

SUMMARY OF TRIAL AND ACQUITTAL OF ROBERT VOSE ARISING OUT THE
SHOOTING OF A DOG IN THE RYE TOWN FOREST, DECEMBER 16, 2017
Rockingham County Superior Court, September 24-27, 2018

Background and brief summary

On December 16, 2017 the defendant, Robert Vose shot and killed the 100 pound Alaskan Malamute dog, Jah, who had his eight pound Pomeranian, Lata, in its mouth. The mother of Jah's owner, Melinda Birse, testified that she was on top of the dog when he was shot in the head, the bullet passing about a foot away from her. Mr. Vose, his wife Karen Vose, and an independent witness, Kelly Halldorson, all said that Ms. Birse was 10-20 feet away at the time of the shooting, and behind Mr. Vose. Mr. Vose testified that he shot downward so that the dog was "backstopped" by the ground.

There was no physical evidence supporting Ms. Birse's testimony. Her clothing was collected by the Rye Police and sent to the State Crime Lab for the purpose of testing for gunpowder residue but the test was never performed. The dog was likewise never tested. The defense argued that this test would have shown an absence of gunpowder residue on Ms. Birse's clothing and the presence of gunpowder residue on the portion of the dog over which Ms. Birse was alleged to be. The State Crime Lab employee, Marc Dupre argued that the test was not done as it would not have been "probative."

The defense presented testimony from George Harris, a firearms expert, who testified that the location of the two shell casings found near the dog and the entrance and exit wounds on the dog indicated that the dog was standing, not on the ground with Ms. Birse on top, and that the physical evidence was consistent with the version of events related by the Voses and Kelly Halldorson.

Following the four day trial, the 12 person jury returned a verdict of acquittal after 20 minutes of deliberations.

Links to sections of this document

1. [Testimony of eyewitness Melinda Birse, mother of Jah's owner, that she was on top of Jah when he was shot.](#)
2. [Testimony of Rye Police officer John Trainor and Rye Police Lieutenant Scott Blaisdell.](#)
3. [Testimony of veterinarian David Needle, who performed the necropsy on Jah.](#)
4. [Testimony of Marc Dupre of the State Crime Lab explaining why they did not perform the requested tests on the dog and Ms. Birse's clothing.](#)
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6. [Testimony of four Delta airlines pilots that it would be totally out of character for Robert Vose to ignore a substantial risk of bodily harm.](#)
7. [Testimony of independent eyewitness Karen Vose that Melinda Birse was well away from Jah when he was shot.](#)
8. [Testimony of defendant Robert Vose that Melinda Birse was way behind him when he shot Jah.](#)

9. [Testimony of firearms expert George Harris that the physical evidence matches the testimony of the Voses and Kelly Halldorson, and not that of Melinda Birse.](#)
10. [Closing arguments.](#)
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Highlights of news articles leading up to the trial

Police Chief Walsh says that “the decision to shoot the dog was ‘poor judgement and could lead to someone being hurt or killed.’” See:

<http://www.wmur.com/article/man-charged-with-reckless-conduct-after-shooting-dog-in-rye/14448148> (December 16, 2017).

Police Chief Walsh said that “I do realize that the situation was severe, because the dog had another dog in its mouth, but there are other ways to deal with it.” Witness Kelly Halldorson, who had no relationship to either party, said that she “never saw (Melinda Birse) on top of the dog.”

<http://www.seacoastonline.com/news/20171218/killed-dogs-owner-traumatized-and-sad> (December 18, 2017).

After the County Attorney’s office asked “for the case to be continued so an investigation could be completed and a plea offer made to Vose,” Judge Delker denied the motion, reporting that “the defendant wants to go to trial.”

<http://www.seacoastonline.com/news/20180405/rye-dog-shooting-suspect-headed-to-trial> (April 5, 2018).

Trial, Monday, September 24, 2018

This day was apparently devoted to jury selection.

Trial, Tuesday, September 25, 2018

The writer was not present. Details contained in the article at: <http://www.seacoastonline.com/news/20180925/trial-begins-in-fatal-shooting-of-dog> are summarized below.

During her opening statement, Rockingham County prosecutor Megan Mackenzie told the jury, which included seven men and seven women (two were alternates who did not end up deliberating) that the case would be decided by whether they believed the dog owner’s mother, Melinda Birse, or others.

During his opening statement, defense attorney Jerome Blanchard said that the dog was not under control and that is why they are here. He argued that the “Rye police arrested Vose ‘before they had all the facts of the case.’” He called it a “rush to judgment.”

Testimony of Melinda Birse (mother of Jah’s owner)

Melinda Birse then testified that Jah and her other dog Clancy came to the forest that day. After Jah sniffed Lata, the dog started yipping and Jah grabbed it in its mouth. She then launched herself onto Jah's back, causing them both to fall to the ground. Ms. Birse said that Bose "approached and she heard 'a muffled pop, like he shot in a pillow, right next to my head.'" She said that she did not know they were gunshots until she saw blood next to her son's twitching dog. Ms. Birse acknowledged having consulted an attorney about filing a civil suit against Vose and acknowledged that the Rye police had cited her for not having Jah under control.

Police testimony

Rye police officer John Trainor testified that he had Mr. Vose get in the back of a cruiser after the shooting because Ms. Birse's family had arrived and "they were really upset and to be honest, would've put their hands on him."

