEF?

This is a conclusion of law, and should be reviewed on a "correctness" standard. *State v. Pena*, 869 P.2d 932 (Utah 1994).

II. IS WEST VALLEY CITY ORDINANCE 23-5-102 UNCONSTITUTIONALLY OVERBROAD?

A trial court's denial of a motion to dismiss based upon its conclusion that the challenged statute is constitutionally valid presents a question of law. That decision should be reviewed under a correction-of-error standard, granting no particular deference to the trial court. *West Valley City v. Streeter*, 849 P.2d 613 (Utah App. 1993).

III. WAS POULSEN'S MOTION FOR NEW TRIAL PROPERLY DENIED BY THE TRIAL COURT?

The denial of a motion for a new trial is within the sound discretion of the trial court, should be given deference, and should not be disturbed absent an abuse of discretion. *State v. Thomas*, 830 P.2d 243 (Utah 1992); *State v. Pena*, 869 P.2d 932 (Utah 1994).

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, AND RULES

West Valley City Municipal Code:

23-5-102. Animals Running at Large.

It shall be unlawful for the owner or person having charge, care, custody or control of any animal to allow such animal at any time to run at large. The owner or person charged with responsibility for an animal found running at large shall be strictly liable for a violation of this Section regardless of the precautions taken to prevent the escape of the animal and regardless of whether or not he knows that the animal is running at large.

STATEMENT OF THE CASE

NATURE OF THE CASE

This case involves a prosecution and conviction in the Third Circuit Court, West Valley Department, Salt Lake County, State of Utah, for four counts of violating Section 23-5-102 of the West Valley City Municipal Code, "Animals Running at Large."

COURSE OF PROCEEDINGS

Prosecution in this case was commenced by the arrest of Lynn Poulsen on or about February 15, 1994. Following her arrest, Poulsen filed numerous pretrial motions, including the following: Motion to Dismiss for Failure to Provide Evidence (Record, p. 21); Motion to Dismiss for Lack of Jurisdiction (Record, p. 57); Motion to Take Deposition with Alternative Recording Device (Record, p. 68); Motion to Dismiss Ordinance Void and Unconstitutional Hearing Requested (Record, p. 70); Motion for Severance of Charges and Counts (Record, p. 74); Motion in Limine (Record, p. 77); Motion for Payment of Witness Fees and Research Fees at Public

Expense (Record, p. 82); Motion to Disqualify Judge (Record, p. 91); Motion to Suppress (Record, p. 109).

On July 5, 1994, the trial court judge granted Poulsen's Motion to Dismiss the six counts of "Nuisance: Animals." The trial court denied Poulsen's other motions.

A jury trial was held on July 5, 1994. Following trial, Poulsen filed a Motion for Arrest of Judgment or in the Alternative Motion to Vacate Verdict of Guilty and Grant New Trial, and a Motion for New Trial. The trial court denied both of Poulsen's motions on August 22, 1994. Poulsen filed a Notice of Appeal on August 30, 1994.

Subsequent to Poulsen's filing of the Notice of Appeal, she filed a Motion for Payment of Transcripts of Court Proceedings for Appeal. The trial court denied this Motion on November 4, 1994. Poulsen filed a Notice of Appeal with the Utah Court of Appeals, appealing the trial court's denial of her Motion for Payment of Transcripts. The Court of Appeals upheld the decision of the trial court in its Memorandum Decision dated May 11, 1995, Case No. 940727-CA. The Utah Supreme Court denied Poulsen's Writ of Certiorari for review of the Court of Appeals' decision regarding the payment of transcripts.

DISPOSITION IN TRIAL COURT

At trial, Poulsen was convicted of four of the six counts brought against her of "Animals Running at Large," a class B misdemeanor. On August 3, 1994, the trial court judge imposed a

jail sentence of thirty days, which was suspended; a fine of \$750, \$250 of which was suspended; and ordered that Poulsen could complete fifty hours of community service in lieu of the \$500 fine that was due and owing. The court also placed Poulsen on probation for twelve months.

STATEMENT OF FACTS

1. At approximately 1:30 a.m. on February 15, 1994, West Valley City Police Officer Cox responded to a report of horses running at large at the approximate location of 2700 South 7000 West in West Valley City. Transcript, pp. 15-16, 18, 27.

2. Upon his arrival at the location, Officer Cox observed six to eight horses loose on the streets of West Valley City. Transcript, pp. 16-17, 20-22.

