



IN THE SUPREME COURT OF THE
STATE OF DELAWARE

JOHN SMITH,)
) No. 559, 2018
)
) Plaintiffs Below,)
) Appellants,) Court Below – Superior Court of
) the State of Delaware
)
) v.) The Honorable E. Scott Bradley
) C.A. No. S15C-12-025 ESB
)
) FIRST STATE ANIMAL CENTER)
) AND SPCA, KATELYN PEPPER,)
) SANDRA GALLOWAY, DAVID)
) HULSE, KEVIN USILTON, MARY)
) PALACIO, and SHERRI)
) WARBURTON,)
)
) Defendants Below,)
) Appellees.)

APPELLEES FIRST STATE ANIMAL CENTER AND SPCA, KATELYN PEPPER, SANDRA GALLOWAY, DAVID HULSE, KEVIN USILTON, MARY PALACIO, AND SHERRI WARBURTON'S ANSWERING BRIEF

WHITE and WILLIAMS LLP

/s/ Nicholas R. Wynn, Esq.

MARC S. CASARINO (#3613)

NICHOLAS R. WYNN (#5670)

600 N. King Street, Suite 800

Wilmington, DE 19801-3722

Phone: (302) 467-4520

Counsel for Defendants Below, Appellees,

First State Animal Center and SPCA,

Katelyn Pepper, Sandra Galloway, David

Hulse, Kevin Usilton, Mary Palacio, and

Sherri Warburton.

Dated: March 15, 2019

TABLE OF CONTENTS

NATURE OF PROCEEDINGS..... 1

SUMMARY OF THE ARGUMENT5

COUNTER STATEMENT OF THE FACTS 7

ARGUMENT 14

I. THE SUPERIOR COURT WAS CORRECT WHEN IT HELD THE DEFENDANT ACOS HAD THE AUTHORITY TO ARREST MR. SMITH FOR VIOLATIONS OF LAWS RELATING TO ANIMALS. 14

 A. QUESTIONS PRESENTED 14

 B. SCOPE OF REVIEW 14

 C. MERITS OF ARGUMENT 14

 1. Defendant ACOs had probable cause to arrest Mr. Smith for hindering prosecution. 17

 2. The arrest warrant was valid because the maintaining a dangerous animal charge is unchallenged.....20

 3. ACOs reasonably believed they had probable cause to arrest Mr. Smith for hindering prosecution.....22

 4. Mr. Smith’s argument that the KCSPCA’s lack of a policy was a violation under § 1983 was not fairly presented below or fully argued in his opening brief, therefore it was waived.24

II. THE TRIAL COURT CORRECTLY ENTERED SUMMARY JUDGMENT ON MR. SMITH’S FALSE ARREST/FALSE IMPRISONMENT CLAIM BECAUSE A VALIDLY ISSUED WARRANT IS A COMPLETE DEFENSE.....26

 A. QUESTION PRESENTED26

 B. SCOPE OF REVIEW26

 C. MERITS OF THE ARGUMENT26

III. THE SUPERIOR COURT WAS CORRECT TO DISMISS THE MALICIOUS PROSECUTION CLAIM BECAUSE MR. SMITH CANNOT POSSIBLY ESTABLISH THE NECESSARY ELEMENTS FROM THE RECORD.....28

 A. QUESTION PRESENTED28

B.	SCOPE OF REVIEW.....	28
C.	MERITS OF THE ARGUMENT	28
	CONCLUSION.....	31

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Blue Hen Mech., Inc. v. Christian Bros. Risk Pooling Tr.</i> , 117 A.3d 549 (Del. 2015).....	29, 30
<i>Boulden v. Turner</i> , 2007 Del. Super. LEXIS 529.....	26
<i>Dabaldo v. URS Energy & Constr.</i> , 85 A.3d 73 (Del. 2014).....	26, 28
<i>Dorsey v. State</i> , 761 A.2d 807 (Del. 2000).....	16, 20
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).....	23
<i>Groman v. Township of Manalapan</i> , 47 F3d 628 (3d. Cir. 1995)	26, 27
<i>Harrison v. Figueroa</i> , 1985 Del. Super. LEXIS 1463.....	26
<i>Heaney v. New Castle County</i> , 672 A.2d 11 (Del. 1995).....	25
<i>Hunt v. State</i> , 69 A.3d 360 (Del. 2013).....	23
<i>In re Santa Fe Pac. Corp. Shareholder Litig.</i> , 669 A.2d 59 (Del. 1995).....	14
<i>Kelsch v. State</i> , 2016 Del. Super. Lexis 225	15
<i>Lengle v. Dukes</i> , 1982 Del. Super. LEXIS 757.....	14
<i>McDonald v. State</i> , 947 A.2d 1073 (Del. 2006).....	16

<i>Monell v. Dep’t of Soc. Servs.</i> , 436 U.S. 658 (1978).....	5, 25
<i>Saucier v. Katz</i> , 533 US 194 (2001).....	23
<i>Sekscinski v. Harris</i> , 2006 Del. Super. LEXIS *4.....	29
<i>Shawe v. Elting</i> , 157 A.3d 152 (Del. 2017).....	24
<i>Smith v. Del. State Police</i> , 2014 Del. Super. LEXIS 334.....	26
<i>Smith v. Del. State Univ.</i> , 47 A.3d 472 (Del. 2012).....	24
<i>Smith v. First State Animal Center and SPCA, Inc., et al.</i> , C.A. No. S15C-12-025	17
<i>State v. Holden</i> , 60 A.3d 1110 (Del. 2013).....	16
<i>State v. Westfall</i> , 2008 LEXIS 6 (Del. C.P.).....	15
<i>Stidham v. Diamond State Brewery</i> , 21 A.2d 283 (Del. Super. Ct. 1941).....	29, 30
<i>Tilghman v. Delaware State University</i> , 2012 Del. Super. LEXIS 405	26
STATUTES	
3 <i>Del. C.</i> § 7902	15, 19
9 <i>Del. C.</i> 9 Sub. II § 922(a).....	11
11 <i>Del. C.</i> 1327 (a).....	20
42 <i>U.S.C.</i> § 1983	1, 2, 3, 4, 5, 24, 25, 33