Rye Lt. Scott Blaisdell said that he documented the shooting scene and noted that one of the two spent shell cases had been moved by Ms. Birse's daughter-in-law. He said he arrested Mr. Vose for reckless conduct and Mr. Vose said that he would not be making a statement without an attorney present. However, while he was seizing the guns from Mr. Vose's home, Mr. Vose said that he had three to five feet of clearance before shooting. He also testified that, at Defense Attorney Blanchard's request, he collected the clothing that Ms. Birse was wearing at the time and sent it to the State Crime Lab, but it was never tested for gunpowder residue. He testified that he never went back to the scene with a metal detector to recover a missing bullet.

Veterinarian David Needle (veterinarian on necropsy of Jah)

Veterinarian David Needle testified that he performed a necropsy on Jah, who had a single gunshot wound through which two bullets passed. One remained in the animal, the other exited from the neck. Once the bullet hit the brain stem, Jah would have collapsed, he said.

Trial, Wednesday, September 26, 2018

Marc Dupre, State Crime Lab (tests not performed)

The prosecution called Marc Dupre of the State Crime Lab, who testified that he had training in firearms, including residue. He said that he had done such tests approximately 50 times. He said that he had not tested Ms. Birse's jacket for gunpowder residue as the examination would not have been probative. Since there was no bullet entry hole in the clothing there was no reference. He explained how the gunpowder residue expands outward from the muzzle of the gun, in a fashion similar to that of a flashlight beam. The farther away the flashlight (or gun) is, the wider the cone is. Without knowing where the center of the beam is (i.e. the bullet entry point) it is not possible to determine the distance from which the shot was taken.

On cross examination by Defense Attorney Blanchard, Mr. Dupre admitted that no analysis of the gun had been done. He said that the range of gunpowder residue deposits is out to 4-5 feet. He said that he had not been asked to test for gunshot residue on the dog. After Mr. Blanchard said that there was a bullet hole in the dog, Mr. Dupre acknowledged that the test could have been done. He also acknowledged that, had there been a person on top of the dog, that would have blocked any residue.

Mr. Dupre acknowledged that bullets move in a generally straight path, although they are affected by gravity. In an area the size of the courtroom, the path would be almost exactly straight, he said.

Mr. Dupre acknowledged that, if there were entrance and exit wounds, the trajectory could be determined. He said, however, that the trajectory of the bullet could be determined with respect to the dog, but the position of the dog could not be determined.

After Mr. Blanchard asked whether the trajectory could be determined if the second bullet was under the dog, Mr. Dupre acknowledged that the trajectory could then be determined. Mr. Blanchard then asked whether the position of the dog at the time of the shooting could then be determined. Mr. Dupre acknowledged that it could have been, but said that he was asked to do that.

The prosecution then rested its case and the jury was led out of the courtroom.

The defense then moved for a directed verdict of acquittal. *Editor's note: Such verdicts are granted by the judge when there is insufficient evidence to sustain a conviction.* Mr. Blanchard argued that Mr. Vose had to be between Ms. Birse and the direction of the shot. Judge Delker denied the motion, noting that, if Ms. Birse's testimony was believed, her head was within 12 inches. The dog or Ms. Birse could have moved. There is a question of fact for the jury, construing the evidence in a light most favorable to the prosecution, he said.

Kelly Halldorson (independent eyewitness)

The defense then called Kelly Halldorson, 99 Brackett Rd., Rye, to the stand. She testified that she had arrived at the Rye Recreation Area shortly before 9:00 a.m. on December 16 to meet a friend to walk their dogs at the Recreation area. She explained that there are two lots there, and the second, smaller one, is not always accessible. She parked in the larger main lot, which is open year round. The other lot was snow covered and closed, she said. *Editor's note: According to aerial photographs available via the Rye GIS system, it is approximately 160 ft. from the entrance to the smaller parking lot from the larger one to the trail entrance.*

Ms. Halldorson that she had just pulled up when she heard yelling. There were two big dogs barking at each other. She saw three people, Mr. Vose and his wife, and Ms. Birse. They were positioned at the trail opening. She said that the dogs and people were not touching so she thought everything was OK. She then looked down briefly at her phone and then heard a pop and looked up. She saw Ms. Birse over by the trail, and Mr. Vose and his wife closer to the dog but some distance away. *Editor's note: Photographs introduced later during the trial showed the deceased dog located adjacent to a curb stop to the left of the trail entrance, looking from the larger parking lot.*

Ms. Halldorson said that she then saw Lata, run over, covered in blood, and crawl under the car next to hers.

Ms. Birse was obviously upset, and was yelling, flailing her arms and inconsolable. The other big dog was loose and she was not at all aware of it, she said.

When Mr. Vose came over to Ms. Birse, he was calm. Ms. Birse seemed very disconnected however, she said.

Ms. Halldorson said that she did not see any leaves or snow on Ms. Birse's clothing.

Ms. Halldorson said that the police asked her to write up something, but there was not enough room on the form so she said that she would provide that later. She wrote up the incident and posted it as a blog. See: <http://kellyhalldorson.com/blog/one-shitty-morning-nonwalk-a-gunshot-and-a-dead-dog/>. She simultaneously provided this same description of events to the police, she said.

Ms. Halldorson said that she took exception to Ms. Birse having said that she was on the dog. The pop had occurred and then she had jumped out of her car. What Ms. Birse said does not compute, she said.

