

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**ROSEMARY WINDER,  
Defendant**

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**No. 1335-2008  
CRIMINAL**

**OPINION AND ORDER**

Before this Honorable Court is the Defendant’s Omnibus Pre-Trial Motion filed October 7, 2008. A hearing on the Motion was held on November 3, 2008.

On July 9, 2008, the Defendant was arrested and charged with Cruelty to Animals at 18 Pa. C.S. § 5511(c)(2)(ii). A Preliminary Hearing was held on July 31, 2008, before District Judge C. Roger McRae, wherein the charge was held over for Court. The Defendant filed a timely motion challenging the testimony presented by the Commonwealth, alleging they failed to meet their burden of proof as to the charge.

***Background***

The following is a summary of the facts presented at the Preliminary Hearing. Lori Onufrak (Onufrak) testified that on June 23, 2008, around 5:38 a.m., she was awoken by a “loud ungodly yelp.” N.T. 7/31/08 p. 2. Onufrak related she got out of bed and went downstairs to see where the yelp was coming from and saw a black dog that was being dragged by the Defendant. She then observed the Defendant dragging the dog by a collar, while it was cowering, with its tail between its legs, ears back, and whimpering. Onufrak related the dog then ran past the Defendant and went through the front door to the Defendant’s house. The Defendant followed the dog inside and Onufrak heard another yelp. The dog came flying back out the door and the

Defendant grabbed a hold of it, put it on a leash, and wrapped it around the pole on her porch. Onufrak explained there was very little room between the end of the collar and the pole the dog was tied to. She related while the dog was tied, the Defendant sat there on the porch for approximately one minute just screaming profanities at the dog. Onufrak related the whole incident lasted about five or ten minutes at most. Onufrak also related she never saw the Defendant strike the dog.

Lawrence Woltz (Woltz) testified that he has been employed for thirty-five years as a Humane Society Police Officer for Lycoming County. During this time, he has conducted thousands of investigations involving animal abuse. On June 24, 2008, the day after receiving the report from Onufrak, Woltz prepared a search warrant and proceeded along with Chief Terry Lynn of the Montgomery Police, to the Defendant's residence at 61 North Main Street in Montgomery. Woltz related he summoned Lynn to go along to the Defendant's residence because of a prior incident with the Defendant about a year ago. Upon arrival at the Defendant's residence, Woltz observed three adult dogs in an 8X10 foot chain-link kennel at the rear of the premises. He made contact with the Defendant, whereupon he read her the warrant and affidavit, and handed her a copy. At Woltz's request, the Defendant brought two adult dogs outdoors, which she stated were hers. One of the dogs was the black Labrador Pit Bull mix, Onufrak testified she had observed being abused.

Woltz testified he took three adult dogs, a boxer, a pug, and the black Labrador Pit Bull mix, along with two cockatiel birds into care. He related he took the animals into care because of the report of physical abuse, as he felt the other animals could be subject to the same abuse. While in care at the SPCA, the dogs were given a wellness examine, in which no outward physical injuries were detected. Woltz testified that he considered dragging a dog abusive and

considered tying a dog to a pole using a choke chain, a rope that is wrapped too tight, or if the dog was struggling upon the restraint, to be inappropriate means of securing the dog.

### ***Discussion***

In Defendant's Omnibus Pre-Trial Motion she asks the Court to dismiss the Cruelty to Animals charge against her. Defendant alleges the Commonwealth failed to present a prima facie case by not establishing that the Defendant wantonly or cruelly ill-treated, overloaded, beat, otherwise abused, or neglected her dog, as the witness testified she did not observe the Defendant strike the dog.

The burden the Commonwealth bears at the Preliminary Hearing is they must establish a prima facie case; the Commonwealth must present sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). See also Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 466 A.2d 991, 996-97 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. See Commonwealth v. Austin, 575 A.2d 141, 143 (Pa. Super. 1990).

### ***Motion to Dismiss the Charge of Cruelty to Animals***

Defendant alleges that there was no prima facie showing of cruelty to animals as there were no external injuries to the dog.

A person is guilty of Cruelty to Animals at 18 Pa. C.S. § 5511(c)(1),

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.

According to the Black's Law Dictionary, cruelty is defined as "the intentional and malicious infliction of mental or physical suffering on a living creature . . ." (7<sup>th</sup> Ed. 1999). Wanton is defined as "unreasonably or maliciously risking harm while being utterly indifferent to the consequences." Id. See Commonwealth v. Askins, 761 A.2d 601 (finding sufficient evidence to convict the Defendant of animal cruelty when there was no actual injury to the dog).

In the instant case, the transcript of the Preliminary Hearing reveals that Onufrak was awoken to the sound of the Defendant's dog yelping. Onufrak then observed this defendant dragging the dog by a collar while it was cowering, with its tail between its legs, ears back and whimpering. Onufrak also observed the Defendant grab a hold of the dog, put it on a leash and wrap it around the pole on her porch, leaving very little room between the collar and the pole. While the dog was tied, the Defendant sat there on the porch, screaming profanities at the dog. The Court finds the Defendant was utterly indifferent to the consequences of dragging a dog by his collar and tying it up leaving very little room for him to move. Further, the court finds the Defendant intentionally inflicted of mental suffering upon the dog by screaming profanities at the dog. Therefore, the Court finds the Commonwealth presented a prima facie case as to the cruelty to animals charge.

**ORDER**

AND NOW, this \_\_\_\_day of November 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-Trial Motion, in the form of a Habeas Corpus Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (AMR)  
PD (RC)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)