OTHER AUTHORITIES

Delaware Constitution Article I Section 6..... 16

Supr. Ct. R. 8.....24

Supr. Ct. R. 14 (b)(iv)(3)4, 5

Op. Att’y Gen., No. 12-IIB05 (Mar. 27, 2012) 15, 23

Op. Att’y Gen., No. 12-IIB05 (Jun. 8, 2012) 16

NATURE OF PROCEEDINGS

John and Nancy Smith (“the Smiths”) filed their Complaint against Kent County Society for the Prevention of Cruelty to Animals, Inc. (“KCSPCA”), Katelyn Pepper, Sandra Galloway, David Hulse, Ruth Agnew, Kevin Usilton, Drew May, Mary Palacio, and Sherri Warburton (collectively, “Defendants”) on December 23, 2015. The Smiths initially asserted six claims in their Complaint as follows:

Count	Allegation	Initially Targeted Defendants
1, 2	Violation of 42 <i>U.S.C.</i> § 1983	Pepper, Usilton, Warburton, May, Galloway, Hulse, Palacio, and Agnew, and KCSPCA
3	Intentional Infliction of Severe Emotional Distress	Pepper, Usilton, Warburton, May, Galloway, Hulse, Palacio, and Agnew, and KCSPCA
4	False Arrest	Pepper, Usilton, Warburton, May, Galloway, Hulse, and Palacio, and KCSPCA
5	False Imprisonment	Pepper, Usilton, Warburton, May, Galloway, Hulse, and Palacio, and KCSPCA

6	Malicious Prosecution	Pepper, Usilton, Warburton, Galloway, May, Palacio, Hulse, and KCSPCA
---	-----------------------	---

On February 16, 2016, Defendants filed their motion to dismiss the Complaint, and on September 28, 2016, the Superior Court dismissed the following claims:

Count	Allegation	Dismissed Defendants
All Counts	Alleged by Nancy Smith	All Defendants
1, 2	Violation of 42 <i>U.S.C.</i> § 1983	Usilton, Warburton, and Agnew
3	Intentional Infliction of Severe Emotional Distress	Pepper, Usilton, Warburton, Galloway, May, Palacio, Hulse, KCSPCA
4	False Arrest	Usilton, Warburton, Galloway, Palacio, Hulse, and Agnew
5	False Imprisonment	Usilton, Warburton, Galloway, Palacio, Hulse, and Agnew
6	Malicious Prosecution	Usilton, Warburton, Galloway, May, Palacio, Hulse

The Smiths did not timely appeal this dismissal therefore any appeal of these claims was waived. The remaining claims were as follows:

Count	Allegation	Remaining Target Defendants
1, 2	Violation of 42 <i>U.S.C.</i> § 1983	Pepper, Galloway, Palacio, and KCSPCA
3	Intentional Infliction of Severe Emotional Distress	Galloway, Hulse, Warburton, Palacio, Pepper, May ¹ , Usilton, Agnew, and KCSPCA
4	False Arrest	Pepper, May, and KCSPCA
5	False Imprisonment	Pepper, May, and KCSPCA
6	Malicious Prosecution	Pepper and KCSPCA

On February 15, 2019, Mr. Smith filed his opening brief appealing the Superior Court’s Order. Though Mr. Smith does not directly state those Defendants against whom he is appealing, because of the claims and Defendants still involved at the time the Superior Court granted summary judgment it appears that he is appealing only the dismissal of his § 1983 claim against Pepper, Galloway, and the KCSPCA, and the false arrest/false imprisonment and malicious prosecution claims against Pepper and the KCSPCA.² Because it is not addressed in his opening brief, Mr. Smith has waived any appeal of the intentional infliction of emotional distress

¹ Defendant May was subsequently dismissed by stipulation.

² Plaintiff Below/Appellant John Smith’s Opening Brief.

claim.³ Therefore, the only claims which are available for Mr. Smith to appeal are the following:

Count	Alleged	Target Defendants
1, 2	Violation of 42 <i>U.S.C.</i> § 1983	Pepper, Galloway, and KCSPCA
4	False Arrest	Pepper and KCSPCA
5	False Imprisonment	Pepper and KCSPCA
6	Malicious Prosecution	Pepper and KCSPCA

³ Supr. Ct. R. 14 (b)(vi)(3).

SUMMARY OF THE ARGUMENT

1. Denied. It is agreed that existence of probable cause and Defendant animal control officers (“ACOs”) arrest authority are central to Mr. Smith’s claims. In 2015, Defendant ACOs had the authority to seek arrest warrants in order to enforce the laws related to animals. There is no genuine issue of material fact regarding whether the arrest warrant contained sufficient information to arrest Mr. Smith for *both* hindering prosecution and maintaining a dangerous animal. Probable cause to arrest for *both* of those charges can be found within the four corners of the warrant. Since the arrest was supported by a valid warrant (*i.e.*, for the maintaining a dangerous animal charge), Mr. Smith’s false arrest/imprisonment claim and malicious prosecution claims must be dismissed.⁴

2. Denied. Mr. Smith’s § 1983 claim alleging “the lack of a policy was a policy” was not fairly presented to the trial court and Mr. Smith’s opening brief presented no legal support for this argument. Mr. Smith’s opening brief alleges a *Monell* claim but does not cite to *Monell*, nor any other related case nor does he attempt to apply the facts in this case to the elements of a *Monell* claim. Finally, Mr. Smith did not offer any argument why the interest of justice exception should be applied to allow him to present a *Monell* claim not fairly presented below.

⁴ Mr. Smith’s opening brief did not address the maintaining a dangerous animal charge and therefore pursuant to Supr. Ct. R. 14 (b)(iv)(3) he has waived any argument challenging that charge.

3. Denied. The trial court was correct when it ruled that a magistrate-issued arrest warrant created a complete defense to the false arrest/false imprisonment claim. Further, even if the Court were to entertain Mr. Smith's argument regarding the hindering prosecution charge, there is no genuine issue of material fact regarding the warrant's other charge - maintaining a dangerous animal.

4. Denied. Mr. Smith is unable to show any facts in the record which would establish malice on the part of Ofc. Pepper. Further, even if he could show malice (he cannot), the fact that there was probable cause for both hindering prosecution and maintaining a dangerous animal mandates dismissal.