3. Officer Cox, in conjunction with several Salt Lake County Sheriff's Deputies, followed the horses as they traveled in a northwesterly direction. Transcript, pp. 20-22.

4. Officer Cox momentarily lost contact with the horses as they traveled through a field. Transcript, pp. 22, 28. However, he again located the animals as they were entering a pasture located at approximately 2100 South 7400 West, which is outside the border of West Valley City. Transcript, pp. 23-24. Officer Cox recognized the horses to be the same horses he had been pursuing in West Valley City. Transcript, p. 31.

5. When Officer Cox arrived at the pasture, Poulsen was present and was directing the horses into the pasture and tying them up. Transcript, pp. 24-25.

6. West Valley City Animal Control Officer Larsen and West Valley City Police Officer Prisbrey made contact with Poulsen at the pasture. Transcript, pp. 37-38. Poulsen demonstrated a familiarity with the pasture by warning the officers that it was unsafe to enter it to pursue the horses. Transcript, pp. 70-71. Poulsen also demonstrated a familiarity with the horses by warning the officers of one horse that had a tendency to kick and another horse that was blind. Transcript, p. 72. Poulsen also identified the pasture as belonging to her (Transcript, p. 119) and proceeded to repair the fence around the pasture (Transcript, pp. 40-41).

7. Poulsen was accompanied by her daughter (Transcript, p. 73), who had arrived in a separate vehicle (Transcript, p. 108), and who also demonstrated familiarity with the horses by riding one bareback, with no halter or reins, to the back of the pasture (Transcript, p. 44) and, along with Poulsen, by feeding the horses with feed she removed from her vehicle (Transcript, pp. 45-46, 109). Poulsen initially denied owning the horses, but ultimately accepted responsibility for them (Transcript, pp. 107, 120) and admitted to Officer Prisbrey that four of the horses were hers (Transcript, p. 120).

SUMMARY OF THE ARGUMENT

- I. THE TRIAL COURT JUDGE PROPERLY DENIED POULSEN'S MOTION TO DISMISS AT THE CONCLUSION OF THE CITY'S CASE IN CHIEF, SINCE SUFFICIENT FACTS HAD BEEN PLACED INTO EVIDENCE TO ESTABLISH A *PRIMA FACIE* CASE.

At the conclusion of the City's case in chief, Poulsen moved for a dismissal based upon the insufficiency of the evidence. She argued that the evidence presented to that point did not establish a *prima facia* violation of the "animals running at large" ordinance. The trial court property denied Poulsen's motion. The judge recognized that testimony had been presented establishing both essential elements of the offense. First, Officer Cox testified that the animals, in this case horses, had been seen running at large down several streets in West Valley City. Second, Officer Larsen testified that Poulsen had helped contain the horses in a pasture, had repaired the pasture fence, and had demonstrated a familiarity with the horses consistent with her being in charge, care, custody, or control of the horses. This familiarity was established by Poulsen's knowledge of the horses' characteristics, such as their blindness and tendency to kick; the horses' willingness to come to her; her daughter's ability to ride one of the horses bareback, without halter or reins; and feeding the horses.

II. SECTION 23-5-102 OF THE WEST VALLEY CITY
MUNICIPAL CODE IS NOT UNCONSTITUTIONALLY
OVERBROAD.

The language of the ordinance is clear and concise and does not sweep otherwise legal conduct into its purview, nor does it impinge upon any constitutionally protected conduct.

The ordinance is not unconstitutionally overbroad as applied to the facts of this case. It was uncontroverted that the horses were running at large. It was also uncontroverted that Poulsen admitted ownership of four of the horses. These facts fall squarely within the conduct prohibited by the ordinance. Poulsen does not have standing to argue that the ordinance may be overbroad as applied to hypothetical facts or facts not before the court.

III. THE ADMISSION OF EVIDENCE REGARDING THE
CIRCUMSTANCES OF POULSEN'S ARREST AND
INCARCERATION, AND THE PROSECUTOR'S
REMARKS RELATING TO THAT EVIDENCE, WERE
PROPERLY ALLOWED BY THE TRIAL COURT AT
THE SPECIFIC REQUEST OF POULSEN.

