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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

STATE OF IDAHO, Plaintiff/Respondent. vs. IVAN S. PEARCE, II, Defendant/Appellant.	Case No. CR38-18-1675 **APPELLANT'S BRIEF**

Appeal from the Third Judicial District Court

of the State of Idaho, in and for the County of Payette

Honorable Joel D. Horton., District Judge, Presiding

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NATURE OF THE CASE

This is an appeal from the prosecution, conviction and punishment of the Defendant Ivan "Shannon" Pearce (Pearce) of a "cruelty to animal" charge under I.C. § 25-3504 and § 25-3502(5)(e) - for alleged criminal negligence in providing water to four of his commercial horses. This appeal addresses several issues involving jurisdiction, the conviction, and sentencing. First, Pearce is arguing that the criminal complaint was fatally flawed, in that it failed to plead an essential element of the crime, in that the state had obtained a written determination from a state inspector that Pearce had violated the law. Therefore, the trial court lacked subject matter jurisdiction. Second, the trial court erred in not granting Pearce's I.C.R. § 29 Motion for Acquittal at the end of the State's case-in-chief, in that there was clearly insufficient evidence of "wanton, flagrant, or reckless disregard of consequences" warranting criminal negligence. Finally, Pearce appeals criminal penalties issued by the trial court after the matter was remanded on appeal from a prior appeal to the district court as constituting cruel and unusual punishment in violation of the Eighth and Fourteenth Amendment of the U.S. Constitution.

COURSE OF PROCEEDINGS/STATEMENT OF RELEVANT FACTS

The following proceedings are relevant for the purposes of this appeal. On July 23, 2018, the State of Idaho filed a criminal complaint against Pearce, which was amended on May 18, 2019, on four misdemeanor counts of "Cruelty to Animals" under I.C. § 25-3504 and § 25-3502(5)(e). (R Vol. I, pp. 19-22, 32-34.) The State's singular charge and factual claim was that Pearce "negligently failed to provide sustenance, water, or shelter to a horse." (Id.)

A jury trial was held on November 11 and 12 of 2019, in the Magistrate Court for the Payette County Court, before Judge Robert Jackson. (R Vol. I, pp. 69-78.) During its case-in-

chief, the State called seven witnesses, none of which had any prior contact with Pearce with regard to the horses prior to July 15, 2018. Three of the witnesses, Vern Anderson, Nathan Collinsworth, and Scott Windom had never spoken to Pearce. (Tr. pp. 23-61, 104-112.) Karen Oltman (a neighbor to the pasture) testified that a "week or two" prior to July 15, that she had seen the water trough on the pasture with the hose in it "overflowing with water." (Nov. 11, 2019, Tr. P. 60 LL 14-22.) She also stated that she did not know how long the horses had been without water. (Tr. p. 61 LL 6-8.) Another witness (neighbor) Theodore McGourty testified that he "didn't know" the last time he saw water in the trough. (Tr. p. 78 LL 20-22.)

The State's primary witnesses were Payette County Deputy Mendel Holley and former Payette City Chief of Police Mark Clark, both of whom had met and questioned Pearce after the neighbors had reported the conditions of the horses on the pasture. (Tr. pp. 63-72, 123-151.) Deputy Holley indicated that Pearce had last checked the water trough "between a couple of days and a week" prior to July 15. (Tr. p. 69 LL 19-21.) He further indicated that Pearce was "emotionally distraught" about the dead horses. (Tr. p. 70 LL. 24-25.)

Chief Clark interviewed Pearce extensively, wherein Pearce described the measures that he undertook to check on his horses, including how Pearce provided water to the horses via a hose into a trough. (Tr. pp. 128-131.) Clark indicated that Pearce had told him the water "was always on, that he left it on." (Tr. p. 131 LL 9-12. See also p. 147 LL 21-25, p. 148 LL 1-5.) Upon further questioning as to what measures Pearce took to keep the water flowing, Clark indicated that Pearce had told him that:

> (Pearce) said that what he would do is would put the hose in the trough and leave it running to where it would overflow to prevent it from mossing up and keep the water cool for the horses. And that's what he had claimed that he had last done.

(Tr. p. 130 LL 11-18.)

Mr. Clark also indicated that Pearce told him that he (Pearce) was upset because he (Pearce) believed that neighbors who did not like him had intentionally turned the water off. (Tr p. 133 LL 15-20.) Pearce also told Clark that he (Pearce) had intended on checking on the horses on July 15 but could not because of a funeral. (Tr. p. 137 LL 1-8.) Clark also indicated that Pearce had told him that he (Pearce) checked on the horses twice a week, had turned the water on in March of that year, and had not observed any problems. (Tr. p. 140 LL 21-25, pp. 141-43.)

The State also called the pasture owner Scott Windom (whom Pearce was leasing from) who indicated Pearce had told Windom that Pearce had "thought the water had been turned off and that the hose removed and put in the pumphouse." (Tr. 156 LL 21-25.)

At the close of the State's case on November 12, Pearce moved for an acquittal under I.C.R. § 29 for lack of proof established by the State for the alleged crimes. Pearce argued that the State had failed to provide sufficient evidence to prove "criminal negligence," i.e. that no evidence was presented that Pearce had shown "reckless disregard" in caring for the horses. (Tr. p. 161 LL 16-25, pp. 163-64, p. 165 LL. 1-10.) The Magistrate Court denied the motion from the bench. (Tr. p. 166 LL 22-25, p. 167 LL 1-25.) After Pearce presented his case, the jury entered a guilty verdict on all four counts. (Tr. p. 244 LL 11-23.)

On February 14, 2020, Pearce filed a "Motion to Vacate Conviction and Dismiss Action for Lack of Jurisdiction." (R Vol. I, pp. 90-94.) That motion was heard and denied from the bench by the Magistrate Court on February 21, 2020. (Tr. pp. 25-30.)

Also on February 14, 2020, Pearce also filed a Motion for Withheld Judgment. (R Vol. I, pp. 95-98.) In support of his motion, Pearce noted the 67 individuals who had submitted letters

to the court vouching for Pearce's reputation and his ability to care for and maintain horses, and that this incident was an anomaly and not the norm for Pearce. (Id.) Pearce also submitted the Idaho Department of Agriculture's investigation of his horses and properties finding that no violations of the animal cruelty statute, and also that Pearce had directly addressed and followed up on any concerns the department had with regard to his animals. (Id.)

The Magistrate Court conducted a sentencing hearing on February 21, 2021. (Feb. 14, 2020, Tr. pp. 31-91.) Several witnesses testified at the hearing with regard to Pearce's history of working with, training, caring and owning horses. (Id., Tr. pp. 33-46) Pearce also testified, providing exquisite detail about the four horses who had died and his deep sorrow for their loss. (Id., Tr. pp. 46-55, 56-59). He also testified about the extensive efforts he engaged to heal the horse that had survived the incident. (Id., Tr. p. 56) Conversely, the State provided no evidence or testimony from any "victims" or any member of the public for that matter that had alleged any harm resulting from Pearce's conduct. (Id., Tr. p, 32, L 2.) Additionally, no witnesses were provided by the State to refute Pearce's treatment and care of horses, as well as his upstanding character, achieved over a lifetime. (Id.)