On cross examination, Prosecutor Megan Mackenzie asked Ms. Halldorson whether she had been so far away that she could not see the two small dogs. Ms. Halldorson disagreed. There was an interchange between the prosecutor and Ms. Halldorson as to whether the distance had been 100 feet or 100 yards. The prosecutor said that it was 75 yards. At some point, at the request of Defense Attorney Blanchard, Judge Delker cautioned Ms. Mackenzie against interrupting Ms. Halldorson not letting her finish her answers.

When shown a photograph of the scene by Ms. Mackenzie, Ms. Halldorson said that the people were bigger than the person in that photograph is depicted, even though it was taken from the location of her car. It depends on the lens used, she said. There were no trees in between her and the scene, although there was a little brush, she said.

Ms. Halldorson said that Mr. Vose had a calming presence.

Ms. Mackenzie asked about Ms. Birse having said that she had been hugging Jah. Ms. Halldorson said that she had thought "huh?" It had nothing to do with whether or not she believed Ms. Birse. It did not fit what she saw, she said.

Ms. Mackenzie interjected "from 100 yards away." She then showed Ms. Halldorson a photograph of the dead dog and asked how many leaves she saw.

Ms. Halldorson responded three, and added that there were no leaves or snow on Ms. Birse.

Four character witnesses (Delta pilots knowing the defendant)

The defense then called Mike Jones to the stand. He explained how he been a pilot for 30 years with Delta, was previously a Navy pilot and had been an instructor at Top Gun. He explained that the movie was inaccurate as "cowboys" are the last thing that they want. There is no time for shenanigans, such as "fly bys," he said. *Editor's note: In a well known scene in the movie Top Gun, a fighter pilot requests a "fly by" of the tower. The response is "negative Ghost Rider, the pattern is full" Nevertheless, the pilot decides to "buzz" the tower just as an officer with numerous stripes is taking a sip of coffee, which he then spills on his shirt.*

Mr. Jones explained that he had met Mr. Vose in the late 1990s and had flown with him 5-6 times. He explained how both he and Mr. Vose were line check pilots. These pilots fly with other pilots to check their competency. Out of 1000 767 captains and first officers at Delta, there are 25-30 line check pilots and 2-4 lead line check pilots, of which he is one. He also recommended that Mr. Vose become a lead line check pilot. His opinion of Mr. Vose is that he is one of the top four out of 1000. He is deliberate, always prepared, cautious, disciplined and fair. When there are 200-300 persons in the back of the plane, they are counting on pilots not to be cowboys, he said. It is inconceivable for him to ignore a significant risk of bodily injury, he said.

Following the lunch break, Christopher Robert Rieder was called to the stand by the defense. He testified that he is a retired airline pilot for Delta and has known Mr. Vose for more than 30 years. They flew together at Delta. Mr. Vose is very methodical, calm, cool and collected. He said that it would be absolutely out of character for Mr. Vose to ignore a substantial risk.

In response to a question from Ms. Mackenzie, Mr. Rieder acknowledged that he had not seen Mr. Vose in a stressful position. If pilots do their jobs, they do not get into those, he said.

The defense then called Scott Haley to the stand. He said that he had been a Delta pilot for 19 years. They have flown together maybe four times. They became close friends. Mr. Vose is meticulous and detailed and one of the few line tech (i.e. instructor) pilots. He said that it would be completely out of character for him to ignore a substantial risk of bodily harm.

On cross examination by Ms. Mackenzie, Mr. Haley acknowledged that he could not recall any stressful situations with Mr. Vose outside of the normal envelope.

The defense then called Mark Spezia to the stand. He said that he has been a Delta pilot for 30 years and has known Mr. Vose for 20 years. They are friends and have flown together. Mr. Vose is very deliberate and conscientious and safety is a major focus for him. He has never seen him flustered. It is absolutely not his character to ignore a substantial risk.

On cross examination by Ms. Mackenzie, Mr. Spezia said that he guessed that he had flown 20 times with Mr. Vose. He acknowledged that he had only been in situations with normal stresses. He said that they try to avoid stressful situations.

Karen Vose (defendant's wife)

The defense then called Karen Vose to the stand. She said that she has been married to Mr. Vose for over 40 years. She has previously walked the Rye Rec. trails with him. They have two Pomeranians, one five pounds and the other seven pounds. On the day in question, there was snow on the ground. During the winter one of the parking areas is closed. They had been walking maybe 45 minutes. One dog, Lata, is always on her heels, the other, Cubby, who is smaller, she had picked up.

Ms. Vose said that she saw Ms. Birse release her dogs who came running down the trail. One dog was much bigger than a St. Bernard and the other was a mixed breed.

Although she is used to big dogs, she was afraid. The Malamute snapped at Lata, but didn't catch him. Mr. Vose then made a noise. The Malamute went right after Lata. The mixed breed dog was then coming around. Ms. Birse tried to grab its rear legs, but could not control him. Mr. Vose tried to grab the Malamute, which tried to bite him. He was yelling at Ms. Vose that her dogs were out of control, but she was not doing anything, Ms. Vose said.

The Malamute was eating Lata alive and Lata was screaming, Ms. Vose said. She said that she was between Ms. Birse and Mr. Vose, who was trying to get the Malamute to release Lata. He touched the Malamute, which stiffened. She then hear "poof, poof" and saw Lata run past Ms. Birse to the parking lot. Ms. Birse said that she was sorry. She did not know that the dog had been shot. She was nowhere near the dog when it was shot. She never tried to get her dog off of Lata. Neither big dog had a leash on so they could be grabbed, she said.