Poulsen's contention that the evidence was improperly admitted by the trial court regarding her arrest is a gross misrepresentation of the proceedings before the trial court. At a prior motion hearing, the City had stipulated not to present evidence on this subject. However, at the pretrial argument on July 5, 1994, Poulsen specifically requested that the trial court allow such evidence. At her request, the previous stipulation and order of the court was dissolved, and it was agreed that either party could raise the circumstances of the arrest. At trial,

Poulsen did not object to this testimony until it appeared to be damaging to her. Obviously, Poulsen cannot specifically request that the trial court allow such evidence and now claim that its admission was improper and that the prosecutor's remarks concerning the evidence were inappropriate.

Also, the circumstances of the arrest were first raised by Poulsen in her opening argument. Once she had raised the issue before the jury and had described the conduct of the arresting officers as "unreasonable and irrational," the City was entitled to present evidence to establish the reason that Poulsen was taken into custody.

Finally, the remarks of the prosecutor in closing argument were fair characterizations of the evidence that had been properly admitted, including evidence of deceptive and inconsistent statements by Poulsen.

IV. THE JURY INSTRUCTIONS REGARDING STRICT
LIABILITY AND THE ELEMENTS OF THE CRIME
OF "ANIMALS RUNNING AT LARGE" ACCURATELY
REFLECT THE LAW.

The jury instruction regarding strict liability is an accurate presentation of the law. This instruction was appropriate since the plain language of the ordinance makes it a strict liability offense.

The jury instruction regarding the elements of the crime of "animals running at large" is an accurate description of the elements of the crime that the City was required to prove. The

instruction was appropriate for this case and was properly presented to the jury.

DETAIL OF THE ARGUMENT

- I. THE TRIAL COURT JUDGE PROPERLY DENIED POULSEN'S MOTION TO DISMISS AT THE CONCLUSION OF THE CITY'S CASE IN CHIEF, SINCE SUFFICIENT FACTS HAD BEEN PLACED INTO EVIDENCE TO ESTABLISH A *PRIMA FACIE* CASE.

At the conclusion of the prosecution's case in chief, Poulsen moved for a dismissal of the charges against her on the basis that the prosecution had presented insufficient evidence to establish a *prima facie* case against her. Transcript, p. 79. Following argument, the trial court judge correctly denied Poulsen's motion. Transcript, p. 90.

The uncontroverted evidence before the court at that time included the following facts:

1. At approximately 1:30 a.m., Officer Cox of the West Valley City Police Department observed six to eight horses running loose at approximately 2700 South 7000 West in West Valley City. Transcript, pp. 15-16.

2. Officer Cox testified that he momentarily lost contact with the horses while chasing them in conjunction with several Salt Lake County Sheriff's Deputies. Transcript, pp. 22, 28. However, Officer Cox did locate the animals as they were entering a pasture located slightly outside the City border. Transcript, p. 23.

Officer Cox further testified that he recognized the horses to be the same animals he had been following. Transcript, p. 31.

3. Officer Cox also testified that Poulsen was present at the pasture, assisting in directing the horses into a fenced area. Transcript, pp. 24-25.

4. West Valley City Animal Control Officer Stan Larsen testified that when he arrived at the pasture, Poulsen was in the process of directing the horses into the pasture area and repairing the fence. Transcript, pp. 38, 40-41.

5. Officer Larsen testified that he had a conversation with Poulsen in which she stated that she was not the owner of the horses, but that she knew who was. When Officer Larsen questioned Poulsen about the identity of the owner, Poulsen responded with a name that was unintelligible to him. Transcript, pp. 42, 66. When Officer Larsen asked Poulsen to repeat the name, she refused. Transcript, p. 66. During their conversation, Poulsen warned Larsen that one of the horses had a tendency to kick and another was blind in one eye, thereby establishing her familiarity with the horses. Transcript, pp. 41, 72. Poulsen also warned Larsen that it was dangerous to go into the pasture area. Transcript, pp. 70-71.

6. Officer Larsen testified that Poulsen's daughter had arrived at the scene by separate vehicle. Transcript, p. 43. He observed her jump onto the back of one of the horses and ride it bareback, with no halter or reins, to the rear of the pasture, and

then observed her unloading food for the horses from her vehicle. Transcript, pp. 44-45.

7. Officer Larsen also testified that he had consulted with a Utah State Brand Inspector, and that following that conversation, he did not continue to look for the owner of the horses. Transcript, p. 77. The clear implication of Officer Larsen's testimony was that he was satisfied that Poulsen was the owner of the horses. This was later confirmed by the testimony of Officer Prisbrey of the West Valley City Police Department. Transcript, pp. 107, 120.