COUNTER STATEMENT OF THE FACTS

The Attack

On March 16, 2015, Nancy Smith was walking her dog “Millie” around her neighborhood in Sussex County.⁵ Mrs. Smith noticed that her neighbor, Michelle Keck was out walking her dog “Spike” as well.⁶ Millie also noticed Spike and slipped out of her leash and ran approximately 500 yards down the block to attack Michelle and Spike.⁷ In the course of the attack on Spike, Michelle was bitten by Millie on her hand.⁸ Martin Moody saw Millie run past his window at which point he went outside and found his daughter Michelle Keck struggling to separate Millie from Spike.⁹ Mrs. Smith arrived at the dog fight and managed to regain control over Millie.¹⁰ Mr. Moody and Mrs. Keck then left the scene to seek treatment for Spike.¹¹ At the Savannah Animal Hospital Spike received treatment for his wounds including sutures and drains which necessitated a multiple night stay.¹² Millie was uninjured and returned home with the Smiths.¹³

⁵ Deposition of Nancy Smith at 59-61. (Appellee Appendix at AA0106 – AA0108).

⁶ *Id.*

⁷ Deposition of Martin Moody at 10 &11. (AA0112).

⁸ Deposition of Michelle Keck at 45. (AA0118).

⁹ Deposition of Martin Moody at 10 &11. (AA0112).

¹⁰ Deposition of Michelle Keck at 13-15. (AA0116).

¹¹ Deposition of Martin Moody at 10 &11. (AA0112).

¹² Treatment Records for Spike from Savannah Animal Hospital. (AA0128 – AA0146).

¹³ Deposition of John Smith at 63. (AA0154).

The Investigation

The KCSPCA ACOs were made aware of the attack by Millie and Ofc. Pepper went to the Smiths' house to verify that Millie was current on her rabies vaccine.¹⁴ Ofc. Pepper received no answer when she knocked on the door, so she left a notice on the garage with information identifying her and asking the Smiths to call her.¹⁵ Mr. Smith contacted Ofc. Pepper at which she point she explained that Millie's rabies status needed to be verified and that there was a quarantine procedure.¹⁶ Mr. Smith told Ofc. Pepper not come to his house and directed her speak to his lawyer.¹⁷ Ofc. Pepper was scheduled to be off for the next couple days so she contacted her supervisor Sgt. Palacio, who agreed to take over the investigation.¹⁸

As the matter was only a run of the mill dog bite at this point, Sgt. Palacio reached out to Mr. Smith directly to explain the standard procedure in dog bite cases; however, Mr. Smith declined to speak to Sgt. Palacio and instead directed her to his attorney John Brady.¹⁹ After Mr. Smith refused to speak to her, Sgt. Palacio then went to Michelle Keck's residence where she took statements from both the Kecks and the Moodys.²⁰ Mrs. Keck relayed that Millie somehow got away from Mrs.

¹⁴ Deposition of Katelyn Pepper at 52. (AA0219).

¹⁵ Deposition of Katelyn Pepper at 53. (AA0220).

¹⁶ *Id.* at 55. (AA0220).

¹⁷ *Id.*

¹⁸ Deposition of Mary Palacio at 82 & 83. (AA0225).

¹⁹ *Id.* at 87 & 88. (AA0226).

²⁰ *Id.* at 90. (AA0227).

Smith and ran down the block and attacked Spike.²¹ Mrs. Keck also stated that the Moody's arrived while she was on the ground to help her get Millie off of Spike.²² Sgt. Palacio then went to Savannah Animal Hospital to check on the health and rabies status of the dogs.²³ Sgt. Palacio confirmed that Millie was current on her rabies and discovered that Spike was not current.²⁴ Michelle Keck was issued a citation for failure to inoculate.²⁵

While visiting Savannah Animal Hospital, Sgt. Palacio was told that there had been a previous biting incident involving Millie.²⁶ Sgt. Palacio followed up on this incident with the Moodys who explained that their Yorkie had run over to Millie and the dogs got in a fight.²⁷ While both of the dogs were seen at the vet, only the Moodys' dog required significant treatment.²⁸ Sgt. Palacio reported this back to her superior Capt. Warburton.²⁹ At this point Capt. Warburton opened a second aspect of the investigation and began to determine whether it was appropriate to recommend a dangerous dog hearing for Millie.³⁰ Capt. Warburton spoke to the

²¹ *Id.* at 90-92. (AA0227).

²² *Id.* at 92. ((AA0227).

²³ *Id.* at 100. (AA0229).

²⁴ *Id.* at 100 &101. (AA0229 – AA0230).

²⁵ *Id.* at 103. (AA0230).

²⁶ *Id.* at 107. (AA0231).

²⁷ *Id.* at 108. (AA0231).

²⁸ *Id.* at 90-92. (AA0227); Deposition of John Smith at 58. (AA0150).

²⁹ Deposition of Mary Palacio at 108. (AA0231).

³⁰ Deposition of Sherri Warburton at 69 – 72, 76 – 77. (AA0237 & AA0238).

Moody's regarding the first incident involving Millie, their dog's injuries, and the injuries inflicted on Michelle Keck and Spike during the second incident.³¹ Based on Capt. Warburton's investigation and interpretation of Delaware law she believed Millie could be a potentially dangerous dog and instructed Ofc. Hulse and Sgt. Palacio to seize Millie.³²

On March 17, 2015, Sgt. Palacio³³ arranged to meet with the Smiths and their attorney, John Brady, on the morning of Friday, March 20, 2015.³⁴ While the exact time agreed upon for the meeting is disputed, according to Mr. Brady it needed to take place before 9:30 AM as he had a prescheduled event in the Superior Court.³⁵ Around 8:30 AM, Mr. Brady contacted the Animal Control officers at which point they told him that they were on their way and would be impounding Millie.³⁶ Mr. Brady told the officers they would need a warrant to impound the dog and told the Smiths "not to let anyone in unless they give you a warrant."³⁷ Approximately an hour later the Smiths contacted Mr. Brady and read to him a search warrant³⁸ for the

³¹ *Id.* at 65 – 68. (AA0236).

³² *Id.* at 89 – 91. (AA0242).

³³ John Brady's Deposition identifies Sgt. Palacio's last name as "Jeanette," as this was her last name at the time.

³⁴ Deposition of John Brady at 12 -13. (AA0246).

³⁵ *Id.* at 12. (AA0246).

³⁶ *Id.* at 15 – 16. (AA0247).

³⁷ *Id.* at 16 – 17. (AA0247).