After hearing the testimony and argument, the Magistrate Court made a number of statements, including some unidentified or substantiated "90 complaints that could have been paraded in front of a jury" which was the alleged reason why Pearce's prior counsel elected not to have Pearce testify at trial. (Id., Tr. p. 77 LL 1-5.) The Court also noted two negative letters that were apparently submitted to the Court by two of Shannon's out of state siblings, Dixie and Benny. (Id., Tr. p. 81, LL 16-17.) The Magistrate Court noted that Pearce had no intention of harming or abusing the horses, but that the case was solely based upon negligence from not

providing water. (Id., Tr. p. 79.) The Court also acknowledged that Pearce had "an excellent reputation for being a horseman, for being excellent and kind to his horses, and for having them as a business." (Id., Tr. p. 81 LL 83-85.)

The Magistrate Court issued a sentence in which it imposed the maximum fine of $5,000 and six months of jail time to be served consecutively (not concurrently) for each of the counts, along with court costs. (R Vol. I, pp. 113-120.) The Magistrate Court set terms of supervised probation, suspending 130 of the 180 days for each of the counts, and $4,000 of the $5,000 of the fines conditioned upon compliance with the terms of supervised probation. (Id.) The sentence required that Pearce spend four days in jail with work release, with an additional 20 days in jail at the discretion of the probation officer, and 20 days of work detail. The sentence further imposed that "any violation of the terms of probation may result in an order forbidding (Pearce) from owning, caring for or having custody of any horse." (Id.) Finally, the length of Pearce's supervised probation was eight years. (Id.)

The Magistrate Court also granted a Withheld Judgment, finding and holding as follows: Sure, this is the only conviction.

> Lots and lots of complaints. I mean, dozens, But I am not going to hold that against you. I think you can be rehabilitated as the statute talks about. Essentially, you are a first offender. I think you are going to be able to abide by the terms and conditions of your probation. You are going to have to tell me whether you can when I go through those, but if you can, then I will grant a withheld judgment in this case.

(Feb. 14, 2020, Tr. p. 86 LL 4-13.)

On April 30, 2020, Pearce appealed the conviction and sentence. (R Vol. I, pp. 122-124.) On December 22, 2020, the District Court issued a Memorandum Decision. (R Vol I, pp. 243-52.) The District Court upheld Pearce's conviction. (Id. pp. 246-48.) However, the Court vacated the sentence, finding that the Magistrate Court imposition of fines and incarceration

violated the I.C. § 19-2601 with regard to withheld judgments. (Id. pp. 249-50.) The Court noted that under a "withheld judgment," that no judgment is entered. (Id.) Rather, the magistrate court retains jurisdiction and sets terms for probation upon which after successful completion, the charges are dismissed. (Id.) The District Court also found that supervised probation did not appear to be warranted or a justified cost under the circumstances of the case. (Id. pp. 250-53.) It indicated that upon remand that the Magistrate Court "eliminate the provision for unsupervised probation or clarify the need for supervised probation and define what is expected and how such is to be administered." (Id. p. 253.) The District Court remanded the case to Magistrate Court for the sentencing to be redone "consistent with the court's comments and findings recited above." (Id.)

On April 20, 2021, the Magistrate Court held a re-sentencing hearing. (April 20, 2021, Tr. pp. 1-23.) Pearce was required to appear at the hearing in person, while his counsel appeared by Zoom. (Id., Tr. p. 3) Without checking with his counsel first, the Court asked Pearce to provide testimony. (Id., Tr. p. 12. 13, p. 14 LL 1-23.) Additionally, Pearce was not able to see his counsel on a screen in the courtroom. (Id., Tr. p. 19.) His counsel could not advise him without having to do so in front of the Court and State. (Id.) No witnesses were called by Pearce or the State. (Id, Tr. pp. 5-12.)

The prosecutor indicated that because he was not one of the prosecutors involved in the case, he had no knowledge about what occurred before, during and after trial. (Id., Tr. p. 5, LL 14.17, p. 11 LL 17-21.) The State nevertheless recommended the same sentence as before, but also adding extensive monitoring requirements as a condition of probation. (Id., Tr. p. 6 LL 4-16.) Pearce's counsel reminded the Court of all the reasons it granted the withheld judgment at the first sentencing. (Id., Tr. p. 7, p. 8 LL 1-4.) Counsel noted that Pearce had met all of the

conditions of his probation during the year since his sentencing and that there had been no complaints about how he managed horses. (Id., Tr. p. 8, LL 7-18.) Pearce's counsel also expressed deep concerns about the apparent overreach of the monitoring requirements being suggested by the state, how that would impact his living, and whether the Court had jurisdiction or authority to impose such a condition. (Id., Tr. p. 9, LL 8-25, p. 10 LL 1-2.) Counsel also again reminded the Court that that only the State Department of Agriculture had jurisdiction over regulating and compliance with commercial breeders such as Pearce. (Id., Tr. p. 15, LL 1-12.)

The Magistrate Court made a number of comments. It referred to a number of "side bars" with counsel where it had a "chance to hear what the State had for evidence." The Court then again referenced counsel for Pearce's legal strategy that "the evidence would be so harmful and alarming that it was not presented" and "backs up to why I know Mr. Pearce thinks he should have taken the stand." (Id., Tr. p. 16 LL 16-21.) The Court further stated that "it was made aware of 30 or 40 other cases involving issues with animals that it intended to tell the jury about" and that "he did hear a lot about a lot of other cases in the past." (Tr. p. 16, LL 22-24, p. 17 LL 24-25.) There is nothing in the court record with regard to any of such other "cases" or "evidence." The Court further stated: "I did hear the facts and circumstances surrounding the offenses. They are horrible. The pictures are horrible." (Tr. p. 18, LL 10-12.) The Court decided that: "I am not going to allow a withheld judgment this go around." (Tr. p. 18, LL 13-14.)

The Magistrate Court subsequently issued an "Amended Judgment" on all four counts. (R Vol I. pp. 274-85.) The Court imposed the same fines and jail time as the first judgment, and does not appear to provide credit for time served or payments made toward the first judgment. The Court ordered "supervised probation" on three of the counts. All but one of the counts are served "consecutively," (Id.)

> Finally, each of the counts provides a "further terms and conditions" as follows: Beginning on May 5th of 2021, and by the 5th day of each month thereafter, Defendant shall provide written documentation to the Payette County Probation Office describing each horse under his care, custody and/or control by body markings, head markings, leg markings, color, sex, breed, and, if applicable, tattoo and branding.
>
> Furthermore, for each horse, the documentation shall describe the geographical locations (physical address, land legal description, OR GPS coordinates) and the identification of all landowners and/or their agents where the horses are kept. Defendant shall also provide, as part of the monthly documentation, copies of all documentation describing the rent, lease and/or use terms between himself and each landowner and/or their agents for all horses under his care, custody and/or control which are on property not owned by the Defendant.

(R Vol I, pp. 276, 279, 282, 285.)

Pearce filed a Notice of Appeal of the Amended Judgment on June 2, 2021. (R Vol. I, pp. 287-89.) On appeal, Pearce argued that the Magistrate Court lacked jurisdiction to impose the "further terms and conditions" of the Amended Judgment or alternatively that such terms and conditions constituted a violation of Pearce's rights under the 8th and 14th Amendments to the U.S. Constitution. (R Vol. I, pp. 314-25.) Pearce also argued that the Magistrate Court violated the mandate of the District Court's mandate on remand to either make the probation unsupervised or clearly clarify and define the conditions of supervised probation. (Id.) Finally, Pearce argued that the Magistrate Court abused its discretion when it reversed the granting of the withdrawn judgment. (Id.)