Defense Attorney Blanchard then showed a "walk through" video. Ms. Vose said that it accurately reflected the scene, except for the lack of snow. She pointed to the stone pillars where the dogs were released. *Editor's note: The pillars are used to hold up a chain that is used to block off the smaller parking lot nearest to the trail entry.* The dogs barreled down the trail when released. Ms. Birse never entered the trail. She never approached or touched the Malamute, she said.

Mr. Blanchard then showed Ms. Vose a photograph and she demonstrated how she was near the entry to the trail, the Malamute was to the left of the trail entrance, and Ms. Birse was behind her, part of the way into the smaller parking lot, and about 10 feet from the dog. She was in between Mr. Vose and Ms. Birse, she said.

Ms. Vose said that Lata never engaged with the Malamute. She is very gentle and never snaps. The Malamute never tried to sniff Lata, Ms. Vose said.

After the dog was shot, Ms. Vose said, Lata shot out and ran past Ms. Birse to the parking lot, past the pillars. She went to find Lata, and came across Kelly Halldorson who said that she thought she saw Lata under a car. She put both dogs in the car while Mr. Vose called 911. Lata was bleeding and she was afraid she would die. She then drove her to a critical care veterinary hospital. She could see Ms. Birse from the car. She was screaming and upset. Ms. Vose said that Lata had puncture wounds all around her neck. The doctor said that it was a miracle that she was alive. A big dog can kill in a millisecond. Lata has recovered, she said.

The police were not there when she left, Ms. Vose said. Lt. Blaisdell came to their house later that evening to get their guns. He did not ask her for a statement at that time, in fact, nobody from the Rye Police ever asked her for a statement, she said.

Ms. Vose testified that Mr. Vose is absolutely not reckless. He is methodical and meticulous, the opposite of reckless. She related an incident when she was driving on the interstate with Mr. Vose and a car collided with them from behind. Their car was swinging like a pendulum and was in danger of swinging into approaching traffic. Mr. Vose calmly took the wheel and steered the car out of danger. He is solid as a rock, she said.

In response to questions from Ms. Mackenzie, Ms. Vose said that could not estimate the amount of time Lata was in the Malamute's mouth. She said that she did not see Mr. Vose pull out a gun. He made many efforts to get the dog to stop, she said.

Ms. Mackenzie asked whether she had seen the veterinarian's report. Ms. Vose confirmed. Ms. Mackenzie said that there was only a small puncture wound on its elbow, and Lata did not receive stitches or surgery. However, two days later she took Lata back to the vet and there were several other wounds that were scabbed over. Ms. Vose confirmed.

In response to questions from Mr. Blanchard, Ms. Vose was unable to estimate how long it was between the time that the Malamute ran down the trail or how long Mr. Vose was standing by the dog before shooting it.

Defendant Robert Vose

After the afternoon break, defendant Robert Vose was called to the stand by the defense. He said that he was often at the Rec. area, often weekly, depending on the weather. He has never had problems with dogs. People let their dogs run, he said.

Mr. Vose related his military career and how he had graduated in the top 10 percent of his flight school class and thus was given the opportunity to fly the F4 Phantom fighter for the Air Force. Fighters require quicker decisions. They are often close to other aircraft. The F4 is a Mach 2.2 plane. Mach 2 is 20 miles per minute, he said.

Mr. Vose related said that he had flown F5 fighters with an "aggressor squad" simulating the MIG-21 and MIG-23 Soviet fighters. He went all over Europe teaching pilots, he said.

Mr. Vose explained how he was trained for combat in fighters. It is a very, very time compressed situations when the jets are closing at Mach 3. At forty miles out, there is only one minute and 20 seconds before they converge. He would look at the radar and decide which planes went where. They can't afford to have a \$30 million plane shot down. Part of the decision is whether to engage or whether the pilot is at a disadvantage. He can't panic. He might have eight planes under his guidance, and twelve coming at them. Other pilots wouldn't follow him into battle if he panics, he said.

Mr. Vose related how he was in the Vermont Air National Guard. On September 11 he was flying an F16 over New York. He said that he has 2200 hours in fighters and 18,000 hours in civilian aircraft. He is a Captain at Delta and is still a line check pilot. He is now the head instructor in New York for 300 captains and 700-750 pilots.

Mr. Vose then related his firearms experience. In the military there was yearly firearms qualification. There were simulators where children and guys with guns both appeared. As a fighter pilot, they primarily used handguns. He said that he completed a number of courses on civilian firearms at Sig Sauer. He spoke about making sure that there is a backstop and what will stop the bullet if it goes beyond what is shot. He said that everyone teaching at Sig Sauer is very experienced. They are from the Delta Force, SWAT teams and the ATF. They are very, very good, he said.

After September 11, Mr. Vose said that he left his civilian job and returned to the military as a volunteer for five years. Following that, he became a federal officer in a security sensitive, aviation anti-terrorism role. In that role, he is required to have a firearm. He will neutralize any threat in the aircraft, he said.

On December 16, Mr. Vose said that he was on the Rye Rec. trail. They had just led their dogs around a big loop and had started to exit. There was about three inches of powder on the trail.

When she was about 1/3 of the way from the granite posts towards the trailhead, it appeared that Ms. Birse was unfastening a leash. Jah came really, really fast. He tried to take possession of the area, but Jah went past and made a beeline for his wife Karen. At the last minute, Jah shifted his focus to Lata, who was on the ground. Jah tried to snap violently, but slid 4-5 yards on the ice. Lata tried to run. There was never any sniffing of Lata's read end. At the time, Ms. Birse was beyond the trailhead, he said.