³⁸ See Search Warrant for Millie dated March 20, 2015. (AA0252 – AA0256).

seizure of Millie.³⁹ Mr. Brady believed that the Justice of the Peace had the authority to issue warrants to seize dogs and instructed the Smiths to comply and turn over Millie.⁴⁰

When Ofc. Hulse and Sgt. Palacio arrived at the Smiths' residence they had two separate and distinct responsibilities.⁴¹ First, they needed to explain the rabies quarantine procedure and verify Millie was current on her inoculations.⁴² Second, they needed to impound Millie as is required by 9 *Del. C.* 9 Sub. II § 922(a).⁴³ The Smiths advised that on the advice of counsel they would need a warrant to hand over Millie.⁴⁴ Ofc. Hulse and Sgt. Palacio called Capt. Warburton who directed Ofc. Galloway to deliver a warrant to the Justice of Peace Court based on her belief that

³⁹ Deposition of John Brady at 18 – 19. (AA0248).

⁴⁰ *Id.*

⁴¹ Deposition of David Hulse at 70 – 73. (AA0261).

⁴² *Id.*

⁴³ 9 *Del. C.* 9 Sub. II § 922(a) An animal control constable or dog warden shall seize and impound a dog suspected of being dangerous or potentially dangerous when the warden has reasonable cause to believe that the dog has engaged in 1 or more of the following:

(1) Killed or inflicted physical injury or serious physical injury upon a human being; or

(2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or

(3) Chased or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.

⁴⁴ Deposition of David Hulse at 75. (AA0262).

Millie met the criteria for a dangerous dog.⁴⁵ Ofc. Galloway delivered the warrant to the Smiths' residence and Ofc. Hulse and Sgt. Palacio provided a copy to the Smiths which they then read to Mr. Brady resulting in Millie being seized as a "potentially dangerous dog."⁴⁶

Millie was taken to the KCSPCA kennel and shelter and held pending her hearing. At some point the Smiths' decided they wanted to have an independent vet come and see Millie. The Smiths, chose not to use Savannah Animal Hospital for this, but rather, chose Dr. Abramowitz, from Alternative Veterinary Care to see Millie.⁴⁷ However, due to shelter policy Dr. Abramowitz was not permitted to see Millie.⁴⁸ Millie was held and cared for at the shelter until her dangerous dog hearing.

At the dangerous dog hearing, Capt. Warburton presented witnesses and evidence regarding the two attacks Millie had been involved in.⁴⁹ The Smiths had an attorney present to represent Millie.⁵⁰ Contrary to the Smiths insistence that Capt. Warburton wanted to "kill our dog," Capt. Warburton never requested that the Dangerous Dog Panel consider euthanasia, rather she asked that Millie be declared "dangerous" and the Smiths would be required to abide by heightened protective

⁴⁵ Deposition of Sandra Galloway at 30 – 34. (AA0265 – AA0266).

⁴⁶ *Id.* at 37 & 38. (AA0267).

⁴⁷ Deposition of John Smith at 87 – 89. (AA0157 – AA0159).

⁴⁸ Deposition of Kevin Usilton at 85 – 87. (AA0271).

⁴⁹ See Transcript of Dangerous Dog Panel Hearing Re: John and Nancy Smith at 5. (AA0275).

⁵⁰ *Id.* at 4. (AA0274).

measures.⁵¹ The Dangerous Dog Panel determined that Millie was “potentially dangerous” and the Smiths were allowed to take her back home after agreeing to the additional safety precautions.⁵² Millie was returned to the Smiths and other than a case of kennel cough was perfectly healthy.⁵³

The Arrest of John Smith

On March 31, 2015, Ofc. Pepper, swore out arrest warrants for John and Nancy Smith.⁵⁴ ⁵⁵ Ofc. Pepper charged Mr. Smith with one count of maintaining a dangerous animal which causes death or serious injury and one count of hindering prosecution.⁵⁶ Ofc. Pepper presented the warrant to the Justice of the Peace who signed it authorizing the arrest of the John Smith.⁵⁷ While he disputed the charges, at deposition Mr. Smith did not materially disagree with any of the information contained in the warrant.⁵⁸ Mr. Smith was allowed to voluntarily surrender at Troop 4 and was accompanied by counsel.⁵⁹ Mr. Smith was processed along with Mrs. Smith and released pending trial.

⁵¹ *Id.* at 5 – 9. (AA0275 – AA02279).

⁵² *Id.* at 118. (AA0282).

⁵³ Deposition of John Smith at 102. (AA0172).

⁵⁴ March 31, 2015, Arrest Warrant of John Smith. (AA0284).

⁵⁵ Nancy Smith was also charged and she eventually pled guilty to one count of dog at large.

⁵⁶ March 31, 2015, Arrest Warrant of John Smith. (AA0284).

⁵⁷ *Id.*

⁵⁸ Deposition of John Smith at 145-175. (AA0185).

⁵⁹ Deposition of John Brady at 52. (AA0249).

ARGUMENT

I. THE SUPERIOR COURT WAS CORRECT WHEN IT HELD THE DEFENDANT ACOS HAD THE AUTHORITY TO ARREST MR. SMITH FOR VIOLATIONS OF LAWS RELATING TO ANIMALS.

A. QUESTIONS PRESENTED

Was the Superior Court correct when it held that in 2015 ACOs had probable cause to arrest Mr. Smith and that their authority to arrest was supported by the terms of their contract with the state, the issuance of a warrant by a Justice of the Peace, and the written opinions of the Attorney General of Delaware?

B. SCOPE OF REVIEW

The Supreme Court reviews a lower court's decision on a motion to dismiss *de novo*.⁶⁰

C. MERITS OF ARGUMENT

As an initial matter, Mr. Smith's assertion that only trained police officers have the authority to seek arrest warrants is incorrect.⁶¹ While, Mr. Smith cited to *Lengle* in his briefing on the motion for summary judgment he neglected to include the fact that the underlying warrant in *Lengle* was not sworn by a "COPT" certified police officer but rather a private citizen.⁶² *Lengle* supports the unremarkable position that non-"COPT" certified individuals can also seek warrants from the

⁶⁰ *In re Santa Fe Pac. Corp. Shareholder Litig.*, 669 A.2d 59, 70 (Del. 1995).

⁶¹ *Lengle v. Dukes*, 1982 Del. Super. LEXIS 757, *2 -*3.