After the Amended Judgment was entered, due to the impossibility of compliance with "new terms and conditions" along with the exposure of confidential and sensitive information of his customers, Pearce had no choice but to abandon his life's work in the care, training and

ownership of horses. (R Vol. I, pp. 327-29[1].) The broadness and ambiguity of the conditions allowed probation officers unfettered discretion to find violations. (Id.) Moreover, as Pearce had already experienced to that point and continued to suffer with, his customers and family members have been subjected to continual harassment and threats by deputies and prosecutors. (Id.) Pearce subsequently gave away all of his horses and cancelled his agreements with customers. (Id.) He is now only a "pedigree consultant." (Id.) The county probation officers, deputies and prosecutors have nevertheless continued to pursue Pearce and to interfere with his prior customers and business associates and harass his family, including his brother, son and daughter. (Id.) The net effect of the sentence, in particular its "further terms and conditions" has been to deprive Pearce of his livelihood and cause enormous grief. (Id.)

On February 23, 2022, as an exhibit to its response brief to Pearce's appeal of the Amended Judgment, the State attached 77 "incident reports" on dates ranging from June of 2010 through August of 2018. (R Vol. I, pp. 351-441.) This purportedly was the "lot of other cases in the past" as discussed during "side bars" not made a part of the record referred to by the Magistrate Court when it issued the amended sentence. (Apr. 20, 2021, Tr. p. 16, LL 22-24, p. 17 LL 24-25, R Vol. I, p. 339.) With the exception of the July 15, 2018, reports pertaining to this case (R Vol. I, pp 429-33), none of the reported incidents resulted in criminal charges filed against Pearce. 44 of the reported incidents over the eight-year period are unrelated to any claim of animal neglect by Pearce, but rather consist largely of reports of loose animals which Pearce immediately addressed upon receiving word. (See again pp. 351-441.) 33 of the incident reports involve calls to police by mostly by anonymous individuals alleging animal neglect – 13 of

[1] The Clerk's record inadvertently omits the declaration, which Appellant will move shortly to augment to the record.

which did not identify Pearce as the owner of the horses – and all of which upon investigation of the officers were shown to be untrue, unfounded or outright false, including the following:

1. December 28, 2010, caller claim that "50 to 60 horses very skinny, and have nothing to eat" – not identified as belonging to Pearce cleared by officer after a 12 minute investigation. (R Vol. I, p. 369.)

2. May 6, 2012, caller claim of "negligence" cleared after investigating officer confirmed that Pearce was taking care of a horse that had previously escaped. (R Vol. I, pp. 374-75.)

3. June 2, 2012, caller claim that "white colt" not identified as belonging to Pearce had no water cleared after a 7 minute investigation by officer. (R Vol. I, p. 377.)

4. June 15, 2012, caller claim of "horse tied up to fence with no food or water" cleared after 52 minute investigation by the officer. (R Vol. I, p. 362.)

5. September 27, 2012, caller claim that horse had no water cleared after "hired hand" confirmed that horses were being provided water "each day." (R Vol. I, pp. 383.)

6. November 8, 2012, claim by a caller that horse not identified as belonging to Pearce was "infected with yellow puss" cleared after a 13 minute investigation by officer. (R Vol. I, p. 386, R Vol. I, p. 440.)

7. January 1, 2013, caller claim that "horses do not have any hay or water" cleared after investigating officer determined that "horses have hay and don't appear to be in poor condition." (R Vol. I, 388.)

8. May 6, 2013, claim of unspecified negligence cleared after brief investigation. (R Vol. I, p. 389.)

9. April 21, 2014, claim by a caller about "group of horses with no food or water for three days" cleared by officer after a 30 minute investigation. (R Vol. I, p. 370.)

10. April 26, 2014, caller claim that horse had "been without food or water for five days" after reporting officer confirmed from Pearce that horse was fed food and water prior to 7:00 A.M. each day. (R Vol. I, p. 395.)

11. June 23, 2014, unverified claim of a "dead horse." (R Vol. I, p. 361.)

12. July 23, 2014, caller claim that "several horses are skinny" and one horse should be "put down" cleared after 20 minute investigation by officer. (R Vol. I, p. 371.)

13. September 5, 2014, caller claim that horses not identified as belonging to Pearce were "neglected" and "had no food or water" cleared after investigating officer determined that "all horses have food and water." (R Vol. I, p. 397.)

14. February 12, 2015, caller claim that horses "had no feed" cleared after investigating officer determined that the horses "look fine and have hay out there." (R Vol. I, p. 399.)

15. March 3, 2015, caller claim that horses were in "pens without water" cleared after state veterinarian found horses to be in good health and Pearce showed the reporting officer where the horses received water. (R Vol. I. p. 402.)

16. May 6, 2015, caller claim that horses looked "skinny" and that there was a dead horse in the middle of the field cleared after a brief investigation by officer. (R Vol. I, p. 403.)

17. June 8, 2015, caller claim that horses lacked water cleared after "neighbors" advised officer that "Shannon was there the other day with a water truck." (R Vol. I, p. 365.)

18. June 29, 2015, caller claim of "horses with ribs showing" cleared after investigating officer determined that horses "are skinny but not dying or anything." (R Vol. I, p. 404.)

19. May 2, 2016, caller claim of "neglected horses, nothing appropriate to eat" cleared after a 46 minute investigation by reporting officer. (R Vol. I, p. 410.)

20. June 15, 2016, caller claim that "water tank is empty and feed is no longer there" cleared after investigating officers determined that there was water in the tank. (R. Vol. I, p. 412.)

21. June 21, 2016, caller claim of no water for the horses not identified as belonging to Pearce cleared after investigating officer arrived and added water to the trough. (R Vol. I, p. 413.)

22. July 23, 2016, caller claim that horses not identified as belonging to Pearce had no water cleared after investigating officer determined that "the horses have water." (R Vol. I, p. 364.)

23. June 12, 2017, caller claim that horse had "no food or water" cleared after reporting officer confirmed that Pearce had been "out there today and checked on them." (R Vol. I, p. 419.)

24. July 7, 2017, caller claim of neglect cleared after officer advised Pearce that the "water trough" was "empty and had been tipped over." (R Vol. I, p. 421.)

25. May 1, 2018, claim of neglect to horses not belonging to Pearce (but rather his brother Brian Pearce) cleared after officer determined that horses were being trained. (R Vol. I, p. 425.)

26. June 8, 2018, caller claim that horses not belonging to Pearce (but rather Laverna Carver) lacked food and water cleared after officer determined that horses were watered twice a day. (R Vol. I, p. 426.)

27. July 18, 2018, caller claim that horses not belonging to Pearce (but rather Laverna Carver) cleared after officer determined horses had water. (R Vol. I, p. 434.)

28. July 19, 2018, caller claim that horses not identified as belonging to Pearce have no food or water cleared by investigating officer determined claims to be "unfounded" (R Vol. I, p. 356.)

29. July 23, 2018, caller claim that horse "tied up to tree with no water" cleared by investigating officer after determination that the horse was actually on city property (thus not belonging to Pearce.) (R Vol. I, p. 435.)

30. July 22, 2018, caller claim that horses possibly belonging to Pearce lacked food and water cleared after investigating officer determined that "the horses have been fed and watered and look healthy." (R Vol. I, pp. 357-58.)

31. August 20, 2018, caller claim that horse not identified to belong to Pearce had "no food since Friday" cleared after 9 minute investigation by officer. (R Vol. I, p. 438.)

