

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED

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DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

DEPUTY
HENN. CO. DISTRICT
COURT ADMINISTRATOR

Court File No. 27-CR-07-110205

Plaintiff,

v.

Zachary Zane King,

Defendant.

**FINDINGS OF FACT
AND VERDICT**

The above-entitled matter came before the undersigned for trial commencing on March 17, 2008.

Michael Freeman, Hennepin County Attorney, and Amy Sweasy, Assistant Hennepin County Attorney, appeared for and on behalf of the State.

Craig Cascarano, Esq., appeared for and on behalf of the Defendant.

FINDINGS OF FACT AND VERDICT

What happened in this case was a horrific tragedy. Although the statute with which Mr. King was charged violating has rarely ever been used, it is understandable why the Hennepin County Attorneys Office decided to prosecute Mr. King. When a tragedy like this occurs, all of us want to find a person who is responsible and to hold them accountable. With hindsight people never make mistakes. With hindsight Mr. King and his wife painfully understand that having four young children, two pit bulls and five pit bull puppies simply makes no sense.

It is clear from Mr. King's testimony, the testimony of other members of his family, his clergy, the guardian ad litem and the child protection worker that Mr. King is profoundly distraught about the death of his son. To Mr. King and his wife's credit, they have taken all appropriate steps to insure that grief does not overwhelm them or their daughters. Nothing any

court could do to Mr. King will give him solace. Certainly this decision is not simply a reaction that he has punished himself enough. Sympathy has a place in courts, but not in this type of decision. The decision this Court is required to make is not whether or not Mr. King is morally culpable, but whether or not this Court can say “I am convinced beyond a reasonable doubt that Zachary Zane King caused the death of his son knowing that the family dog, Face, had vicious propensities and that he negligently failed to properly confine the dog.” Mr. King is presumed innocent, a task not especially easy in a case involving the brutal death of a child.

Mr. King is not Michael Vick. Mr. King did not get Face to engage in dog fighting. He got the dog that killed his son as a puppy. The puppy was given to him by a friend. The puppy grew to be Zach Jr.’s buddy. Mr. King had no idea what the dog’s pedigree was other than it was a pit bull.

The story has been painted about Mr. King being a careless and not particularly contrite parent whose neglect of his son directly resulted in his death. On the night before this horrific tragedy, he was up too late mixing music with some clients and then predictably he was not carefully watching his four children the following morning. The evidence does not entirely support that picture. On the day Zach Jr. was killed, the King house was a mess. There are explanations for that. The King home was being remodeled. Four kids, two dogs and five puppies are not always conducive to a neat and tidy home. Mr. King and his wife enrolled their children in a private school. They were active in their children’s education. They had an extended family that was close. There is no evidence that Mr. King has a criminal record. Mr. King was “Mr. Mom” and Mrs. King was the breadwinner. Pastor Albert Hale testified that Mr. King was a protective parent. Pastor Hale was not there that terrible day. He does not know what happened, or what led up to it. But to knowingly expose children to a vicious dog is

inconsistent with being a protective parent.

Two of Mr. King's daughters testified in court. A transcript of the testimony of the children does not fully express the picture of how those young girls looked at their father in court. It is clear from their testimony, the school guidance counselor, the guardian ad litem and the child protection worker that Mr. King's daughters love their parents and that their parents love them.

If having a pair of pit bulls was a crime, Mr. King is guilty, but that is not presently a crime in Minnesota or in the City of Minneapolis. Pit bulls are among the dogs most prone to seriously bite, but the evidence presented by Dr. Petra Mertens is all dogs have the potential to bite children. Dr. Mertens is a distinguished veterinarian with a specialty in dog psychology. Dr. Mertens' recommendation is a parent should never allow a child of 7-12 to be alone with a dog. Dr. Mertens' opinion is more emphatic with young boys. Dr. Mertens' advice is wise. After Zach Jr.'s death, Hennepin County Child Protection, Mr. King, Mr. Cascarano and the Hennepin County Attorneys Office all sought Dr. Mertens' advice. Unfortunately all of that occurred too late. Zach Jr. was dead.