Based on the facts, which clearly established that the horses were running at large within the boundaries of West Valley City and that Poulsen was in a position of either being the owner of the horses or being the person having charge, care, custody, or control of the horses, the judge properly denied her motion. It was not necessary for the City to prove a mental element to the crime, since the City's "animals running at large" ordinance is a strict liability offense.

Following the judge's denial of Poulsen's motion, additional critical evidence was presented during Poulsen's case in chief that clearly supported the jury's verdict. Of particular note, Officer Prisbrey, a defense witness, testified that Poulsen admitted to him that she was responsible for the horses, and then later admitted that she was the owner of four of the horses. Transcript, pp. 107,

120. None of this evidence was rebutted or challenged by the defense, and, ultimately, was the only evidence before the jury.

II. SECTION 23-5-102 OF THE WEST VALLEY CITY
MUNICIPAL CODE IS NOT UNCONSTITUTIONALLY
OVERBROAD.

Section 23-5-102 of the West Valley City Municipal Code is clearly not overbroad, since it does not prohibit constitutionally protected activity while prohibiting unprotected behavior. *State v. Frampton*, 737 P.2d 183 (Utah 1987). The ordinance applies only to those limited circumstances defined by its elements and does not sweep innocent conduct into a criminal act.

The ownership or charge, care, custody, or control of an animal is not prohibited. It is only when the ownership or charge, care, custody, or control qualities are combined with the circumstance of the animal's running at large that a criminal act occurs.

In this case, Poulsen's argument that the language of the ordinance may criminalize innocent conduct has no standing. A person to whom a statute may be constitutionally applied cannot challenge the statute on the grounds that it conceivably may be applied unconstitutionally to others in situations not before the court. *Broadrick v. Oklahoma*, 413 U.S. 601, 610; 93 S. Ct. 2908; 37 L. Ed. 2d 830, 839 (1973). This ordinance is not overbroad as it related to the facts of this case. Officer Prisbrey testified that Poulsen admitted to him that she was the owner of four of the horses. That testimony was completely uncontroverted. Officer

Cox, also in testimony that was wholly uncontroverted, testified that those same animals were personally observed by him to be running loose in West Valley City. Given those facts, the plain language of Section 23-5-102 is not unconstitutionally broad as applied to Poulsen. She was the owner of four animals that had been observed running at large and, therefore, was found guilty of four of the six counts brought against her. Also, Poulsen has articulated no basis for believing that allowing an animal to run at large is a constitutionally protected activity.

The plain language of the statute does not punish or prohibit the conduct of parties that falls outside of the specific prohibitions of the ordinance as set forth in its elements. The language of the ordinance at issue is clear and unambiguous. It simply prohibits a person who is in ownership or control of an animal to let the animal run at large. Poulsen has not shown that the ordinance is overbroad on its face, in its application to her, or that it impinges on a constitutionally protected right.

III. THE ADMISSION OF EVIDENCE REGARDING THE
CIRCUMSTANCES OF POULSEN'S ARREST AND
INCARCERATION, AND THE PROSECUTOR'S
REMARKS RELATING TO THAT EVIDENCE, WERE
PROPERLY ALLOWED BY THE TRIAL COURT AT
THE SPECIFIC REQUEST OF POULSEN.

Poulsen complains that trial court improperly allowed the evidence presented by the prosecution relative to her arrest and subsequent incarceration. She further asserts that the prosecutor's reference to that evidence in closing argument was

improper. This argument is based upon a gross misrepresentation of the proceedings before the trial court.

At a prior hearing, the City had stipulated not to present evidence regarding the reasons that Poulsen was arrested rather than merely issued a citation. However, at the pretrial argument on July 5, 1994, Poulsen specifically requested that the trial court allow such evidence. At her request, the previous stipulation and order of the court was dissolved, and the court stated:

Court: That order is stricken based on your statements to the Court that you want to be free to raise the issue, if this is what you choose ***and you are not objecting to the prosecutor raising the issue as well.***

We will proceed on that basis.

Poulsen: Thank you, your Honor.

Record, p. 295 (emphasis added).

A copy of the relevant sections of the Record, pages 290-295, is attached hereto as Exhibit A.

At trial, Poulsen did not object to testimony about the arrest until the discrepancies in her statements about having a driver's license appeared to be damaging to her. Obviously, Poulsen cannot specifically request that the trial court allow evidence regarding the arrest and then selectively exclude that which she does not wish the jury to hear. Furthermore, she obviously cannot request that the evidence be allowed and now claim, before this Court, that

its admission was improper and that the prosecutor's remarks concerning the evidence were inappropriate.