32. August 27, 2018, caller claim that horses were without food and water cleared after investigating officer determined that the horses "do have food and water." (R Vol. I, p. 437.)

33. August 31, 2018, caller request for officer to check if horses "believing to belong to Shannon Pearce" were obtaining food and water cleared after a 45 minute investigation by officer. (R Vol. I, p. 436.)

On May 5, 2022, the district court issued a decision denying Pearce's appeal of the Amended Judgment. (R Vol. I, pp. 464-72.) On June 16, 2022, Pearce filed a Notice of Appeal of the Amended Judgments and all prior interlocutory decisions including both of the decisions by the District Court on the respective appeals. (R Vol. I, pp. 474-77.)

ISSUES PRESENTED ON APPEAL

1. Did the State's criminal complaint sufficiently establish subject matter jurisdiction?

2. Did the trial court err in not granting the Defendant's I.C.R § 29 Motion for Acquittal?

3. Are the terms of probation imposed by the Magistrate Court in the Amended Judgment, i.e. the "further terms and conditions," not narrowly drawn to drawn to achieve the purpose of probation without unnecessarily restricting Pearce's otherwise lawful activities, therefore making such terms invalid?

4. Did the Magistrate Court lack jurisdiction to impose the "further terms and conditions" in its Amended Judgment?

5. Did the Magistrate Court abuse its discretion in reversing the withdrawn judgment it had previously granted?

6. Is the sentence imposed upon Pearce excessive, disproportional, and intrudes upon the rights of other parties therefore violating the 8th and 14th Amendment to the Constitution?

ARGUMENT

I. Standard of Review

A. *Review of a district court decision while acting in its intermediate appellate capacity*.

As succinctly stated by this Court:

> When considering an "appeal of a decision rendered by a district court while acting in its intermediate appellate capacity, this Court directly reviews the district court's decision However, to determine whether there was an abuse of discretion, we independently review the record of the proceeding before the magistrate court.
>
> In independently reviewing the record, the Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

> Therefore, in reviewing a case on intermediate appeal, we do not directly review the decision of the magistrate court. Rather, we are procedurally bound to affirm or reverse the decisions of the district court.

State v. Ochoa, 169 Idaho 903, 912, 505 P.3d 689, 698 (2022)(citations omitted.)

B. *Jurisdictional questions on sufficiency of criminal complaint.*

The standard of review on appeal regarding jurisdiction is set forth this Court is as follows:

> Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review. Whether an information conforms to the requirements of law is also a question subject to free review.

State v. Quintero, 141 Idaho 619, 621, 115 P.3d 710, 712 (2005) (citations omitted).

Questions regarding jurisdiction of the trial court under I.C.R. § 12(b)(2) are listed as an "exception" and thus can be raised at any time, including for the first time on appeal. *State v. Cahoon*, 116 Idaho 399, 400, 775 P.2d 1241, 1242 (1989). When an objection to the information is not raised before trial "the sufficiency of the charging document will be upheld unless it is so defective that it does not, by any fair or reasonable construction, charge an offense for which the defendant is convicted. A reviewing court has considerable leeway to imply the necessary allegations from the language of the Information." *State v. Jones*, 140 Idaho 755, 758, 101 P.3d 699, 702 (2004) (citations omitted).

C. *Standard of review for an I.C.R. 29(c) Motion for Acquittal.*

As set forth by this Court:

> The proper description of the standard of review for a motion for judgment of acquittal under I.C.R. 29(c) is whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Applying this standard, each predicate act under (the criminal counts) that the jury could not decide must be analyzed to determine whether the district court properly denied (the defendant's) motion for judgment of acquittal. Where there is competent although conflicting evidence to sustain the verdict, this court cannot reweigh that evidence or

> disturb the verdict. In reviewing a motion for judgment of acquittal ... all reasonable inferences on appeal are taken in favor of the prosecution.

State v. Hoyle, 140 Idaho 679, 684, 99 P.3d 1069, 1074 (2004) (citations omitted).

D. *Standard of review for the trial court's setting of probation terms*.

Trial Courts have broad discretion to impose restrictive conditions in a probation sentence. *State v. Wardle*, 137 Idaho 808, 810, 53 P.3d 1227, 1229 (Ct. App. 2002). However,

> Whether the terms and conditions of a defendant's probation are reasonably related to the goals of probation and whether constitutional requirements have been satisfied are legal questions over which (the appellate court) exercises free review.

State v. Cheatham, 159 Idaho 856, 858, 367 P.3d 251, 253 (Ct. App. 2016)(citations omitted).

E. *Standard of review for sentencing*.

> An appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. . . Where an appellant contends that the sentencing court imposed an excessively harsh sentence we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.

State v. Burdett, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000) (citations omitted).

F. *Standard of review on withdrawn judgments*.

Whether to withhold judgment is in the sound discretion of the trial court. *State v. Edghill*, 134 Idaho 218, 219, 999 P.2d 255, 256 (Ct. App. 2000). A "[r]efusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate." *State v. Geier*, 109 Idaho 963, 965, 712 P.2d 664, 666 (Ct. App. 1985).

G. *Standard of review for Constitutional questions including 8th Amendment claims.*

In its appellate capacity, this Court exercises free review over constitutional questions and interpretation of a statute. *State v. Glenn*, 156 Idaho 22, 24, 319 P.3d 1191, 1193 (2014). "The requirements of the Idaho and U.S. Constitutions are questions of law, over which this Court has free review." *State v. Draper*, 151 Idaho 576, 598, 261 P.3d 853, 875 (2011).

The Idaho Supreme Court summarized the authority on reviewing Eighth Amendment protections against "cruel and unusual punishment" as follows:

> The Court first considers objective indicia of society's standards, as expressed in legislative enactments and state practice to determine whether there is a national consensus against the sentencing practice at issue. Next, guided by the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's test, history, meaning, and purpose, the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.

State v. Abdullah, 158 Idaho at 455, 348 P.3d at 60 (citations omitted).

II. The Magistrate Court Lacked Subject Matter Jurisdiction because the State Failed to Plead an Essential Statutory Element of the Alleged Crime.

Even under the liberal pleading standards, the State's charging document failed to sufficiently allege all of the necessary elements of a crime against Pearce and therefore lacked subject matter jurisdiction. Under I.C. § 19-101, "no person can be punished for a public offense except upon a legal conviction in a court having jurisdiction thereof." As held by the Idaho Appellate Court, the Constitutional basis and criteria necessary in a charging document to establish subject matter jurisdiction in a criminal complaint is as follows:

> Article I, section 8 of the Idaho Constitution provides that no person "shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor." The information or indictment is the jurisdictional instrument upon which a defendant stands trial. 41 AM. JUR.2d *Indictments and Information* § 19 (1995). A trial court lacks jurisdiction over a criminal defendant if no information or indictment is filed by the state. A trial court may

> also lack jurisdiction over a defendant if an otherwise filed indictment or information contains jurisdictional defects. *Hays v. State*, 113 Idaho 736, 739, 747 P.2d 758, 761 (Ct.App.1987). A jurisdictional defect exists: (1) when the alleged facts are not made criminal by statute; (2) there is a failure to state facts essential to establish the offense charged; (3) the alleged facts show on their face that the court has no jurisdiction of the charged offense; or (4) the allegations fail to show that the offense charged was committed within the territorial jurisdiction of the court. *Id*.

State v. Izzard, 136 Idaho 124, 127, 29 P.3d 960, 963 (Idaho App. 2001).