Jah was hyperfocused on getting to Lata. He tried to grab him, but Jah violently snapped at him. He managed to get his hand on Jah's back hind quarters but it felt like tackling a locomotive.

He hadn't quite exited the trail when he hear a blood curdling sound from the Pomeranian. It was the sound of a dog trying not to be killed. He continued to the right and saw Jah had the dog in its mouth. He screamed at the top of his lungs "get out of here." He pushed Jah, which then buried his teeth, he said.

At that point he felt he had no other option, Mr. Vose said. He was concerned that his dog would be killed and he would next be mauled. He was also concerned for his wife, who was 3-4 yards behind. He withdrew his 9 mm which he carries in his front waist underneath his sweater, which had a down jacket over it. The Glock required no cocking. He angled the gun down and shot Jah just below the ear, firing two times in quick succession. It was a very deadly shot to the cranium and Jah lost the ability to hold onto Lata. As he described this, Mr. Vose demonstrated how he was holding the gun pointing almost directly downwards, with his hand about a foot above the ground.

The backstop was the ground, Mr. Vose said. He checked to see where Ms. Birse and his wife were. Mr. Vose said that he is right handed and shot by Jah's right ear. He was about 1 foot from the dog when he fired. The firearm was lightly touching the dog's fur and skin. He tried to have an immediate impact. He angled the shot away from the dog's mouth as Lata was in the mouth. He took two shots as it was a big dog and he did not know if one shot would stop him, he said.

Mr. Vose said that Ms. Birse was to his left about seven yards away. She was not on the dog at the time, he said.

Mr. Blanchard said that Ms. Birse had testified that she and Jah were running towards each other. Mr. Vose said that that did not happen.

After shooting Jah, Mr. Vose said that he holstered his weapon, saw his wife running and went directly through the woods, running into Ms. Halldorson. She pointed to the dog under the next car who was whimpering, injured, bleeding and shaking. He then called 911 to report the incident and get help.

Mr. Vose's testimony continued the following day.

Trial, Thursday, September 17, 2018

The defendant, Robert Vose was on the stand again. Defense Attorney Blanchard asked him what happened after he found Lata under the car.

Mr. Vose said that he had a brief conversation with Ms. Halldorson, who was a bit confrontational. The dog was bleeding profusely and it turned out to have multiple

puncture wounds. The dog was being chewed and he heard her blood curdling scream. His main concern was that Jah would bite, hold and shake Lata, which would paralyze her. That occurs quickly.

Mr. Vose said that he called 911. Mr. Blanchard played the call back. On the recording, Mr. Vose was speaking calmly, but some stress was evident in his voice. He said that another dog had been “chewing” his dog at the Rec. Center. He said that no humans had been injured. The dispatcher then got the Rye Police on the line and related that Mr. Vose had said that he ended up shooting the other dog. Mr. Vose said that his wife was going to take the dog to the vet. The person from the Rye Police can be heard saying that that was no problem.

After Mr. Blanchard asked Mr. Vose what happened after the police arrived, Mr. Vose said that he was standing in the middle of the parking lot and answered questions at that point in time. The police did not ask where the other people were at the time of the shooting. They did not insinuate that someone was on top of Jah. There were a lot of emotions, so the officer thought it best to put him in the car. Some of the relatives of the dog owner were very emotional and had a lot to say to me. They were aggressively upset, he said.

Mr. Vose said that, after they read him his rights and handcuffed him he said that he was wondering what precipitated that. He never received an adequate explanation other than that the arrest was for reckless conduct.

In the Sally Room at the Rye Police Station, Mr. Vose said that his first call was to the federal government in Arlington, VA to report the arrest and tell them that his duty weapon could be collected from the Rye Police.

Mr. Vose then related a number of incidents that occurred in his 20,000 hours of flying over the years. In one instance, he was in an F4 Phantom jet when almost a third of one of the wings fell off. While the plane was still flying, he did not know how slowly it would go. He put the flaps and gear down to verify that the plane was still controllable at low speeds. If it hadn't been he would have had to eject. There are usually back injuries when that occurs. He was able to save the jet by doing a barrier approach and catching a wire on the runway with his tailhook.

In another incident, he was up in an F5 over Italy in the aggressor squad role. One of two F15s managed to get behind him. He couldn't have that as he was the instructor. He maneuvered aggressively and both engines flamed out over a mountainous area. He descended for 20,000 feet, fighting the aircraft on the way down, and he and was lucky to get the motors restarted and he was able to land. Subsequently, engine problems were found.

On September 911, Mr. Vose said that he was flying over Western New York on bombing practice. A voice came on over the radio emphatically directing them to return to the base in Burlington, VT. It turned out that one of the hijacked planes passed by about ten miles away. The whole base community came into the airport in a compelling show of patriotism. His plane was refueled and armed with its engines running. The jets were fully armed for combat. For the next year, they flew combat air patrol 24/7 in conjunction with the F15 Eagles at Otis Air Force Base.

The stress was not knowing what was going on. At times they would be awakened and would have to run to their jets and get everything running in ten minutes.