Even at trial, the circumstances regarding Poulsen's arrest were initially raised by Poulsen herself. In her opening argument, Poulsen stated:

. . . these officers acted in an unreasonable and un--irrational [sic] manner, and that all they cared about that night was simply that they got someone, just anyone.

As a matter of fact, I've been told I was the only one that has ever been arrested and taken into custody for this offense.

Transcript, p. 10.

Poulsen also stated in her opening, "This little boy lost his mother for 22 hours while she sat in jail." Transcript, p. 12.

Having raised the issue before the jury that her arrest was unique or unusual, and having alleged that the police officers who arrested her acted unreasonably and irrationally, the City, in reliance upon the pretrial argument agreement, was entitled to provide an explanation of the reasons for the arrest. The City's explanation was presented by way of direct examination of Animal Control Officer Larsen. Officer Larsen testified that it was his intention to issue Poulsen a citation and to release her at the scene. Transcript, p. 52. However, Poulsen was unable to produce identification, refused to give her date of birth, and provided the officer with two addresses. Officer Larsen testified that Poulsen originally stated she had apparently lost her driver's license and

that she began to search for it in the pasture, using a flashlight. He further testified that a check by radio revealed that Poulsen in fact did not have a driver's license. Transcript, pp. 49-52.

Based upon Poulsen's lack of cooperation with regard to the information needed for the citation, Officer Prisbrey eventually placed her under arrest. In a situation such as this, the officer has little choice but to choose arrest rather than citation. When an officer issues a citation to an individual whose identity he is unsure of, there is a great risk that the citation is being issued in the wrong name and that, subsequently, the offender cannot be found or will not appear in court. In addition, in this case the officer believed Poulsen to be deceptive regarding her driver's license. She first claimed to have one, apparently did not, and then became evasive when further questioned. Transcript, pp. 99-100. The only way to assure Poulsen's appearance on the charges was to take her into custody. The prosecution presented these facts in order to rebut the allegations raised by Poulsen in her opening statement that the officers had acted unreasonably and irrationally, and that the arrest had been unusual.

Following the prosecution's brief presentation (Transcript, pp. 49-52), and consistent with her pretrial argument statement that "I think that it is going to greatly help my case in showing that these officers acted terribly unreasonable . . ." (Record, p. 294), Poulsen seemed fascinated with the subject of her arrest. She repeatedly questioned Officer Larsen on cross-examination

regarding the circumstances of her arrest, and also raised the issue in her direct examination of Officer Prisbrey, who she called as a defense witness. Poulsen seemed much more interested in delving into the reasons for her arrest than in presenting evidence regarding the "animals running at large" charges. At one point during her direct examination of Officer Prisbrey, the City finally felt compelled to object to the line of testimony. This occurred during the following exchange:

Q (POULSEN)	Now, Officer Larsen said that he was going to issue a citation?
A (PRISBREY)	Yes.
Q	And I gave him my name?
A	You gave him a name, yes.
Q	And I gave him an address?
A	You gave him two addresses.
Q	And I gave him a phone number?
A	You did.
Q	And there's only two things that I wouldn't give him; is that correct?
A	I wouldn't know how to answer that question. I'm sorry.
Q	I did give him a phone number?
A	Yes. You did.
Q	Now, are you able to check an address out by a phone number?
A	Uh huh. In most cases.
Q	And so you have that available to you?
A	In most cases.
MR STONEY:	Your Honor, may I ask what the relevance is of all of this? What does it have to do with horses running at large?
MS. POULSEN:	Establishing foundation of truthfulness.
COURT:	All right. Proceed.

Transcript, pp. 97-98.

A close reading of the Transcript reveals that by far, the bulk of the evidence presented regarding the circumstances of Poulsen's arrest were presented by Poulsen herself. Transcript, pp. 54-63, 66-67, 73-77, 93-105, 114-118.

At closing argument, the prosecutor made several references to Poulsen's deceptiveness. These references were based in part upon Poulsen's statements concerning her driver's license, where she had first claimed to have a driver's license, which claim later proved to be false. But, there was other independent evidence presented that indicated contradicting statements by Poulsen and that support the prosecutor's remarks. These statements include Poulsen's assertion to Officer Larsen that she was not the owner of the horses and her later admission to Officer Prisbrey that she was in fact the owner of four of the horses. Also, Officer Larsen testified he felt that Poulsen was being deceptive when she provided him with the alleged name of the owner of the horses. He stated that she said the name quickly and unintelligibly and would not repeat it for him.