This Court further distinguished "due process" from "subject matter" jurisdiction by holding that failure to state facts with specificity to support the charge or failure to allege an essential element of the crime are not fatal to jurisdiction on challenges made after trial or for the first time on appeal *if the charging document cites to the applicable code section*. See *State v. Jones*, 140 Idaho at 760, 101 P.3d at 704 (emphasis added).

However this is an issue that has been recently refined and clarified. The Idaho Appellate Court in *State v. Olin*, 153 Idaho 891, 292 P.3d 282, (Idaho App. 2012) further clarified the requisite information that must be contained within the charging document to survive a jurisdiction challenge:

> There is a distinction between a failure to allege an element of the offense or a material fact— which may be later proven, admitted to, or inferred from the language in the document and the cited statute— establishing what is actually a crime, and alleging acts that do not constitute a crime according to the laws of the State. Our courts "have many times rejected jurisdictional challenges to charging documents because their factual allegations could fairly be construed to include elements that were claimed by defendants to have been omitted." *State v. Murray*, 143 Idaho 532, 536, 148 P.3d 1278, 1282 (Ct.App.2006); see also *State v. Cook*, 143 Idaho 323, 326, 144 P.3d 28, 32 (Ct.App.2006) (implying the element of " knowing" from the word " purchase" in the indictment to find jurisdiction); *State v. McNair*, 141 Idaho 263, 268, 108 P.3d 410, 415 (Ct.App.2005) (finding jurisdiction by implying the element of negligence from the terms "carelessly," "imprudently," and "inattentively"); *State v. Halbesleben*, 139 Idaho 165, 168, 75 P.3d 219, 222 (Ct.App.2003) (finding jurisdiction by inferring the defendant had "care and custody" of the child, an element of the crime, by reference to the defendant as the child's father). *Yet, a jurisdictional defect is present when the facts alleged do not constitute a prosecutable act under the laws of the State, and the distinction in more*

> *recent cases between due process and jurisdictional challenges has not altered this outcome*.

State v. Olin, 153 Idaho at 895, 292 P.3d at 286 (emphasis added).

In this case, the State failed to cite an applicable code section and/or failed to plead facts that would constitute a crime, either of which warrants an acquittal of the charges for lack of subject matter jurisdiction. In each of the counts of the criminal complaint, the State charges that Pearce committed a crime in accordance with I.C. § 25-3504, and I.C. § 25-3502(5)(e). (See However, the State failed to plead an essential component of the applicable statute. (R Vol. I, pp. 32-34.)

This Court's opinion in *State v. Armstrong*, 146 Idaho 372, 376, 195 P.3d 731, 735 (Idaho App. 2008) further reinforces this point. In that case, this Court stated that a challenge to subject matter jurisdiction may:

> be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no 'jurisdiction' (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. When a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction.

Id. (citation omitted)

While this language may be considered as dicta, there is nothing that prevents this Court from utilizing its sound reasoning as guidance in conjunction with applicable authority, i.e. *Olin*, *Jones*, and *State v. Izzard*, 136 Idaho 124, 127, 29 P.3d 960, 963 (Idaho App. 2001). It is therefore only sensible that a criminal complaint be required to allege that "certain procedural prerequisites" as "prescribed" by statute have been met in order for the Court to have jurisdiction.

In applying this authority and reasoning in this case, the Magistrate Court lacked subject matter jurisdiction because the State failed to comply with a mandatory prerequisite under statute before bringing animal cruelty charges against the defendant. I.C. § 25-3501A(3) contains a strict "enforcement restriction" as follows:

> In cases where production animals are subject to a violation of I.C. §§ 25-3504, 25-3505, or 25-3511 Idaho Code, law enforcement agencies and animal care and control agencies shall not:
>
> > (a) Enforce section 25-3504, 25-3505 or 25-3511, Idaho Code, without first obtaining an inspection and written determination from a department investigator that a violation of one (1) or more of the sections has occurred or is occurring; or
> >
> > (b) Take a production animal from a production animal facility, pasture, or rangeland for a violation of section 25-3504, 25-3505 or 25-3511, Idaho Code, without first obtaining an inspection and written determination from a department investigator that such action is in the best interest of the animal.

Id.

I.C. § 25-3502 defines "production animal" and "department investigator" as follows:

> (14) "Production animal" means, for purposes of this chapter:(a) The following animals if used for the purpose of producing food or fiber, or <u>*other commercial activity*</u>, in furtherance of the production of food or fiber, or *other commercial activity*, or to be sold for the use by another for such purpose: cattle, sheep, goats, swine, poultry, ratites, <u>*equines,*</u> domestic cervidae, camelidae, and guard and stock dogs;
>
> (7) "Department investigator" means a person employed by, or approved by, the Idaho state department of agriculture, division of animal industries, to determine whether there has been a violation of this chapter.

Id. (emphasis added.)

There is no dispute in this case that the horses or "equines" that are subjects in this case were being maintained for a commercial purpose by Pearce, and therefore consisted of a "production animal" subject to the enforcement restrictions of the statute. Thus, in order adequately charge Pearce with a crime, the complaint should have also alleged that Pearce

violated IC § 25-3501A(3). The State's complaint did not allege this essential provision, and therefore the trial court lacked subject matter jurisdiction.

Regardless, the facts or "information" alleged by the State in its complaint did not constitute a crime. Again, in order for Pearce to have committed animal cruelty, under I.C. § 25-3501A and § 25-3502, a "department investigator" must have given a "written determination" that Pearce had violated I.C. § 25-3504. Merely alleging that Pearce did "subject an animal to cruelty by negligently failing to provide sustenance, water or shelter to a horse" does not suffice. R Vol. I, pp. 32-34.) That alone would not rise to the level of a crime without a "written determination" stating as such by a department investigator.

Simply put, because the State failed to allege these essential pre-requisites and/or information, no actual crime had therefore been plead. The case and conviction should therefore be dismissed for lack of jurisdiction.

III. The Magistrate Court Erred in Denying Pearce's Motion for Acquittal because the State did not Present Sufficient Evidence Proving that Pearce was Criminally Negligent.

As was argued by Pearce in his Motion for Acquittal, to convict the defendant of a crime, the State must prove "criminal negligence" beyond reasonable doubt. *State v. Taylor*, 59 Idaho 724, 735, 87 P.2d 454, 459 (1939). Criminal negligence means "gross negligence or some measure of wantonness or flagrant or reckless disregard of the rights of others or wilful indifference." *Id*.

Time and again this Court has emphasized that "ordinary negligence" does not give rise to "criminal" negligence. For instance, as early as 1940 this Court held that:

> Criminal negligence within statute providing that in every crime there must exist a union, or joint operation, of act and intent or "criminal negligence," does not mean merely the failure to exercise ordinary care or that degree of care which an ordinarily prudent person

> would exercise under like circumstances but means gross negligence amounting to a reckless disregard of consequences and of the rights of others.

State v. Hintz, 61 Idaho 411, 412,102 P.2d 639, 640 (1940). See also *State v. Brinton,* 91 Idaho 856, 859, 433 P.2d 126, 129 (1967).