⁶² *Id.* at *1 -*2.

Justice of the Peace Court.

It is also settled Delaware law that ACOs have the legal authority to apply for and execute warrants both for searches as well as arrests.⁶³ Specifically, the Superior Court stated that ACOs from the KCSPCA had the authority to apply for and execute “any warrant of arrest, or other process, issued under or by virtue of the several laws in relation to cruelty to animals may be directed to and executed by any [KCSPCA] agent.”⁶⁴ This belief in the authority of the ACOs to issue and execute both search and arrest warrants was also held by the Delaware Attorney General’s Office (“DAG”). In March of 2012, the DAG issued an official opinion analyzing the KCSPCA’s status and authority as a public body.⁶⁵ The DAG determined that the KCSPCA officers were part of an association established by the General Assembly which was specifically empowered by a state government entity to make investigations and enforce Delaware’s animal control laws.⁶⁶ In a supplemental opinion, the DAG explicitly stated that the General Assembly empowered the KCSPCA and its appointed agents to enforce “all laws which are enacted for the protection of dumb animals” under 3 *Del. C.* § 7902 and it may “execute search and

⁶³ See *Kelsch v. State*, 2016 Del. Super. Lexis 225, *25 -*26.

⁶⁴ See *id.* at *5. See also *State v. Westfall*, 2008 LEXIS 6, *3 (Del. C.P.) (holding ACOs are permitted to investigate and enter property either through consent to search or pursuant to a search warrant.)

⁶⁵ See Op. Att’y Gen., No. 12-IIB05 dated (Mar. 27, 2012.) (AA0295).

⁶⁶ See *id.* (AA0298).

arrest warrants.”⁶⁷ Further, it is important to note that Mr. Smith was arrested pursuant to a warrant applied for and approved by a Justice of the Peace.⁶⁸

Under Delaware law, the magistrate issuing a warrant is tasked with making a factual determination as to whether the circumstances are sufficient to arrest an individual.⁶⁹ When evaluating a warrant for arrest the reviewing court must determine whether sufficient facts appeared on the face of the affidavit which would allow the reviewing court to ascertain from only the affidavit the factual basis for probable cause to arrest, the so called “four corners test.”⁷⁰ The Delaware Supreme Court has held that a reviewing court should pay “great deference” to a magistrate’s finding of probable cause and confine its review to determining whether the issuing magistrate decision “reflects a proper analysis of the totality of the circumstances.”⁷¹ Probable cause to arrest focuses on whether an individual has committed or is committing a criminal offense.⁷² Where an arrest is made without probable cause the remedy is the exclusion of any evidence “recovered or derived” from the illegal seizure.⁷³

⁶⁷ See Op. Att’y Gen. No. 12-IIB05 (Jun. 8, 2012.) (AA0305)

⁶⁸ March 31, 2015, Arrest Warrant of John Smith. (AA0284).

⁶⁹ *State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013).

⁷⁰ *McDonald v. State*, 947 A.2d 1073, 1079 (Del. 2006).

⁷¹ *Holden*, 60 A.3d at 1114.

⁷² *Dorsey v. State*, 761 A.2d 807, 812 (Del. 2000).

⁷³ *Id.* at 821 (“[E]xclusion is the remedy for a violation of the search and seizure protections set forth in Article I Section 6 of the Delaware Constitution.”).

Mr. Smith has made two arguments regarding his arrest for only the charge of hindering prosecution. First, he argues, there was no probable cause to arrest him for hindering prosecution. Secondly he argues that the ACOs are not entitled to qualified immunity. Mr. Smith is wrong on both accounts. Further, Mr. Smith's argument completely fails to address that the ACOs had probable cause to arrest Mr. Smith for the lead charge on the affidavit of probable cause, maintaining a dangerous animal.

1. Defendant ACOs had probable cause to arrest Mr. Smith for hindering prosecution.

Mr. Smith's argument that Defendant ACOs did not have probable cause to arrest flies in face of not one, but two separate reviews of the underlying warrant. As an initial matter the warrant was drafted by an ACO and presented to the Justice of the Peace who reviewed it and approved it.⁷⁴ Then the merits of the warrant were reviewed by the Superior Court which also found that the warrant "complied with the formal requirements of the law."⁷⁵ Importantly, in his line by line review of the arrest warrant Mr. Smith was unable to point any material misstatements which would have misled the Justice of Peace.⁷⁶

The affidavit of probable cause presented to the Justice of the Peace contained

⁷⁴ *Smith v. First State Animal Center and SPCA, Inc., et al.*, C.A. No. S15C-12-025. p. 18, Bradley, J. (October 4, 2018) (Letter Op.) (AA0324)

⁷⁵ *Id.*

⁷⁶ Deposition of John Smith at 145-175. (AA0185).

the following support for the charge of hindering prosecution:

- On March 16, 2015, KCSPCA received a complaint from Michelle Keck stating that she and her dog were attacked and injured by dog owned by John and Nancy Smith.⁷⁷
- On March 16, 2015, Ofc. Pepper arrived at the Smiths' house and attempted to make contact but after receiving no response left a note on the garage.⁷⁸
- On March 16, 2015, Ofc. Pepper received a call from Mr. Smith. Ofc. Pepper informed Mr. Smith of the rabies quarantine procedure at which point he became "irate", advised he would be calling "Senator Lopez", and advised he would not be speaking to Ofc. Pepper about rabies quarantine or any other matter without his lawyer present.⁷⁹
- On March 17, 2015, Lt. Palacio spoke with Savannah Animal Hospital who advised that Millie was current on her rabies inoculations and that Millie had previously attacked and caused serious physical injury to another dog.⁸⁰
- On March 17, 2015 Lt. Palacio contacted Mr. Smith again regarding

⁷⁷ March 31, 2015, Arrest Warrant of John Smith, at ¶1. (AA0286).

⁷⁸ *Id.* at ¶ 2. (AA0286).

⁷⁹ *Id.* at ¶ 3. (AA0286).

