

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**EDWARD D. ISAACSON,
Defendant**

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**No. 158-2008
CRIMINAL**

OPINION AND ORDER

Before this Honorable Court is the Defendant’s Omnibus Pretrial Motion filed March 11, 2008. A hearing on the Motion was held on April 22, 2008. At the time of the hearing, some of the issues raised in the Omnibus Motion were agreed to be handled at a later date as outlined in the Order following this Opinion. The only issue remaining before the Court at this time is the Motion to Suppress.

Background

The following is a summary of the facts presented at the Suppression hearing. Lawrence Woltz (“Woltz”) testified that he has been employed for thirty-five years as a Humane Society Police Officer with the Lycoming County SPCA. During this time, he has conducted thousands of investigations involving animal cruelty.

On June 29, 2007, Woltz received a report that Edward D. Isaacson (Defendant) had an excess number of cats at his residence on Northway Road (“Northway residence”). On July 2, 2007, Woltz responded to the Northway residence, where he could smell cat urine and feces from the exterior of the residence. Woltz did not cite Defendant at that time, but informed him that he must find homes for the cats. On July 3, 2007, Woltz spoke with Defendant regarding the number of cats in the residence. Defendant told Woltz that he had at least twenty cats in the

residence, which is in violation of the local ordinances. Woltz and Defendant discussed some of the concerns with having that many cats in the residence. On July 5, 2007, Defendant called Woltz and said he knew he was in violation of the codes for having more than twenty cats in his residence and set an inspection date for July 13, 2007.

On July 13, 2007, Woltz conducted an inspection of the residence. Woltz noticed the carpets had been cleaned prior to the inspection. At the time, there were twenty-three cats, all of which were adults and of both sexes. Defendant told Woltz that most were rescued off the streets. Woltz noted that a number of the cats were ill; they had nasal and eye discharge and upper respiratory issues. He advised Defendant that the cats had to get veterinary treatment, as failure to provide these cats with the necessary care is in violation of state law. Defendant said he would find homes and the cats would receive veterinary care. Sometime after that, Defendant sent Woltz a letter stating that seventeen cats were given homes and all received veterinary care. Defendant stated he intended to keep a few of the cats.

On November 13, 2007, Woltz received an email from a resident of Muncy stating that there were a number of cats in the Defendant's residence at 207 South Market Street, Muncy ("Muncy residence"). Woltz stated that he usually responds within forty-eight hours of the receipt of a complaint. On November 16, 2007, Woltz responded to the Muncy residence. He stated no one was home at the time. When he approached the front door, he peered through the windows where he saw 20, 30 or 40 cats. Woltz stated he only saw cats, no furniture. Woltz testified that some of the cats appeared to be the same cats from the Northway residence. He recognized these cats as they were calico and long haired cats. Woltz noticed that the cats had the same illness. He was concerned with the sick cats being that they were closed up inside the residence without ventilation and were not quarantined. Woltz explained that ventilation is

needed for cats with upper respiratory infections, and that such cats should be quarantined to prevent the spread of infection.

Woltz made a repeat visit to the residence on November 26, 2007. He stated that the windows had sheer curtains so he was able to look inside in residence. Woltz again observed that the cats were sick and that there was discharge on the glass. He testified that due to his experience and work with veterinarians for at least ten or fifteen years, cats as sick as these can starve to death, suffocate, or their teeth can fall out.

On November 27, 2007, Woltz prepared and secured a search warrant. Woltz executed the warrant on November 28, 2007. He noticed no one was home, but read the warrant and then entered the residence. Woltz testified that he noticed no change in the health of the cats.

Defendant was later charged under 18 Pa.C.S.A. § 5511(c)(1) which states in relevant part that:

A person commits an offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry.

Defendant also testified at the Suppression Hearing. Defendant testified that he took pictures of the Muncy residence in January of 2008 at about 1:00 or 2:00 p.m, which had similar lighting to November 2007. He stated that the lights were not on and he needed flash to help take the pictures as it was dark inside the home. Defendant testified further that not a lot of light can get into the home and therefore, it would be difficult to see inside the residence. He also stated that he moved a bed, the cats, and a hammock into the Muncy residence on November 5, 2007 and that he spent evenings and weekends in the home.

Discussion

Defendant argues that there was insufficient probable cause to support the issuance of a Search Warrant for the Muncy residence and therefore, all evidence derived from the search should be suppressed.

Pa. R. Crim. P. 203 states in relevant part that:

(B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).

Courts should not “take an overly technical approach on evaluating the information supplied to the magistrate in a search warrant application but should evaluate it in a common sense and practical manner.” Commonwealth v. Gannon, 454 A.2d 561, 564 (Pa. Super. Ct. 1982) (and cases cited therein). The Pennsylvania Supreme Court states that the determination into “whether a warrant was supported by probable cause, . . . is confined to the four corners of the affidavit.” Commonwealth v. Coleman, 830 A.2d 554, 560 (Pa. 2003) (citing Commonwealth v. Stamps, 427 A.2d 141, 143 (Pa. 1981)). In Pennsylvania “[t]he existence of probable cause is determined by a consideration of the totality of circumstances as seen through the eyes of a trained police officer, not the average citizen.” Commonwealth v. Vergotz, 616 A.2d 1379, 1383 (Pa. Super. Ct. 1992). According to the Superior Court,

[t]he ‘totality of the circumstances’ test has been summarized as follows: The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and

‘basis of knowledge’ of persons supplying hearsay information, that there is a fair probability that . . . evidence of a crime will be found in a particular place.

Commonwealth v. Tiffany, 926 A.2d 503, 506 (Pa. Super. Ct. 2007); Commonwealth v. Gray, 503 A.2d 921 (Pa. 1985) (adopting the Illinois v. Gates, 462 U.S. 213 (1983) totality of circumstances test).

After a review of the search warrant, the Court is satisfied that there was sufficient information for the Magisterial District Judge to conclude that a search should be conducted of the Muncy residence. The affidavit stated that in June Woltz observed an excessive number of cats inside the Northway residence. Then in July, Defendant admitted he had in excess of twenty cats at his residence and that some were sickly and not examined by a veterinarian. The affidavit further stated that in July, Woltz inspected the Northway residence and observed approximately twenty cats with various illnesses. The affidavit went on to state that Woltz responded to the Muncy residence in November where he observed at least twenty sickly cats. Woltz also stated he responded a second time and observed the cats in the same conditions. Finally, the affidavit stated that in 1999, Defendant was arrested for Cruelty to animals after eighty animals were removed from his residence at 316 Jordan Avenue, Montoursville. This Court finds that the affidavit of probable cause shows that Defendant’s actions were not single and isolated but a continuing course of conduct, and as such were sufficient for a search warrant. See Vergotz, 616 A.2d at 1382. Therefore, considering the totality of the circumstances, it is reasonable to conclude the cats were not provided with necessary veterinary care, as such, the Motion to Suppress is denied.

ORDER

AND NOW, this ____day of April 2008, based on the foregoing Opinion, it is

ORDERED and DIRECTED as follows:

- I. The Court does not need to address the Defendant's Motion to Compel Discovery, as Counsel has indicated that the items will be provided with in (30) thirty days of April 22, 2008. Defense Counsel's record is preserved as to this issue.
- II. Defendant's Motion to Suppress evidence derived from a search of Defendant's residence is DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (MR)
Donald F. Martino, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)