This Court in *State v. Papse,* 83 Idaho 358, 36263, 362 P.2d 1083, 1087-8 (1961) provided a detailed and worthwhile analysis distinguishing the difference between ordinarily "negligence" and the "reckless disregard" requirement to establish criminal negligence, that is particularly relevant in this case. As succinctly summarized in *Papse*:

as succinctly summarized by the Idaho Supreme Court in *State v. Papse,* 83 Idaho 358, 36263, 362 P.2d 1083, 1087-8 (1961):

> Negligence and recklessness contrasted. Reckless misconduct differs from negligence in several important particulars. It differs from that form of negligence which consists in mere inadvertence, incompetence, unskillfulness or a failure to take precautions to enable the actor adequately to cope with a possible or probable future emergency *in that reckless misconduct requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man*. It differs not only from the above-mentioned form of negligence, but also from that negligence which consists in intentionally doing an act with knowledge that it contains a risk of harm to others, *in that the actor to be reckless must recognize that his conduct involves a risk substantially greater in amount than that which is necessary to make his conduct negligent*. The difference between reckless misconduct and conduct involving only such a quantum of risk as is necessary to make it negligent is a difference in degree of the risk, but this difference of degree is so marked as to amount substantially to a difference in kind.

Id. (emphasis added).

With these clear delineations in mind, i.e. separating "negligence" from "reckless disregard" necessary to establish criminal negligence, the State did not provide any evidence in its case to suggest that Pearce was criminally negligent. In fact, the testimony and evidence provided by the State actually showed that Pearce did not demonstrate reckless disregard. The admissions from Pearce introduced by State witnesses suggest that Pearce believed he had taken reasonable measures to ensure that his horses were receiving water, i.e. that he turned the water

on in the spring and would check twice a week to see if the horses were fine. The State provided no evidence to suggest that Pearce "intentionally" prevented his horses from obtaining water, and in fact the opposite is true. Further, there was no evidence presented to suggest that Pearce made a "conscious choice" to cut off water from his horses.

In fact, the State's own witnesses (the deputies in particular) indicated there was strong reason to believe that *someone else* shut off the water to the horses. Yet the officers chose not to investigate these other possible causes. The State based its entire case on an argument that because Pearce did not check on his horses on the day they died (because he was at a funeral) that this somehow constituted "reckless disregard." At best, there may be an argument for ordinary negligence – although that in itself is a weak argument.

The State's witnesses regarding the condition and death of the horses on July 15 was also irrelevant as to Pearce's alleged "reckless" conduct. These witnesses had no direct knowledge of any of Pearce's conduct prior to July 15. Nor did they have any knowledge as to the circumstances or reasons why the water was no longer running in the trough. They could not even verify the last time they had seen water in the trough. Nevertheless, their testimony was meaningless as it applies to criminal negligence.

Indeed, the State did not call a single witness that had observed the actual actions of Pearce. It provided no evidence whatsoever to suggest that Pearce had engaged in a "conscious choice of a course of action either with serious danger to others…or with knowledge of facts which would disclose this danger to a reasonable man" as it pertained to Pearce's providing of water to his horses. *Papse*. The State also provided no evidence that Pearce's conduct involved "a risk substantially greater in amount than that which is necessary to make his conduct negligent," again as it pertained to the providing of water to his horses. *Id*. In short, there is no evidence to suggest that Pearce

"knowingly" engaged in conduct that constituted a "substantially great risk" toward the alleged "failure" to provided water to his horses. In fact, the only admissions that the State presented in its case suggests that Pearce *did not know* that his horses lacked water, and that he would have immediately taken corrective measures had he known. (Tr. pp. 128-131, p. 140 LL 21-25, pp. 141-43, p. 147 LL 21-25, p. 148 LL 1-5). The State offered no evidence in its case in chief to dispute these admissions.

Both the Magistrate Court and District Court missed the mark on this issue. Even drawing "all inferences" in favor of the prosecution, there was not "substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Hoyle*, 140 Idaho at 684, 99 P.3d at 1074). In fact, there was no evidence to support criminal negligence. The Magistrate Court erred by suggesting that it was a question of "credibility" of the witnesses. The credibility of a witness has no bearing on the case when the testimony itself does not support the element of the claim. The District Court did not address any of Pearce's recitation to the facts on appeal nor did it cite any of the trial record in denying Pearce's appeal on this point. (R Vol. pp. 247-48.) Pearce's conviction should be reversed.

IV. The Magistrate Court's Imposition of "Further Conditions" on the Amended Judgment Upon Remand Does Not Achieve the Narrow Purposes of Probation to Rehabilitate while not Punishing or Restricting Pearce's Activities.

The imposition of the draconian "further conditions" by the Magistrate Court on remand only serves to punish and overly restrict Pearce's activities, which therefore fails to meet the essential purposes of probation but rather is punitive. A trial court, in its discretion, may "place the defendant on probation under such terms and conditions as it deems necessary and appropriate." I.C. § 19-2601(2), (3). However, "although trial courts have broad discretion in the imposition of restrictive terms, the conditions of probation must be reasonably related to the

rehabilitative and public safety goals of probation." *State v. Cheatham*, 159 Idaho 856, 858, 367P.3d 251, 253 (Ct. App. 2016). Naturally, if the purpose of a probation condition is to rehabilitate and to promote public safety goals, a probation condition is invalid if its purpose is to punish the defendant. See *Higdon v. United States*, 627 F.2d 893, 898 (9th Cir. 1980). Moreover, because the purpose of probation is to rehabilitate and promote public safety, the condition "must be narrowly drawn to achieve rehabilitation and protection of the public without unnecessarily restricting the probationer's otherwise lawful activities. If the impact of the conditions is needlessly harsh, the conditions are impermissible. I*d*. at 898.

In this case, the "further conditions" are needlessly harsh and in effect restricts Pearce's "lawful activities." Without question, the practical effect of the "further terms" of the probation is to discourage and outright prevent Pearce from engaging both in the care and ownership of horses (which is what has actually occurred in this case.) To comply with its extensive terms, Pearce would have to disclose the confidential information of his clients, including everything from the terms of their agreements, their real and personal property. Complying with the terms of the probation in itself violates the very agreements that Pearce has with his customers and further exposes their information to public authorities. As such, Pearce had no choice but to terminate his agreements with customers and business associates. Moreover, given the impossibility of compliance with the additional terms and their ambiguity, Pearce was forced to absolve himself of any ownership and work involving horses. Otherwise, at any time and for any reason, Pearce could have his probation revoked and would face substantial incarceration and fines. To subject himself to the whims of a probation officer, deputy and prosecutor – who have no jurisdiction nor expertise in commercial horse management is not an option that Pearce or any reasonable

person could take. This is particularly true given the aggressive and discriminatory approach that these authorities have taken toward Pearce.

Moreover, requiring Pearce to disclose each and every detail of his business dealings as well as his property interests and that of his customers does not reasonably fit the "protection of the public" purposes of probation. It is impossible to conceive how the "public" is protected by Pearce having to divulge each and every detail of his private dealings as well as information with regard to his own personal property. After all, the horses that Pearce owned and the horses that his customers own (as well as their real property) belong to them and not the public. Yet, the Court's "further conditions" intrude upon these private interests and wrongfully concludes that these wholly private interests belong to the public. It is worth noting here that the State provided no witnesses either at trial or in the sentencing phase by "victims" of Pearce's alleged crimes. Indeed, there were no actual victims that suffered harm as a result of Pearce's actions. As such, the protection of the "public" is not served in anyway by the extreme conditions imposed by the Magistrate Court. It therefore exceeded the purposes of probation.