⁸⁰ *Id.* at ¶ 4. (AA0286 – AA0287).

going over the quarantine paperwork with him, he again refused and instead told Lt. Palacio to call his attorney John Brady. Lt. Palacio called Mr. Brady but he did answer and she left a message. Mr. Brady called Lt. Palacio and advised that they could meet at Mr. Smith's residence on the mornings of March 19th or 20th.⁸¹

Mr. Smith voluntarily made himself the point of contact for all interactions with the ACOs and his steadfast refusal to speak with them or allow them to speak to Mrs. Smith impeded their ability to pursue their investigation. The ACOs had a statutory and contractual mandate to enforce all laws for the protection of “dumb animals” as well as rabies control and enforcement.⁸² Mr. Smith's steadfast refusal to review or discuss rabies quarantine procedures was an undeniable hindrance of the ACOs ability to do their job. Therefore, it is reasonable that the issuing magistrate found sufficient probable to issue an arrest warrant for hindering prosecution.

Mr. Smith's brief attempts to show that he was arrested for simply requesting that his lawyer be present for questioning. This is simply a creative litigation theory, but not reality. Mr. Smith demanded more the mere presence and counsel of an attorney; he demanded the ACOs conduct their investigation in a specific fashion

⁸¹ *Id.* at ¶ 6-8. (AA0287).

⁸² 3 *Del. C.* § 7902 (repealed by 80 Del. Laws c. 200 § 1. eff. Feb. 3, 2016)

according to his terms. There is a well-established remedy for when a person is questioned by police in the absence of an attorney after they have requested one, the exclusion of any evidence obtained as a result of the questioning.⁸³ Therefore, were the court to find Mr. Smith had requested an attorney and then been questioned in a criminal matter without his attorney present the Court could exclude any statements made by Mr. Smith as well as any evidence gained as the “fruit” of that questioning.⁸⁴ What Mr. Smith did was attempt to control and frustrate the investigation of the ACOs largely based on his continued belief that they did not have the legal authority to investigate him.

2. The arrest warrant was valid because the maintaining a dangerous animal charge is unchallenged.

Although the affidavit of probable cause contained sufficient facts for regarding hindering prosecution, even if that charge was removed the officers still had probable cause to arrest Mr. Smith. It is undisputed that on March 16, 2015, Millie attacked Michelle Keck and her dog.⁸⁵ In fact, the lead charge on the warrant to arrest Mr. Smith was a violation of 11 *Del. C.* 1327 (a), “Maintaining a Dangerous Animal Which Causes Death or Serious Physical Injury to a Person or Another Animal,” an “A” misdemeanor.⁸⁶ Mr. Smith does not, because he cannot, argue that

⁸³ *Dorsey*, 761 A.2d at 821.

⁸⁴ *See id.*

⁸⁵ March 31, 2015, Arrest Warrant of John Smith, at ¶1. (AA0286).

⁸⁶ *Id.* at “Exhibit A.” (AA0285).

Millie was not his dog or that ACOs did not have probable cause to believe Millie had caused serious injury to another animal. Based on the four corners of the warrant the Justice of the Peace had the following relevant facts:

- During Millie’s escape she attacked and injured Michelle Keck and seriously injured her dog, Spike.⁸⁷
- Savannah Animal Hospital informed the KCSPCA ACOs that Millie had been in a previous fight where she also seriously injured a small dog requiring surgery.⁸⁸
- Lt. Palacio obtained veterinary records from Savannah Animal Hospital for Spike which showed “punctures and lacerations to deep tissue and muscle.”⁸⁹
- Captain Warburton of the KCSPCA determined that Millie met the criteria for a dangerous dog and prepared paperwork for seizing her.⁹⁰

The maintaining a dangerous animal charge was a class “A” misdemeanor, the same class and severity as the hindering prosecution charge.⁹¹ Mr. Smith’s testimony supports the information in the affidavit of probable cause, specifically confirming that Millie was his dog at the time of the attack and that he was aware of

⁸⁷ *Id.* at ¶ 1. (AA0287).

⁸⁸ *Id.* at ¶ 4. (AA0286 – AA0287).

⁸⁹ *Id.* at ¶ 9. (AA0287 – AA0288).

⁹⁰ *Id.* at ¶ 11. (AA0288).

⁹¹ *Id.* at “Exhibit A.” (AA0285).

the injuries to Michelle Keck and Spike.⁹² The fact that the ACOs had probable cause to arrest Mr. Smith for maintaining a dangerous animal is further supported by the fact that a Dangerous Dog Panel independently determined that Millie was a “dangerous dog” as contemplated by statute.⁹³

It is understandable that Mr. Smith has chosen to fixate on the charge of hindering prosecution to the exclusion of the maintaining a dangerous animal charge as the facts supporting the latter charge are irrefutable. Mr. Smith has not alleged any separate or distinct injury attributable solely to the hindering prosecution charge. In fact, what Mr. Smith has attempted to argue is a totally new and novel theory of the law which invalidates an arrest warrant if only one of multiple charges on it were eventually determined to be unsupported by probable cause. Mr. Smith has provided no case law supporting this theory, likely because the bizarre implications of such a proposition beggars the imagination. Therefore, because the ACOs had probable cause to arrest Mr. Smith on a different charge in the same arrest warrant, his argument is fatally flawed and should be dismissed.

3. ACOs reasonably believed they had probable cause to arrest Mr. Smith for hindering prosecution.

Mr. Smith’s citations to the requirements for COPT-certification seem to

⁹² Deposition of John Smith at 145-175. (AA0185).

⁹³ Transcript of Dangerous Dog Panel Hearing Re: John and Nancy Smith at 118. (AA0282).

indicate that in 2015, there were some contradictions and inconsistencies between portions of the Delaware Code and the authority of government agencies. However, it is undisputed that Ofc. Pepper was an employee of the KCSPCA acting in her official capacity when she sought and obtained the arrest warrant for Mr. Smith. Further, at the time Ofc. Pepper sought the arrest warrant, the DAG, the Justice of the Peace Court, and the KCSPCA's contract with the state all agreed that ACOs had the authority to obtain arrest and search warrants.⁹⁴ Therefore Ofc. Pepper should be entitled to qualified immunity.

In *Hunt v. State*, the Delaware Supreme followed the United States Supreme Court case of *Saucier v. Katz*⁹⁵, which held that qualified immunity protects individuals acting under the auspices of state authority unless the alleged violation was of a “clearly established” right and that the contours of this right were so “sufficiently clear” that a reasonable official would understand that he is violating that right.⁹⁶

What Mr. Smith argues is that the facts alleged in the affidavit of probable cause with regard to hindering prosecution were so plainly deficient that a reasonable officer would not have sought the warrant. This assertion is belied by the fact that

⁹⁴ See Op. Att’y Gen., No. 12-IIB05 dated (Mar. 27, 2012.) (AA0298).