Mr. Vose related an incident in which he was ferrying the Rams football team back to St. Louis. His copilot was flying the plane. They hit at least eight snow geese. This was the same type of incident experienced by Sully Sullenberger, who landed in the Hudson. Mr. Vose said that in the Rams incident, there was damage to the nose cone of his plane, which peeled back and cracked the windshield. Fortunately, their engines did not flame out. There was blood, and the copilot thought that they had been injured and became emotional. I took control and landed the plane, Mr. Vose said.

In response to a question from prosecuting attorney Mackenzie, Mr. Vose said that he not had to fire his weapon before. She asked whether he had tried to pick Lata up. Mr. Vose responded that he did not have the ability to get Lata. His focus was on the big dog, he said.

George Harris (firearms expert)

George Harris, an independent consultant with International Firearms Consultants LLC was then called to the stand. He related how his first experience with firearms was when he saw his grandmother shoot a squirrel out of a tree. He said that he had grown up in Southwest Virginia and was a card carrying hillbilly. His uncle was a hunter and so were his neighbors. He entered the military and quickly shot his way onto the international team. *Editor's note: This was apparently a marksmanship team.* Mr. Harris said that he coached five world championship teams.

In 1990, Mr. Harris said, he moved from Herndon, VA to Exeter, NH with Sig Sauer. They expanded their firearms curriculum to over 150 courses. He wrote all of the armory school curriculum, he said.

The judge then accepted the motion to tender Mr. Harris as an expert.

Mr. Harris was asked by Attorney Blanchard whether he was familiar with Mr. Vose's anti-terrorism role. Mr. Harris responded that he has an association with the Federal Air Marshals Service. The air marshals have access to the cabin side of the cockpit door, Mr. Vose's program has to do with the forward side of that door. It is a very, very compact area, with hydraulics, electronics and other persons subject to negative factors. The need for spatial awareness is at its peak. He is very well aware of Mr. Vose's training. Their main mission on the flight deck is to keep control of the aircraft and keep it in the air. If someone else gets on the flight deck, they must be neutralized with minimal collateral damage.

Mr. Harris described the "OODA loop," which stands for observe, orient, decide and act. The loop is continuous. Once action is taken there is more observation, he said.

Mr. Harris said that he was familiar with Sig Sauer's close quarters pistol operators course. The idea is to neutralize or settle in the best way possible. That could be verbal commands. The key thing in close quarters is the target that needs to be hit. Projectiles may or may not go through the target. If they do, what is on the other side is important. The most accurate shot occurs when the muzzle is in direct contact with the target, he said.

Mr. Harris was asked whether he had been asked to determine the angle and position of the dog. He said that he had been, but his information was limited to the evidence that the state collected. He explained how, when shell casings are ejected from the type of Glock pistol used in this incident, they come out in a pretty consistent fashion,

usually at the 1:00 or 2:00 position with respect to the barrel of the gun, to the shooter's right, but possibly between the 12:00 and 3:00 position. The shell casing usually exits slightly to the rear. It is an inexact science.

Mr. Harris, referring to a photograph of the deceased dog, said that the two cartridge cases ended up close to each other. He pointed to the impressions in the snow and described how, in one case, the heat of the shell casing melted the snow, but the shell casing was subsequently moved somewhat, as is indicated by the lack of melted snow where it was found. He pointed and showed how the shell casings landed a couple of inches from each other. He said that he was 100 percent confident as to where the shell cases landed.

Mr. Blanchard was asked about the Glock 9 mm firearm that Mr. Vose surrendered. Mr. Harris said that it is one of the most reliable firearms. He has several himself, he said.

Using the picture of the deceased dog, Mr. Harris pointed to the two impressions in the snow indicating where the two shell casings landed. They were about 6 inches from the head of the dog, towards the curb stop. Mr. Harris said that the location where the shell casings landed indicates that the firearm was discharged downward. He said that it was consistent with the dog being on all four legs at the time of the shooting. He demonstrated to the jury, using the photograph, the trajectory followed by the shell casings after they were ejected from the gun in the 1:00 to 2:00 position, traveling forward from the shooter.

Mr. Harris said that he had seen the necropsy report on Jah. The entrance wound at the back of the skull indicates that the gun was in contact, he said.

Mr. Blanchard asked hypothetically whether someone had been lying on the dog when it was alive whether the shell casings would have gone where they went. Mr. Harris responded that the gun would have had to be on the opposite side of the dog. There are no footprints there. The shooter would have had to have been shooting back at himself, he said.

Mr. Blanchard asked what would be considered under the OODA loop if it was necessary to neutralize the dog.

Mr. Harris said that the first thing is safety. A backstop is the number one priority. The number two priority is to stop the aggressive action. A neurological shot to the brain stem is best. It disconnects the brain stem from the rest of the body and prevents movement. The ideal location for the muzzle is in contact with the victim to avoid deviation. Also, it places the muzzle as close as possible to the ground to maximize safety.

Mr. Blanchard asked Mr. Harris to assume that Jah had a small dog in its mouth. Mr. Harris described how immediate cessation of the aggressive action was most important. The shooter would not want to shoot the small dog, himself, or other people around. Referring to the necropsy report, Mr. Harris said that the angle matches. Since the shots went through the same hole, that shows that the gun was under total control as the recoil otherwise would cause the gun to move.

Mr. Blanchard asked whether the angle was forward or back. Mr. Harris said that it would have to be forward. Mr. Blanchard asked whether anyone behind would have been further away. Mr. Harris said that that was correct and that the shooter would have been closest to the muzzle and the bullet as it came out.