Finally, Poulsen's own witness, Officer Prisbrey, testified he felt that Poulsen was being deceptive. The Transcript reveals the following:

Q (POULSEN)	And up to that point, did you have reason to not believe me?
A (PRISBREY)	Relative to what?
Q	Relative to the fact that I gave to you my name, I gave you an address, reasonable explanation and a phone number.

A Okay. But to believe or
disbelieve you relative to
what?

Q What would make you think I
hadn't given you the correct
information?

A You--in my mind, I felt that
you were being deceptive.

Q In what way?

A When I asked you for your
driver's license and
identification, initially you
said that you must have dropped
it somewhere in the pasture.
You borrowed my flashlight, you
spent approximately ten minutes
looking for it.
When we attempted to have
dispatch locate a driver's
license for you, they were
unable to do so under the name
that you gave me. At which
point, I asked you if you had a
driver's license, you said,
well, I didn't say I had a Utah
driver's license. I asked you
if you had a driver's license
anywhere in America, you would
not answer that.
I felt that you were deceptive
about your identification.

Q Do you believe I'm Lynn
Poulsen?

A I honestly don't know who you
are. To this day, I don't know
who you are.

Transcript, pp. 99-100.

Poulsen specifically requested that the trial judge reverse
the previous order that had been based upon the parties'
stipulation, and then proceeded to raise the circumstances
surrounding her arrest in her opening statement to the jury. In
response, the City provided testimony regarding the reasons why

Poulsen was arrested, taken into custody, and incarcerated. Following the City's initial explanation, the bulk of the testimony concerning the circumstances of the arrest, including the issues related to the driver's license, was elicited by Poulsen both through cross-examination of prosecution witnesses and direct examination of her own witnesses. Having initially raised the issue and having presented the bulk of the evidence on this issue, Poulsen cannot now claim that such evidence was improperly admitted by the trial court. Further, the prosecutor's remarks in closing argument, which consisted of pointing out the inconsistencies in Poulsen's statements, were entirely proper, and Poulsen did not object to such statements at trial.

IV. THE JURY INSTRUCTIONS REGARDING STRICT
LIABILITY AND THE ELEMENTS OF THE CRIME
OF "ANIMALS RUNNING AT LARGE" ACCURATELY
REFLECT THE LAW.

The record reveals no objection to the jury instructions as they were read to the jury. However, Poulsen now raises an issue with regard to jury instructions #15 and #16, and claims that they misstate the law.

Jury instruction #15 accurately states the elements of the crime that must be found by the jury in order to convict Poulsen. These elements, as set forth in jury instruction #15, state:

- (1) That on or about the 15th day of
February, 1994;
- (2) In West Valley City;
- (3) The defendant, Lynn Poulsen;

- (4) Had charge, care, custody or control of any animal and allowed such animal to run at large.

Transcript, p. 152.

Jury instruction #15 accurately describes the elements of Section 23-5-102, West Valley City Municipal Code. The City carried the burden of proof that on the specified date, in West Valley City, animals within the charge, care, custody, or control of Lynn Poulsen were running at large. The evidence at trial, including the testimony by Officer Prisbrey that Poulsen admitted ownership of four of the animals, adequately supported the jury's finding of guilt on four of the six charges.

Jury instruction #16 explains the concept of strict liability to the jury. Since Section 23-5-102, West Valley City Municipal Code, states clearly on its face that it is a strict liability offense, as required by Section 76-2-102, Utah Code Annotated, this instruction is entirely appropriate, and Poulsen's arguments otherwise are without merit.

CONCLUSION

Based on the foregoing, the City respectfully requests that Poulsen's appeal be denied, and that the convictions be affirmed.

DATED this 10th day of July, 1996.

WEST VALLEY CITY



J. Richard Catten, Senior Attorney
Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I, J. Richard Catten, certify that on the 10th day of July, 1996, I served upon Lynn Poulsen two (2) copies of the Brief of the Appellee, by causing said Briefs to be mailed to her, by first class mail, with sufficient postage prepaid, to the following address:

Lynn Poulsen
3353 South Main Street, #227
Salt Lake City, Utah 84115

WEST VALLEY CITY

A handwritten signature in black ink, appearing to read 'J. Richard Catten', is written over a horizontal line.