⁹⁵ *Hunt v. State*, 69 A.3d 360, 365 (Del. 2013).

⁹⁶ *Saucier v. Katz*, 533 US 194, 202 (2001) (citing *Graham v. Connor*, 490 U.S. 386 (1989)).

Mr. Smith was arrested pursuant to an arrest warrant reviewed and granted by a magistrate in the Justice of Peace Court. This was not an arrest made by Ofc. Pepper based on only her belief that Mr. Smith had committed hindering prosecution. Ofc. Pepper drafted the warrant incorporating information from other officers and presented it for independent court approval. Finally, as discussed previously even if the Court were to accept that a reasonable officer would have known after applying for a receiving a warrant to arrest that probable cause did not exist sufficient for hindering prosecution it is undeniable that the warrant contained sufficient information to support the lead charge on the warrant, maintaining a dangerous animal.

4. Mr. Smith’s argument that the KCSPCA’s lack of a policy was a violation under 42 U.S.C. § 1983 was not fairly presented below or fully argued in his opening brief, therefore it was waived.

Under Delaware Supreme Court Rule 8 “only questions fairly presented to the trial court may be presented for review, provided, however that when the interests of justice so require, the Court may consider and determine any question not so presented.”⁹⁷ Absent a “plain error” the Court will not review any argument not presented to the trial court.⁹⁸ Mr. Smith’s opening brief acknowledges that the

⁹⁷ Supr. Ct. R. 8; *Smith v. Del. State Univ.*, 47 A.3d 472, 479 (Del. 2012).

⁹⁸ *Shawe v. Elting*, 157 A.3d 152, 168 (Del. 2017) (“[T]he doctrine of plain error is limited to material defects which are apparent on the face of the record; which are

argument that the KCSPCA's so called "lack of policy is a policy" was not fairly presented to the trial court.⁹⁹ In his attempt to present it now, Mr. Smith's opening brief contains three total sentences regarding a *Monell* type claim, with argument that offers no case law or statutory support.¹⁰⁰ Mr. Smith makes no attempts to argue that the "plain error" exception applies here. The *Monell* argument appears to be something Mr. Smith tossed in when it became obvious he had not previously pled the necessary elements for his §1983 claim. Mr. Smith chose to present the "lack of policy" argument in an off handed and unsupported fashion.

Even if the Court were to consider the merits of Mr. Smith's *Monell* claim it would be required to do the work to present the argument as Mr. Smith has not cited to *Monell* or any other relevant case law.¹⁰¹ Mr. Smith has failed to state the necessary elements of a *Monell* claim or attempted to apply the facts of this case to these elements.¹⁰² This *Monell* claim argument should be disregarded by the Court.

basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”)

⁹⁹ Appellee's Opening Brief at 25.

¹⁰⁰ *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

¹⁰¹ Appellee's Opening Brief at 25.

¹⁰² *Heaney v. New Castle County*, 672 A.2d 11, 15 (Del. 1995) (citing *Monell*, 436 U.S. at 690.)

II. THE TRIAL COURT CORRECTLY ENTERED SUMMARY JUDGMENT ON MR. SMITH'S FALSE ARREST/FALSE IMPRISONMENT CLAIM BECAUSE A VALIDLY ISSUED WARRANT IS A COMPLETE DEFENSE.

A. QUESTION PRESENTED

Was the trial correct when it held, consistent with established Delaware law, that a warrant issued from a neutral magistrate is a complete defense to a claim of false arrest or imprisonment?

B. SCOPE OF REVIEW

The Supreme Court reviews a lower court's grant of summary judgment *de novo* as to both the facts and the law.¹⁰³

C. MERITS OF THE ARGUMENT

Under Delaware law, false imprisonment and false arrest are the same tort with the following elements: (1) a restraint or seizure (2) that is unlawful (3) and against the individuals will.¹⁰⁴ An individual maybe be validly arrested so long as probable cause existed to arrest.¹⁰⁵ When the individual is arrested pursuant to an arrest warrant "an action for false arrest of false imprisonment cannot be permitted."¹⁰⁶ Mr. Smith's attempt to use *Groman* to support his position that a

¹⁰³ *Dabaldo v. URS Energy & Constr.*, 85 A.3d 73, 77 (Del. 2014).

¹⁰⁴ *Harrison v. Figueroa*, 1985 Del. Super. LEXIS 1463, *5.

¹⁰⁵ *Boulden v. Turner*, 2007 Del. Super. LEXIS 529, at *3.

¹⁰⁶ *Smith v. Del. State Police*, 2014 Del. Super. LEXIS 334, *10 (citing *Tilghman v. Delaware State University*, 2012 Del. Super. LEXIS 405, *5 (citing *Boulden*, LEXIS 529, at *4)).

warrant is not a complete defense is curious. *Groman* is easily distinguishable because it did not involve a magistrate issued warrant but rather an arrest pursuant directly to an officer's observations.¹⁰⁷ More damaging to Mr. Smith's argument is the fact that the analysis undertaken by the Third Circuit in *Groman* is that if police officers had probable cause for at least one of their charges they would have "properly arrested Groman."¹⁰⁸

Mr. Smith has pointed to no legal authority which would disturb the well-established principal that an arrest warrant issued by a reviewing magistrate is a complete defense to a false imprisonment or false arrest claim. However, even if the Court were to entertain such a consideration here, the fact that there is unquestionably probable cause for the maintaining a dangerous animal count in the warrant obviates further consideration. Therefore, the Superior Court was correct to dismiss the claims due to the presence of a validly issued warrant.

¹⁰⁷ *Groman v. Township of Manalapan*, 47 F3d 628, 632 (3d. Cir. 1995).

¹⁰⁸ *Id.* at 635 ("In order for the police to have properly arrested Groman, they must have had probable cause on the aggravated assault or disorderly conduct charges.")

III. THE SUPERIOR COURT WAS CORRECT TO DISMISS THE MALICIOUS PROSECUTION CLAIM BECAUSE MR. SMITH CANNOT POSSIBLY ESTABLISH THE NECESSARY ELEMENTS FROM THE RECORD.

