

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
JUDY INES COCHRAN**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD73766

DATE: May 1, 2012

Appeal From:

Boone County Circuit Court
The Honorable Mary (Jodie) Capshaw Asel, Judge

Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Mark D. Pfeiffer, Judge and Gary D. Witt,
Judge

Attorneys:

Rose L. Olson and Ryan F. Haigh, Columbia, MO, for respondent.

Rosalynn Koch, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

JUDY INES COCHRAN,

APPELLANT.

No. WD73766

Boone County

Before Division Two: Karen King Mitchell, Presiding Judge, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

Judy Ines Cochran appeals her conviction, after a jury trial, from the Circuit Court of Boone County for the misdemeanor of animal abuse and for a violation of a county ordinance for failure to vaccinate an animal.

AFFIRMED IN PART AND REVERSED IN PART

Division Two holds:

Cochran was visited at her home by an animal control officer and Dawn Hall of the Department of Agriculture in response to a complaint. They found Cochran at her home and their subsequent investigation found conditions that they believed were unsuitable for the care of animals. There was inadequate food, water, and shelter provided to the animals. The temperature at the time of the visit was below freezing and one dog in particular, Fifi, was observed to be underfed and cold to the touch. A dog named Boss was also on the premises and a cross-check of Cochran's veterinary records revealed that Boss had not been vaccinated. Cochran was charged with animal abuse for the treatment of Fifi, a violation of section 578.012, and with a county ordinance violation for failure to vaccinate Boss, under section 192.300, and was found guilty by a jury on both counts. Cochran now appeals.

In Point One, Cochran argues the trial court erred and abused its discretion in permitting Matt Rold of the Department of Agriculture to testify, over Cochran's objection, that her actions were "animal abuse" in that the testimony was a legal conclusion that the jury was equally able to decide from the evidence presented and invaded the province of the finder of fact on an ultimate issue in the charged offense. First, Cochran failed to raise this issue at trial and therefore it can only be reviewed for plain error. Second, the charge of animal abuse includes a showing that the defendant knowingly failed to provide adequate care to the animal. To the extent that the testimony in this case could be interpreted that Rold was testifying that Cochran *knowingly* failed to provide adequate care to these animals, it would have exceeded his expertise. However, it is clear to us that the question of whether Cochran committed animal abuse and Rold's response to it were intended merely to show the jury his opinion that there was inadequate care given to the animal. Even if it was error to admit the evidence, Cochran has failed to show there was

manifest injustice, as this error would not have been outcome determinative given the strong evidence in this case. Point One is denied.

In Point Two, Cochran argues the trial court erred in overruling her motion for judgment of acquittal and accepting the jury's verdict of guilty as to Count II because the State failed to prove beyond a reasonable doubt that Cochran was guilty of every element of the offense in that the State failed to adduce proper evidence of the provisions of county health regulation 2.4.3 by failing to introduce the ordinance into evidence. It is undisputed that the State failed to offer the ordinance into evidence. Section 479.250 requires that a municipal ordinance must be admitted into evidence or stipulated to by the parties or a conviction based on a violation of that ordinance cannot stand. Subsequent cases have interpreted that rule to apply to county ordinances as well. Therefore, Cochran's conviction of violation of a county ordinance cannot stand. Further, the principles of double jeopardy preclude a retrial on that charge.

Point Two is granted and the conviction and sentence under Count II is vacated and Cochran discharged as to that Count.

Opinion by Gary D. Witt, Judge

May 1, 2012

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