Mr. Blanchard asked whether, given what Mr. Harris knows about Mr. Vose's training and his version of events, whether his actions were consistent with his training. Prosecuting attorney Mackenzie objected and the two attorneys approached the bench and conferred inaudibly.

Mr. Blanchard then asked whether Mr. Harris had been present during Mr. Vose's testimony. Mr. Harris responded that he had been present for part of it, but had not been there the prior day.

Mr. Blanchard then showed Mr. Harris the photograph of the deceased dog and asked Mr. Harris to assume a series of events. He then described Mr. Vose's testimony the prior day and again asked whether that description of events was consistent with Mr. Vose's training. Mr. Harris said that it was. He had taken into account all requirements for spatial awareness, in particular the TSA course, he said.

Mr. Blanchard asked whether, based on his description, anyone had been placed in danger of serious bodily injury. Mr. Harris said that they had not been.

Mr. Blanchard asked Mr. Harris to assume that the dog was prone on the ground with someone on top. He asked whether anyone would have been placed in danger under that assumption. Mr. Harris said that they would not have been, however he added an inaudible qualification.

Under cross examination by Ms. Mackenzie whether the OODA loop can be used unsuccessfully. Mr. Harris responded that we are all human and that it can be used unsuccessfully.

Ms. Mackenzie asked whether Mr. Harris had ever seen a bullet ricochet. Mr. Harris said that he had. Ms. Mackenzie asked whether he had seen this occur off of bone. Mr. Harris acknowledged that he had.

Ms. Mackenzie asked whether Mr. Harris had spoken to Ms. Halldorson or Ms. Birse. Mr. Harris said that he had spoken only to the Voses and had reviewed documents.

Under re-direct questioning by Attorney Blanchard, Mr. Harris said that he had read Ms. Birse's statement and Ms. Halldorson's 19 page blog as well as the police reports. Mr. Blanchard asked whether there was any information that he did not have. Mr. Harris said that there was not.

The defense then rested.

Judge Delker asked whether the state had any rebuttal. Ms. Mackenzie said that it did not.

Closing arguments

Following the lunch break, there were closing arguments. Defense Attorney Blanchard said that the case was a rush to judgment by the state. The state had not heard from Kelly Halldorson at the time that the decision was made to charge Mr. Vose, and it never heard from Karen Vose. The trial is necessary due to their quick decision, he said.

Mr. Blanchard said that the jury's work is done once they decide that there is reasonable doubt on the issue of recklessness or bodily injury. Every piece of evidence must be interpreted in his client's favor if it is reasonably possible to do so, he said.

The prosecution's entire case rests on the credibility of Ms. Birse. That is the only evidence that Mr. Vose did anything close to what is alleged. Even if she is

believed there is still a problem with proving recklessness or a risk of serious bodily injury.

They can pick the testimony of Ms. Birse, or that of Robert Vose, Karen Vose and Kelly Halldorson. Ms. Birse's story does not make sense. It is true that her testimony does not need to be corroborated. However, it should bear some resemblance to what others saw. There is no physical evidence to corroborate her story, he said.

Ms. Birse insisted that she had control of the dogs, but at one point admitted that she did not. She also insisted that Lata had been the aggressor. Neither fact has any bearing on the crime, but they are important facts for the civil case that Ms. Birse is planning. If you can't believe her on the little things, you cannot believe her on the little things. She said that she launched herself onto the dog, but the dog ended up 20-25 feet away from where Ms. Birse says that occurred. Mr. Blanchard asked where the evidence was in the snow of the dog having dragged her that distance.

There is no doubt that Ms. Birse apologized to Karen Vose, Mr. Blanchard said. Who would apologize to the wife of someone who had almost shot her, he asked.

Where is the snow, debris or wetness on Ms. Birse, Mr. Blanchard asked.

Mr. Blanchard said that the state did not conduct the forensic tests that could have helped Mr. Vose's case. This was a serious allegation. It was their job to investigate. We don't know whether there is gunshot residue as that test was not done. There should be gunshot residue on Ms. Birse's clothes but not on the part of the dog that she was lying on. He said that he had asked for the test on December 17, 2017.

Mr. Blanchard said that the police allowed contamination of the scene and allowed someone from the Birse family to pick up a shell casing. A metal detector should have been used to find the missing bullet, which would have allowed a trajectory analysis to determine whether the dog was prone or on all fours. Lt. Blaisdell said that he assumed that the bullet went into the ground. "Then get the damned thing," Mr. Blanchard said.

Mr. Blanchard asked where the footprints at the dog's head are to support Ms. Birse's story.

Mr. Blanchard said that after Ms. Birse walked over to Jah, put a leash on and pulled, she realized that Jah was dead and became hysterical. How would she explain to her son how she got his dog killed? She decided to make up a story. She may even believe it at this point. Perhaps what she recalls is tackling the other dog by grabbing his hind legs, he said.

Kelly Halldorson said that Mr. Vose was calm. Listen to the two 911 calls. Compare his call to that of Ms. Birse. To say that she was hysterical doesn't even adequately describe it. She was in no state of mind to recall what happened, he said.

George Harris said that the physical evidence does not match Ms. Birse's testimony. He said that even if she is believed, no one was at risk of serious bodily injury.

The state could have called an expert witness, if one could be found, but it did not, he said.