A. QUESTION PRESENTED

Was the Superior Court correct when it determined that there was insufficient evidence in the record from which a jury could find in favor of Mr. Smith’s claim for malicious prosecution?

B. SCOPE OF REVIEW

The Supreme Court reviews a lower court’s grant of summary judgment *de novo* as to both the facts and the law.¹⁰⁹

C. MERITS OF THE ARGUMENT

In order for Mr. Smith’s claim for malicious prosecution to survive summary judgment he must be able to point to evidence in the record to establish six necessary elements. They are:

“(1) There must have been a prior institution or continuation of some regular judicial proceedings against the plaintiff in this action for malicious prosecution.

(2) Such former proceedings must have been by, or at the instance of the defendant in this action for malicious prosecution.

(3) The former proceedings must have terminated in favor of the defendant

¹⁰⁹ *Dabaldo*, 85 A.3d at 77.

therein, the plaintiff in the action for malicious prosecution.

(4) There must have been malice in instituting the former proceedings.

(5) There must have been want of probable cause for the institution of the former proceedings.

(6) There must have been injury or damage resulting to the plaintiff from the former proceedings.”¹¹⁰

Mr. Smith’s problems with his claim start with the second element; as the only “defendant in this action” who filed the affidavit of probable cause for his arrest warrant is Ofc. Pepper therefore, the claim against the KCSPCA must be dismissed leaving solely Ofc. Pepper.¹¹¹ Mr. Smith has focused his argument on the idea that a jury should have been able to determine if Ofc. Pepper acted with “malice.” This Court has traditionally disfavored the tort of malicious prosecution and has determined that the tort requires a “lack of probable cause.”¹¹² However, in the rare cases where there is sufficient evidence to defeat summary judgment the plaintiff must show “evidence of actual malice, in the sense of an improper motive or wanton

¹¹⁰ *Sekscinski v. Harris*, 2006 Del. Super. LEXIS *4 (citing *Stidham v. Diamond State Brewery*, 21 A.2d 283, 284 (Del. Super. Ct. 1941)).

¹¹¹ Mr. Smith repeatedly makes references to “Defendant Hulse” however Defendant Hulse is not a defendant in any of the claims Mr. Smith is appealing so any references to him are irrelevant and merely an attempt to present various unrelated, out context actions, as wrong doing to shore up his factually deficient claims.

¹¹² *See Blue Hen Mech., Inc. v. Christian Bros. Risk Pooling Tr.*, 117 A.3d 549, 551 & 558 (Del. 2015).

disregarding of the rights of the [plaintiff].”¹¹³ Mr. Smith does not point to any facts in the record from which a reasonable jury could conclude that Ofc. Pepper acted with malice. If anything, Mr. Smith seems to be alleging Ofc. Pepper was acting as a cat’s paw for Ofc. Hulse or others within the KCSPCA; however, Mr. Smith needs evidence of Ofc. Pepper’s actual malice not the insinuation of a vague institutional dislike.

Even if the Court were to accept Mr. Smith’s proposition that a jury ought to be permitted to attempt to unearth some hidden animus in Ofc. Pepper (which a robust exchange of discovery in litigation failed to reveal – because it does not exist), his malicious prosecution claim cannot show a want of probable cause. Again, Mr. Smith focuses his argument exclusively on the hindering prosecution charge however he completely fails to address the maintaining a dangerous animal charge. As has been previously discussed, there is ample evidence that Ofc. Pepper had probable cause to arrest Mr. Smith for maintaining a dangerous animal. Mr. Smith therefore cannot show a lack of probable cause for the proceedings. Additionally, Mr. Smith cannot show a distinct injury from the hindering prosecution charge because his alleged injuries, i.e. being arrested, processed, and having to defend himself, would have occurred even if he were only arrested for maintaining a dangerous animal.

¹¹³ *Id.* (internal quotation omitted) (citing *Stidham*, 21 A.2d at 285).

CONCLUSION

Mr. Smith is clearly unhappy with the fact that he was investigated and arrested by KCSPCA's ACOs. Unfortunately, everything that happened to Mr. Smith occurred because his dog escaped his wife's control and attacked his neighbor and her dog. Rather than simply acknowledge that he was in the wrong, Mr. Smith has decided that he is the victim of a vast and insidious conspiracy by animal control. During his first conversation with Ofc. Pepper Mr. Smith was clearly upset and directed Ofc. Pepper to his attorney and threatened to call Senator Lopez. Mr. Smith was, for lack of a better word, looking for a fight. Mr. Smith's insistence that any ACO needed to go through his lawyer ignores the health and safety component of the ACOs attempts to contact Mr. Smith to verify Millie's rabies status. Mr. Smith's dog caused a serious injury to another animal and a human being, and rabies protocol demanded that the owner of any such animal be informed of the quarantine procedure, hence the multiple calls from ACOs.

What is truly baffling about Mr. Smith's position in this matter is that in order for any of his claims to succeed, the warrant has to be invalid. In order to invalidate the warrant, Mr. Smith addresses only one of the two charges. While his instinct makes sense, it essentially admits defeat on the charge of maintaining a dangerous animal. Put simply, the Court can accept all of Mr. Smith's statements regarding the hindering prosecution charge as true and still find he was arrested pursuant to a valid

warrant for maintaining a dangerous animal. If Mr. Smith's arrest was valid his claims for unlawful arrest/imprisonment and malicious prosecution must be dismissed. If there are no underlying claims the § 1983 claims must also be dismissed. In fact, the only way for the Court to find for Mr. Smith would require it to create a new type of tort permitting liability when one charge on a multiple charge warrant lacks probable cause. This theory is not consistent with Delaware law, and for good reason, it should remain a stranger to Delaware law.

Therefore, for all the previously stated reasons the Court should uphold the lower court's grant of summary judgment in favor of the ACOs and KCSPCA.

Respectfully submitted,

WHITE and WILLIAMS LLP

/s/ Nicholas R. Wynn, Esq.

MARC S. CASARINO (#3613)

NICHOLAS R. WYNN (#5670)

600 N. King Street, Suite 800

Wilmington, DE 19801-3722

Phone: (302) 467-4520

*Counsel for Defendants Below, Appellees,
First State Animal Center and SPCA,
Katelyn Pepper, Sandra Galloway, David
Hulse, Kevin Usilton, Mary Palacio, and
Sherri Warburton*

Dated: March 15, 2019