J. Richard Catten, Senior Attorney
Attorney for Plaintiff/Appellee

ADDENDUM

Exhibit A: Record, pp. 290-295

1 determine the location of the animals' owner, the county will determine the
2 ownership.

3 If they are unable to locate the ownership within a reasonable time, then it can
4 be disposed of.

5 The whole time, it refers to the county. Under the municipal code
6 construction, it states that the code will be strictly construed and that county means
7 Salt Lake County.

8 Therefore, your Honor, I would move the dismiss on the fact that I don't think
9 the city has the right to prosecute this.

10 I know it's been brought to the attention of this Court before. I want this on
11 record so that everybody is well aware that everything states that there must a contract
12 with the city. Contract means that there is a written agreement.

13 To my knowledge, there is none.

14 I have requested it, and there isn't any. You might say, every single bit of
15 information that I have gleaned throughout the whole state code, states that it will be
16 the "county's duty and not the city's." I would move to dismiss this on that. If the
17 county wishes to prosecute me, they can, ... they know where I live.

18 Court: Well, as you state, this has already been before the Court. I am going
19 to stand on the decision to dismiss, to deny the move to dismiss on the basis that you
20 raise. I am also going to not demand an order and stipulation as to the definition of
21 the terms charge, care, custody or control as you have suggested. I believe that the
22 language in the statute is plain and should be understandable and I think, frankly, by
23 attempting to integrate the different meaning would more likely confuse the jury than
24 to assist the jury and so we will not require the stipulation. Are we prepared to go
25 forward?

26 Poulsen: I have one more matter before the Court. It also states that the city
27
28

1 shall state that the duties of the pound keeper are. I have called the city and have
2 asked for the duties of the pound keeper and they gave me a copy of their codes ...
3 which was very old ... and in there ... I found no authority for arrest.

4 In further talking with, ... being taken into custody, ... and further talking with
5 Barbara Carr, she stated that she had never known of a person who was arrested. My
6 question goes to, ... if it is not within the duties of the pound keeper to cite a person
7 outside of their city, then was the arrest lawful and the custody taken and I would ask
8 for a determination of that.

9 I believe that I have asserted standing and I believe that there is questionable
10 facts before the Court that it states that it will ... state his duties within the city's
11 boundaries.

12 I realize that this is probably like, I don't know, a citizen's arrest or something,
13 but the police officer's report clearly states that it did it under direction of ... the
14 arrest under the direction of the pound keeper.

15 If that is correct, and it was done under this authority, then I would like to see
16 what the duties of the pound keeper are and if they would indeed have the duty to
17 have somebody take me into custody for animals at large.

18 The officer gave conclusive testimony, he stated, on the stand, "you were
19 arrested for not cooperating with the police officer and for failing to have
20 identification."

21 I haven't been charged with either one of those. I have been charged with
22 "Animals at Large." I would like the determination as to the validity of the arrest that
23 was made and if it was proper and pursuant to the fact that under the reasonable
24 suspicion statute, it states an officer may ask for your name, address, and an
25 explanation.

26 It also states that he can ... that he hadn't had reason to believe that I would
27
28

1 flee or destroy evidence, injury another person.

2 It also states here that ... I also told him and he states in this report, that I told
3 him I was born again.

4 It also states that I gave him all truthful information because they certainly are
5 not citing me with false information.

6 The fact of the matter is, ... I wonder if the officer, ... if the animal control
7 officer, indeed had the right to have me arrested for that charge, or just release me on
8 the citation and also if the officer had the right to make the arrest when I had given
9 him all the information that was authorized by statute?

10 Court: Is this a matter that has been before the Court previously or are you
11 just raising it for the first time?

12 Poulsen: No, your Honor. This ... I started to bring this up and the reason
13 why is because of probably cause because several times I've mentioned that I stated
14 that I was arrested on that, I wasn't just cited. I was arrested. It seems to me that I
15 have a certain standing to have the determination of their arrest brought before the
16 Court and if there is not validity to the fact that I was arrested, then a determination
17 of if it was a false arrest.

18 I am wondering, ... and I am sure the Court must wonder also, where it says to
19 prescribe this duties, if indeed an animal control officer has the right and duty to have
20 a person arrested.

21 Or, is he just given the authority to cite a person and release them on citation.

22 Court: Is this going to be an issue, Mr. Stoney, to be brought before the jury
23 today?

24 Stoney: The arrest, your Honor?

25 Court: Yes.

26 Stoney: I don't know that it has anything to do with anything we are talking
27
28

1 about today.