On the 911 call, Ms. Birse kept saying that it was her son's dog, Mr. Blanchard said. Eventually she was asked if she had been shot. She responded that she had not been, but could have been. The misstatements were important relative to her own guilt with her son. If you can't believe her on the little things, you can't believe her on the big

things, he said. Everyone else heard her apologize to Rob Vose never apologized to her, but everyone else, including Lt. Blaisdell, did, Mr. Banchard said.

The state did not even mention Kelly Halldorson in their opening statement, but she is a very important third party witness. You can either believe Ms. Birse or you can believe Rob Vose, Karen Vose, Kelly Halldorson and the physical evidence.

Rob Vose is trained to defend the cockpit. What better training is there than that? If the federal government trusted him to kill without putting a bullet through the side of the plane he can be trusted with the dog. In stressful situations, the default is to the lowest level of training. Rob Vose is trained to live or die when in a \$100 million at the speed of sound.

Mr. Blanchard displayed a slide showing the names of Mr. Vose's four character witnesses. The shots didn't place anyone in danger of serious bodily injury, he said. It was a contact shot, from high to low, backstopped and angled away from everyone else. The gun had dog hair stuck to it, he said.

The jury must rule out all reasonable doubts. This is not an emotional decision. Whether or not they feel sorry for Ms. Birse is irrelevant.

County Prosecuting Attorney Megan Mackenzie then gave her closing argument. She said that Ms. Birse had given a consistent story, saying either that she was holding or hugging the dog. She gave that story to Kelly Halldorson, the 911 operator, the officers and to you, Ms. Mackenzie said.

I said at the beginning that this case would boil down to who you believe, Ms. Mackenzie said. Ms. Birse does not hide things, she said.

The natural defensive move would have been to pick up Lata, Ms. Mackenzie said. It was prey as was said, she argued.

There was only one wound. A couple of days later two other smaller wounds were found, she said.

The testimony was only that Ms. Birse had been dragged the length of the pillar, Ms. Mackenzie said.

The gun was 12 inches away from Ms. Birse's head when Mr. Vose fired. He apologized to Ms. Birse, who did not realize that the dog had been shot. She immediately told Kelly Halldorson that she had been on top of the dog, Ms. Mackenzie said.

The defendant would have you believe that the dog allowed him to put the gun to its head without turning his head, Ms. Mackenzie said. Mr. Vose fired from the top of the head to the throat, close to his own dog. The only way that he could have gotten that close is if the dog was not reacting. That was the case because Ms. Birse was on top, she argued.

Kelly Halldorson saw the incident from 150 feet away through the trees. She interacted with both Ms. Birse and Mr. Vose. What she said is not all that inconsistent with what Ms. Birse said. Ms. Birse said that it only took 1-2 seconds to jump off of the dog, Ms. Mackenzie said.

The Voses' testimony is not consistent with Ms. Halldorson's. Ms. Halldorson said that Ms. Birse was in the trailhead area. The Voses said that she never made it to the trail.

Mr. Vose saw the dog as a threat and used the OODA loop to neutralize it without concern for Ms. Birse, Ms. Mackenzie argued. If she was on top it is still reckless.

People move. Bullets move. It was still reckless when he fired the gun 12 inches from Ms. Birse's head, she argued.

Think about the motives to lie. Ms. Birse was hysterical, not thinking about fabricating. Ms. Vose gave her statement to defense counsel, not the police, she said.

It boils down to what the jury believes. The OODA loop is smoke and mirrors. No one disagrees that Jah was shot at point blank range, she said.

Jury instructions

Judge Delker then gave the jury instructions. He said that each crime has a precise definition. The elements must be proven beyond a reasonable doubt. Not every piece of evidence must be proven beyond a reasonable doubt.

The state has the burden of showing that the defendant both mentally intended and acted to commit the act. Without both, there is no crime. In this case, proving reckless conduct requires proof that:

1. He acted recklessly
2. He placed, or may have placed, a person at risk of serious bodily injury.
3. A deadly weapon was used.

See <http://www.gencourt.state.nh.us/rsa/html/LXII/631/631-3.htm>.

The defendant must have been aware of a substantial and unjustifiable risk. If he is aware, he must have consciously have disregarded it. The circumstances must be examined. It must be a gross deviation. Being unreasonable or thoughtless is not enough. It must be a substantial departure from what a law-abiding person would do. It is not enough to negligently disregard a risk.

Judge Delker then said that the defendant was justified in shooting the dog if:

1. The dog is not in its enclosure or immediate control of its keeper.
2. The dog is "worrying, wounding or killing a domestic animal.

See: <http://www.gencourt.state.nh.us/rsa/html/XLV/466/466-28.htm>.

The term "worrying" is defined as "tearing, biting or snapping," Judge Delker said. The state has conceded that Ms. Vose was justified in shooting Jah, he said.

The jury should exercise its common sense, he said. If the state has not proven all elements of the crime beyond a reasonable date, the jury must acquit him. If it has proven all elements beyond a reasonable doubt, it should find him guilty.

Reasonable doubt means that the doubt must be reasonable, not unreasonable. The verdict must be unanimous. The jury's first order of business is to elect a foreperson. When you have reached a verdict, let the bailiff know, he said.

Judge Delker then told jurors 6 and 14 that they were alternates and would not be participating in the deliberations. The remaining 12 jurors retired to consider their verdict at 2:07 p.m.

The jury returned a verdict of not guilty within approximately 20 minutes, according to press reports. See: <http://www.seacoastonline.com/news/20180927/rye-man-not-guilty-in-dog-shooting-case>.