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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1884**

Sharon Marie O'Boyle, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 3, 2017
Affirmed
Toussaint, Judge***

Washington County District Court
File No. 82-CR-14-1300

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and
Toussaint, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

TOUSSAINT, Judge

Appellant Sharon O'Boyle challenges the denial of her petition for postconviction relief, which sought review of her conviction for harm caused by dog, in violation of Minn. Stat. § 609.226, subd. 1 (2012), arguing that the district court plainly erred by admitting excessive, cumulative, and highly prejudicial *Spreigl* evidence of prior dog bites involving O'Boyle and her dogs. O'Boyle also argues that the postconviction court erred by applying the balancing test in Minn. R. Evid. 403, rather than the more stringent test under rule 404(b). Because the postconviction court did not abuse its discretion in denying O'Boyle's petition for postconviction relief, we affirm.

DECISION

This court reviews the denial of a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). A postconviction court abuses its discretion if it bases "its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (quotation omitted). A postconviction court's factual findings are clearly erroneous if they are unsupported by the record. *Riley*, 819 N.W.2d at 167. This court reviews a postconviction court's legal conclusions de novo. *Id.*

"A person who causes great or substantial bodily harm to another by negligently . . . failing to keep [a dog] properly confined is guilty of a misdemeanor." Minn. Stat. § 609.226, subd. 1. "Substantial bodily harm means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss

or impairment of the function of any bodily member or organ.” Minn. Stat. § 609.02, subd. 7a (2012). Negligence means “the doing of something which an ordinarily prudent person would not do or the failure to do something which an ordinarily prudent person would do under like or similar circumstances.” *State v. Munnell*, 344 N.W.2d 883, 886 (Minn. App. 1984) (quotation omitted); *see also* 10 *Minnesota Practice*, CRIMJIG 13.98 (2016) (defining “negligence” for crime of negligent storage of firearms). Negligence requires a showing of foreseeable harm. *State v. Tice*, 686 N.W.2d 351, 355 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004); *see also Hellman v. Julius Kolesar, Inc.*, 399 N.W.2d 654, 655–56 (Minn. App. 1987) (foreseeable harm in civil case).

The state charged O’Boyle with harm caused by dog after her dog bit a daycare child in the face on February 28, 2014. The district court, after considering the *Spreigl* factors under Minn. R. Evid. 404(b), allowed the state to introduce evidence that O’Boyle’s dog had previously bitten two other people in 2013.¹ The first incident occurred in January 2013, when the dog bit a process server who was serving papers on O’Boyle. The second incident occurred in September 2013, when O’Boyle’s dog bit a different daycare child in the face. The evidence was offered in the form of testimony and photographs of the injuries. The state also questioned the Washington County child care licenser if she was aware of any prior incidences involving O’Boyle’s dog, to which she responded that she knew about the September 2013 dog bite. O’Boyle did not object to the evidence offered.

¹ We note that both the district court and the state expressed doubt as to whether the evidence of the prior dog bites should properly be considered *Spreigl* evidence. It appears that both the district court and the state erred on the side of caution, and in favor of O’Boyle, in applying the *Spreigl* analysis.

O'Boyle contends that the postconviction court erred when it concluded that the district court did not plainly err in admitting the evidence of the prior dog bites. O'Boyle argues that the evidence offered at trial was excessive, cumulative, and prejudicial *Spreigl* evidence, and the district court should have limited the amount or presentation of the evidence to lessen its prejudicial impact. The state contends that the evidence was not *Spreigl* evidence because it pertained to the acts of a dog, not a person.

We conclude that the evidence was not *Spreigl* evidence because negligence is an element of the crime, which cannot be proven without foreseeable harm. *Tice*, 686 N.W.2d at 355; *Hellman*, 399 N.W.2d at 655–56. Thus, evidence indicating that O'Boyle knew or should have known that her dog was dangerous was directly relevant to proving the negligence element of harm caused by dog. *See Rowe v. Ehrmanntraut*, 92 Minn. 17, 18–19, 99 N.W. 211, 211–12 (1904) (holding evidence that dog owner knew of prior dog attacks was sufficient to put owner on notice of dog's propensity to injure another).

In order for O'Boyle to be convicted of harm caused by dog, the state had to prove that she “negligently fail[ed] to keep [her dog] properly confined.” Minn. Stat. § 609.226, subd. 1. Because negligence requires a showing of foreseeable harm, evidence that O'Boyle's dog had previously injured two other people was relevant to show O'Boyle was on notice of her dog's dangerous propensities. *Rowe*, 92 Minn. at 18–19, 99 N.W. at 211–12. Thus, the evidence was highly probative of establishing that it was foreseeable that, if O'Boyle failed to properly confine the dog, it would cause harm to another person.

O'Boyle also submitted a pro se supplemental brief, in which she argues: (1) the county suppressed evidence favorable to her; (2) ineffective assistance of trial counsel;

(3) new evidence exists to prove her innocence; (4) her sentence was unconstitutional; (5) a finding of negligence was inappropriate because her dog is a registered therapy dog; and (6) she received unequal treatment from the licensing board. The state asks this court to strike O'Boyle's pro se supplemental brief. This court granted the motion, in part, leaving the panel to determine which issues, if any, "it deems proper" to be considered on appeal. After carefully reviewing all of O'Boyle's claims, we conclude that her arguments are unsupported by fact and law. Thus, O'Boyle is not entitled to relief on these claims. See *State v. Davis*, 820 N.W.2d 525, 539 (Minn. 2012) (summarily rejecting unsupported pro se supplemental claims).

Because the postconviction court did not abuse its discretion in determining the district court did not plainly err in admitting the evidence of two prior dog bites, the evidence was relevant to prove negligence, and O'Boyle's pro se claims are meritless, we affirm.

Affirmed.