V. The Magistrate Court Lacked Jurisdiction and Grounds Sanctioned under Law to Impose the Further Conditions.

Notwithstanding being repeatedly advised of the statutory provisions which place regulatory oversight of commercial horse management strictly in the State Department of Agriculture's veterinarian, the Magistrate Court nevertheless exceeded its authority by empowering an unqualified and authorized probation officer to serve in such role. A court must have both personal and subject matter jurisdiction in a criminal proceeding, which jurisdiction can be challenged at any time and which makes a conviction or judgment voidable if it is found that the court lacks jurisdiction. *State v. Armstrong*, 146 Idaho 372, 376, 195 P.3d 731, 735

(Idaho App. 2008). Additionally, "the decision regarding probation must be based on reason rather than emotion. It cannot be arbitrary or based upon whim, caprice, or upon a ground not sanctioned by law." *State v. Ogata*, 95 Idaho 309, 508 P.2d 141, 145 (1973)

The "further conditions" impede upon the regulatory authorities in the State of Idaho who are charged with oversight and management of commercial equine care and control, which is the Idaho Department of Agriculture and State Veterinarian. (See authority cited *infra* Section II.) With regard to the jurisdictional issue, the District Court incorrectly relied on the opinion on the previous appeal which addressed a different issue – i.e. whether the State had sufficiently alleged a crime. (R Vol. I, p. 469.) Pearce's argument on appeal of the Amended Judgments addressed an entirely different issue with regard to jurisdiction -- whether the Magistrate Court had jurisdiction to issue the conditions of probation which usurped the jurisdiction of the Department of Agriculture to regulate commercial animals as well as impose conditions on third parties. (Id.) In addressing the actual question posed by Pearce, this Court should find that the terms of probation well exceeded the Magistrate Court's jurisdiction.

Additionally, as particularly apparent in the comments made by the Magistrate Court during its resentencing, its imposition of the "further terms" was entirely based upon whimsical and unarticulated reasons combined with an emotions over the circumstances of the case and thus were "arbitrary or based upon whim, caprice, or upon a ground not sanctioned by law." *Ogata*, 95 Idaho at 413, 508 P.2d at 145. The Magistrate Court repeatedly refers to "evidence" and "numerous complaints" that it was "aware of," but which were never actually brought into evidence during the sentencing phase, to which Pearce never had an opportunity to dispute, and which were completely in-articulated. It merely existed in the mind of the Court, based entirely

upon hearsay from the prosecutor (who based it upon hearsay) and appeared nowhere in the record.

Well into the appeal of the Amended Judgments the State finally produced the "numerous complaints" referenced by the Magistrate Court. (See again R Vol. I, pp. 351-431.) In actuality, the documents consisting of "incident reports" over the eight year period of 2010 through 2018 only contradict the Magistrate Court's position in that all of the alleged reports of alleged negligence against Pearce were investigated and deemed to be untrue. (See again 33 reports cited *infra* in "Procedural History/Statement of Facts.") The incident reports also completely diffuse the notion advanced by the Magistrate Court and the District Court that the offences on which Pearce was convicted were not "isolated" events. (R Vol. I, p. 471.) Indeed, this was one "isolated" event that occurred in the many decades during which Pearce owned and cared for thousands of horses.

Another indication of the Magistrate Court's arbitrary decision is the fact that many of the alleged complaints were not related to or did not identify Pearce as the potential culpable party. It should be further noted that these incident reports themselves consisted of double hearsay, mostly involving "anonymous" sources and are therefore not reliable whatsoever. Again, the State did not produce one single witness at the sentencing hearing that testified with regard to Pearce's care and treatment of horses. In essence, the Magistrate Court relied upon debunked and/or false claims against Pearce over an eight year period to impose an extremely harsh sentence and probation term on Pearce for a first time offence.

In addition, the Court refers to the "horrible" circumstances of the case, including the "horrible pictures." In so doing the Magistrate Court is evincing an emotional reason to support the sentencing and terms of probation, upon which basis is an abuse of discretion. That the

horses died was indeed a tragedy. But the pictures of the horses should have had no bearing on the purposes of "rehabilitating" Pearce. Rather, the focus should have been on the goals of probation to "rehabilitate and promote public safety." *Cheatham*, 159 Idaho at 858, 367 P.3d at 253.

In its decision on appeal, the District Court did not address any of the foregoing points made by Pearce, but rather cursorily concluded that the conditions were "rationally related" to "Pearce's rehabilitation." (R Vol. I, pp 468-69.) The "further conditions" were not "rational" in that they were unduly ambiguous, overly harsh and effectively ended Pearce's livelihood. As such, this Court should correct this shortfall and in so doing grant Pearce's appeal in finding that the Magistrate Court lacked grounds and rational basis to impose the "further conditions" on Pearce.

VI. The Magistrate Court Abused its Discretion by Reversing its Withdrawn Judgment.

Upon remand, without obtaining additional facts from the initial sentencing hearing, and in fact contradicting its own findings from the initial hearing, the Magistrate Court reversed its ruling for a withdrawn judgment. In so doing, the Magistrate Court abused its discretion. In ascertaining whether to grant a withdrawn judgment under I.C. § 19-2601 and I.M.C.R. § 10, the court must consider and articulate its basis in factors set forth therein. *State v. Glidden*, 115 Idaho 560, 562, 768 P.2d 823, 825 (Ct. App. 1989). (See also *State v. Cornwall*, 95 Idaho 680, 683 (1974)("In ruling upon application for probation, trial court must consider all facts and circumstances surrounding offense, whether applicant is first offender, applicant's previous actions and character, whether rehabilitation may reasonably be expected, whether it reasonably appears that applicant will abide by terms of probation, and interests of society in being protected

from possible future criminal conduct of applicant.") Additionally, the decision must be based upon "reason" and not "emotion." *Id*. at 684. The decision also cannot be arbitrary, capricious or groundless. *Ortega*.

In this case, just in comparing the reasoning by the Magistrate Court in the first and second sentencing hearings, its basis for reversing its withdrawn judgment is clearly arbitrary and capricious. In the first sentencing hearing, the Magistrate Court addressed the factors in I.M.C.R § 10, and particularly given that this was Pearce's first offense, found that a withdrawn judgment was appropriate. Moreover, in the first sentencing hearing, the Court referenced the in-articulated and unsubstantiated prior claims against Pearce and commented "I will not hold that against you." The Court also referenced the two negative letters submitted in contrast to the 67 letters and testimony provided at the sentencing hearing in considering whether to grant a withdrawn judgment. Finally, the Court heard and considered Pearce's testimony where he asserted his innocence despite the guilty plea and believed that he had been treated unjustly and not adequately represented. The Court nevertheless granted the withdrawn judgment.

In the second resentencing, the Magistrate Court had no additional testimony to consider. It also was aware that for a year that Pearce had abided by the terms of probation and that no additional complaints or charges had been brought with regard to the treatment of his horses. Yet, the court arbitrarily and unreasonable contradicted its own prior ruling by heavily focusing on the un-substantiated "complaints," and "evidence" (never presented) among other "side-bar" and unrecorded hearsay statements to reverse its withdrawn judgment. The Court also emphasized Pearce's insistence that he was innocent of the crime, even though that is not one of the criteria to consider under the rule.

It was also inappropriate and unfair to elicit testimony from Pearce, without first checking with Pearce's counsel – particularly given the fact that his counsel was not in the courtroom with Pearce and had limited capacity to communicate and advise him.