If there are "lessons" from this tragedy, Dr. Mertens' testimony should be read and followed by every parent. There are many "urban myths" about dogs. Mr. King and his family did things and had beliefs about dogs that are commonly shared by others; the principal one being that dogs are less likely to bite the people with whom they live. In fact, that is not true. Dogs are important to many people, but dogs are not humans. The evidence in this trial shows conclusively that the psychology of dogs is different than the psychology of humans.

The statute with which Mr. King is charged violating is not specifically related to dogs. It is a statute that in some form has been in Minnesota for decades and yet there is no reported

appellate criminal case discussing its application. In fact, it is extremely rare for a dog to fatally bite a human. Between 1998 and 2005 there is only one reported death in Minnesota caused by a dog. Dr. Mertens testified that territorial bites do not predict aggressive bites. While the defense has tried to portray that as significant, it is not. The facts in this case show it can happen and it should not.

Mr. King is charged with violating Minnesota Statute § 609.205 (Subd. 4). The statute provides: “A person who causes the death of another by any of the following means is guilty of manslaughter in the second degree ... by negligently permitting any animal, known by the person to have vicious propensities or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner’s premises, or negligently failing to keep it properly confined.” M.S.A. § 609.205 (Subd. 4). In this case there is no allegation in the complaint that Face, despite the number of prior bites, ever caused great or substantial bodily harm. The sole allegation is Face had “vicious propensities.”

Minnesota has a very specific statutory scheme for dealing with dogs that are dangerous or potentially dangerous. The Minnesota Court of Appeals has held that, “The City [of Minneapolis] has a high interest in taking appropriate measures for animal control.” American Dog Owners Ass’n, Inc. v. City of Minneapolis, 453 N.W.2d 69, 72 (Minn. App. 1990). “Minneapolis Animal Care and Control is authorized to deem any animal as a dangerous animal or a potentially dangerous animal subject to the requirements under this Code and under Minnesota State Statute 347.50 subdivision (2), Dangerous Dogs and Minnesota State Statute 347.50 subdivision (3) Potentially Dangerous Dogs.” Minneapolis Code of Ordinances Title 4, Chapter 64.110. Minnesota State Statute 347.50 subdivision (2) defines Dangerous Dogs as: “any dog that has: (1) without provocation, inflicted substantial bodily harm on a human being

on public or private property; (2) killed a domestic animal without provocation while off the owner's property; or (3) been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.” M.S.A. § 347.50 subd. 2.

Once a dog has been declared dangerous then there many requirements for the dog owners including, but not limited to, registration, obtaining a surety bond, annual fees and posting a warning symbol on the property. M.S.A. § 347.51 and § 347.52. The statutes also grant the animal control agency having jurisdiction the ability to seize or destroy a dangerous dog if a violation of the requirements occurs. M.S.A. § 347.54 and § 347.56. Although Minneapolis Animal Control knew of the bites Face made prior to the death of Zach Jr., no attempt was made by them to classify Face as a dangerous or potentially dangerous dog.

Given the fact that Mr. King had four young children and had problems with Face, it was a reasonable alternative to kill Face after he bit Joseph Friendshuh and Zach Jr. in the summer of 2006 and then bit Ms. Hill in December of 2006. Mr. Friendshuh was installing a new fence between Mr. King and his neighbor’s house in the summer of 2006. Face was let out of the house by Mr. King, charged and bit Mr. Friendshuh. Face’s bite of Mr. Friendshuh may in part be explained by the fact that the neighbor “forgot” to call Mr. King. Frankly, it is far better explained by the fact that Mr. King was simply careless when he let his dogs out without checking to see if the fence construction guys were on site. Owners, not neighbors, are responsible for their dogs. A month later Face bit Zach Jr. Had Dr. Mertens been asked after these bites, her recommendation would have been to kill Face. However, Dr. Mertens conceded that not all, in fact, many dog owners find it impossible to kill their pet. With hindsight, Mr. King now knows Face should have been humanely put to sleep by a veterinarian, not shot by him

in his basement.