2 Court: Well, what's troubling me is we are holding a jury, this is not
3 something that has been filed timely, whether you have an independent basis to have
4 standing for false arrest or not.

5 I'm not going to cite, off the top of my head, without giving both yourself and
6 the city a chance to brief it.

7 But it seems to me that it is not something that we are going to be taking up in
8 this jury trial. What I am going to do is suggest that you reserve that argument.
9 Certainly I am not going to prejudice you from making it, but, try not to entertain it
10 this morning without having any notice to the Court previously and delay the jury
11 from getting on with this case.

12 Stoney: I understood, your Honor, that I was under an order not to talk about
13 the fact that she was taken into custody.

14 Court: That's my understanding of the order that was entered the last time we
15 were here and I think that's where I want this to stand.

16 Poulsen: Your Honor, there were timely objections filed for this, but they have
17 never been addressed by the Court.

18 I thought this was a substantial issue.

19 I was not the one who made that motion. The city didn't even put in a motion
20 to not have the arrest brought up. The Court just simply granted the city's request.
21 They have never filed a motion whatsoever before this Court, they just simply were
22 granted the request.

23 Court: You made a motion for in limine ...

24 Poulsen: Simply on the fact that a refusal to get a birth~~date~~ is not required by
25 any ordinance or a statue, ... required under the law, ... that was all.

26 Stoney: You want to be mentioned then? I understood at the hearing that the
27
28

1 city was attempting to accommodate you and discussing with the Court what they were
2 prepared not to mention to avoid prejudicing you. That was my understanding that
3 was happening.

4 Poulsen: Your Honor, all I ask was that the fact that my birthrate, that I
5 refused to give my birthrate to the officers because it was religious belief and then I
6 would have to explain my religious belief and right to assert my birthrate to them.

7 The city is the one who misrepresented that to the Court and stated, "Oh, I
8 think she is just a little upset about being taken into custody and we won't bring that
9 up."

10 I think that it is going to greatly help my case in showing that these officers
11 acted terribly unreasonable and under the circumstances, that I was the only person
12 that West Valley can think of that has been arrested for Animals at Large.

13 Also, this is the basis of my motion to suppress. These officers, they were
14 threatening and coercive, there was a lot of reasons why there should be a motion to
15 suppress the presents of numerous officers.

16 I presented Utah law and the strict fact that they have certain requirements, I
17 need to bring all these up before I go to trial even though I may have addressed them
18 before. It is my understanding, according to Justice Zimmerman. I am bringing this
19 up because I believe it is a valid issue.

20 I have the duties of animal control and there is nothing in there that says that
21 they can arrest. I was arrested. I think I have an asserted standing through my
22 objections, that have not been addressed.

23 Stoney: If she wants to make the motion at the appropriate time in the trial and
24 then make an argument, I don't have an objection to that and I will be happy to go
25 ahead and mention the fact that she was arrested to the jury so that we can get on with
26 this today.

1 Court: Would that satisfy you?

2 Poulsen: Is that a fact then that whether the animal officer had a right to
3 arrest?

4 Stoney: You can bring that up at the appropriate time, Lynn. That's what I'm
5 saying.

6 Poulsen: Maybe I don't the appropriate time, being pro se.

7 Stoney: Unfortunately for you, it is not the Court's job or my job to tell you
8 that.

9 Poulsen: So, I can assert that and raise a question for the jury to decide?

10 Court: What you can raise is your defense subject to the objections of Mr.
11 Stoney, the prosecutor, just as if you can object to his case and I will rule under
12 relevancy at the time.

13 I am not going to pre-judge the issue at this point to the extent that there was
14 an order in place that that was not to be mentioned.

15 That order is stricken based on your statements to the Court that you want to be
16 free to raise the issue, if this is what you choose and you are not objecting to the
17 prosecutor raising the issue as well.

18 We will proceed on that basis.

19 Poulsen: Thank you, your Honor.

20 Court: Are we ready to I wanted to make a statement on record that aspect
21 of this.

22 There was a motion to disqualify this trial, the proceeding of the Court, which
23 by the rules that allows the judge to review that if the Court doesn't believe that there
24 is a prejudice which exists and that process was completed from Judge Thorne, ... he
25 denied the motion. There were some representations made in the affidavit as to
26 comments that Mr. Stoney made to Ms. Poulsen about my views about her on the
27
28