Finally, converse to the approach taken in the first hearing, the Magistrate Court based its decision on its emotions, i.e. the "horrible circumstances" of the case, including "the pictures." Simply put, the Magistrate Court was clearly upset with Pearce, and rather than base his decision on the actual circumstances, the impact that a sentence would have on Pearce and the fact that this was his first offence over a fairly weak claim of "criminal negligence" for failure to provide water, the Magistrate Court instead relied entirely upon double hearsay and non-testimony not known to Pearce to make its decision. This was a whimsical, arbitrary and unreasonable decision made by the Court. The reversal of the withdrawn judgment was therefore an abuse of its discretion.

In its decision on appeal, the District Court disregarded the flagrant inconsistencies of the Magistrate Court apparent from the initial sentence wherein the court granted the withdrawn judgment and the amended sentence on remand wherein it arbitrarily reversed its decision. (R Vol. I, pp. 469-70.) As such, this issue was not truly addressed. This Court should correct that oversight and grant Pearce's appeal on this point.

VII. The Magistrate Court's Sentence is Oppressive, Excessive and Intrudes upon the Rights of Others, Making it Unconstitutional.

Finally, the overall sentence, with its consecutive (not concurrent) imposition of potential jail time and fines, combined with the "further conditions" of probation are oppressive, disproportionate to the crime committed and also invade the rights of other parties than the defendant and therefore violates rights protected under the Constitution.

As stated by this Court: "The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. That right, we have explained, flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." *State v. Shanaha*, 165 Idaho 343, 350, 445 P.3d 152, 159 (2019).

In ascertaining whether a sentence constitutes cruel and unusual punishment, the trial court is required to engage in a "gross disproportionality test:"

> Determining if a sentence constitutes cruel and unusual punishment requires a threshold comparison of the crime committed and the sentence imposed to determine whether the sentence leads to an inference of gross disproportionality. This gross disproportionality test is equivalent to the standard under the Idaho Constitution which focuses upon whether the punishment is out of proportion to the gravity of the offense committed and such as to shock the conscience of reasonable people.

Knutsen v. State, 144 Idaho 433, 440, 163 P.3d 222, 229 (Idaho App. 2007). See also, *State v. Adamcik*, 152 Idaho 445, 485, 272 P.3d 417, 457 (2012).

The Magistrate Court's sentence was grossly disproportionate. The punishment rendered to Pearce for his first conviction of failing to ensure that four of his horses were provided adequate includes two years of jail time and $20,000 in fines. These penalties are only reduced if for six years Pearce complies with the draconian requirements of the "further conditions" which effectively prevent him from owning or caring for horses.

Simply put, Pearce's punishment is not proportional to either the "offense" or the "offender." See again *Shanaha*, 165 Idaho at 350, 445 P.3d at 159. As indicated by the witnesses at the sentencing hearing, as well as Pearce himself, Pearce has his entire life cared for and raised many thousands of horses. (See Feb. 14, 2020, Tr pp. 33-60.) His knowledge of horses including their quality and pedigree is likely without equal. (See test. of David Dire Feb 14 Tr p. 35 LL 11-

21, Virginia Bond p. 39 LL 2-19.) Time and again throughout the sentencing hearing, witnesses whom Pearce had dealt with, in many cases for decades, described Pearce's extraordinary care and knowledge of horses.

In particular, witnesses vouched for Pearce's ability to take a horse that has been neglected or which has no value, nurse and care for the horse into excellent health, and in some cases turning them into prize horses. Typical testimony as such included this from Aurora Gardner:

> I bought my first horse from Shannon four years ago, and she is a dream. She by the tenth ride I put on that mare, I was up on a hill gathering cows off the mountain, because Shannon knows how to produce a mind on a horse. Shannon knows how to say – he can create a horse for somebody who knows nothing about horses, and they can train that horse. Because that's what Shannon does: He produces horses for anybody and everybody.

(Feb. 14, 2020, Tr p. 45 LL 9-16.)

The witnesses also noted the special care that Pearce has shown for horses and having never heard of or witnessed any abuse or neglect. For instance, Lance Hoch testified that:

> I don't think literally on the planet there's anybody, even his brother I don't think has been over that period of time so closely oriented to him to see if there was any sort of issue with abuse or neglect…He literally goes the extra mile to do the exact opposite of abuse.

(Id., Tr p. 59 LL 3-7, 15-16.)

Pearce described his lifetime of experience and love for horses. (See Id., pp. 46-56.) In regard to horses that perished he testified:

> These weren't horses that were ignored by me. These were horses I highly prized, that I was absolutely in love with, and that nobody in this world was more devastated by what happened to these horses than I was.

(Id., Tr. P. 53 LL 6-9.)

Finally, throughout Pearce's entire history of working with, training, caring and owning horses had he ever been previously charged with abuse or neglect. Conversely, the State provided no evidence or testimony from any "victims" or any member of the public for that matter that had alleged any harm resulting from Pearce's conduct.

No witnesses were provided by the State to refute Pearce's treatment and care of horses, as well as his upstanding character, achieved over a lifetime. For a man of such character and history with horses, who was more devastated than anybody about the death of his horses, the punishment rendered to Pearce simply did not fit the crime. The punishment decreed by the Magistrate Court is excessive and shocks the conscience of any reasonable person. Particularly egregious is the fact that the so deemed "condition of probation" effectively prevents Pearce from owning or caring for horses for six years, thus depriving him of property and a living. The Court's sentence has robbed Pearce of his life's passion and dispossesses him of property without just compensation. Such a drastic measure is excessive and an unconstitutional intrusion on a person's basic fundamental rights to property, and as in this case, an impediment on a citizen's liberties and freedoms to pursue a livelihood.

Additionally, the Magistrate Court's sentence reaches well beyond punishment and conditions imposed upon Pearce and also invades, rights of third parties, including all of the individuals and entities that Pearce does business with and members of his family. Under the "further conditions" of probation, such individuals would have much of their personal and private information, including their contracts and information with regard to their horses turned over to a probation officer and Payette County. They are also subject to harassment and abuse from law enforcement simply due to their connection with Pearce. Finally, they have been effectively deprived of Pearce's services. This an egregious violation of privacy and an extreme

intrusion into such individuals' personal and financial affairs. The Magistrate Court acted grossly outside of its jurisdiction by imposing such conditions.

Rather than address all of the foregoing points which were made by Pearce on appeal, the district court summarily concluded that Pearce "greatly overstate(d) the penalties that were imposed." (R Vol. I, pp. 471-72.) There was no "overstatement" of the penalties by Pearce. This is particularly true with regard to the "further conditions" which ended Pearce's ability to make a living for no less than six years required Pearce to give up ownership of all of his horses – all for a first time offence of a misdemeanor criminal negligence. This Court should consider the actual penalties imposed upon Pearce, in which it should find are grossly disproportionate and therefore unconstitutional.

CONCLUSION

Pursuant to the foregoing, this Court should grant Pearce's appeal and vacate the conviction for either lack of jurisdiction or lack of sufficient evidence presented by the State to support criminal negligence. If the Court does not vacate the conviction, it should find invalidate Pearce's sentence including the probationary terms as being arbitrary, groundless and/or unconstitutional.

DATED this 23rd day December, 2022.

OLSEN TAGGART PLLC

/s/ Nathan M. Olsen
Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2022, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Persons Served:	Method of Service
Ross D. Pittman Payette County Prosecuting Attorney prosecutingattorney@payettecounty.org	[✓] iCourt eFile/eServe

/s/ Nathan M. Olsen
Nathan M. Olsen