The prosecution relies on a reported history of bites or scratches Face inflicted on others to support the contention that Mr. King, “knowing” Face had “vicious propensities,” negligently failed to keep him properly confined. The prosecutor’s theory is not unreasonable. A lot of people would not think of owning a pit bull as a pet believing they are by definition animals with vicious propensities, and yet Dr. Mertens testified she has had students who select pit bulls as pets.

Minneapolis Animal Control does an admirable job carefully balancing the need for public safety, the welfare of animals and the rights of owners. The Animal Control agency is not responsible for Zach Jr.’s death. However, although Minneapolis Animal Control knew about previous incidents of Face biting people, Minneapolis Animal Control did not label Face dangerous. Minn. Stat. § 347.50, subd. 2 and Minneapolis Ordinance 64.110 both have provisions to declare a dog dangerous or potentially dangerous. There is no evidence that Minneapolis Animal Control ever sent Mr. King a warning letter, nor did they seek to have Face licensed by the City of Minneapolis as a potentially dangerous dog. Animal Control did not recommend to Mr. King that Face be humanely put to sleep or refer him to a person such as Dr. Mertens for guidance. Given the fact that Mr. King had no warning from Animal Control, it is quite possible that he did not know or believe that he had an animal that had what Minnesota law declares is an animal with vicious propensities. Surely a reasonable person might assume that animal control professionals are in a better position to ascertain whether or not a pet is an animal with “vicious propensities” than an extremely attached owner. Had evidence of those things been introduced, it would make it far easier for this Court to have concluded that Mr. King knew that Face had “vicious propensities.”

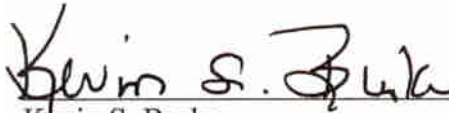
This was a professionally and well done prosecution. However, although the prosecution introduced evidence that there was a settlement between Joseph Friendshuh and Mr. King's insurance company, there was no evidence that the homeowner's insurance company canceled Mr. King's insurance coverage because of this bite, or even that the company raised his rates. In fact, the uncontradicted evidence is Mr. King did not even know the amount of the settlement until after Zach Jr.'s death. What Mr. King knew was he paid a medical bill for about \$200.00, certainly not an amount of money for medical care that might have put him on notice that there was something seriously amiss. Again, had there been any evidence that the homeowner's insurance company "warned" Mr. King either through canceling his policy or even raising his rates, it would be far easier to conclude that Mr. King knew that one of the family pets had "vicious propensities." Surely a reasonable person might assume that an insurance company which would be in a position to calculate the risk that a dog had vicious propensities is far more detached from the emotion an owner has with his dog.

Julian Mason received medical treatment for a bite in 2005 and Zach Jr. received medical treatment in 2006. In the search to find who is responsible for Zach Jr.'s death and to hold them accountable, it is not the doctors and nurses. However, there is no evidence that the doctors and nurses at the hospital which provided medical care to Julian and Zach Jr. reported either bite to Hennepin County Child Protection. Doctors and nurses can under some circumstances have a legal duty to report child abuse. Minnesota law provides immunity to them if they make such a report. In fact, not only was there no report to Child Protection, there was no evidence presented that doctors or nurses sat down with Mr. King to discuss with him what to do with Face in light of the bite to Zach Jr. Again, had evidence of those things been introduced, it would make it far easier to conclude that Mr. King knew that Face had "vicious propensities."

Given what happened in this case, there is no victor. A child is dead, his siblings and parents are traumatized, and a lot of other people who never knew these people are bewildered and wonder how can this happen? Who is responsible? Somewhere each day in this nation judges, prosecutors and defense lawyers ask citizens who serve on juries to carefully consider the evidence and make a decision about whether the state has proven a charge beyond a reasonable doubt. The Court has carefully considered the evidence. These findings are but a summary review of what occurred in this case. More could be said. But in the final analysis, the decision comes down to an application of one of the most important concepts in our law – reasonable doubt. This Court has reasonable doubt and therefore finds the Defendant Zachary Zane King **not guilty** of Manslaughter in the Second Degree.

BY THE COURT:

Dated: April 11, 2008

A handwritten signature in black ink, appearing to read "Kevin S. Burke", written over a horizontal line.

Kevin S. Burke
Judge of District Court