

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)

v.)

SAMANTHA PETTINGILL,)
JULIE PETTINGILL,)
And GENE PETTINGILL)

C.A. Nos: 0304016725
0304018241
0304018244

Submitted: September 29, 2004

Decided: October 25, 2004

Sean P. Lugg, Esquire
Carvel State Office Bldg.
Department of Justice
820 N. French Street
Wilmington, DE 19801
Attorney for State

Eugene J. Maurer, Jr., Esquire
1201-A King Street
Wilmington, DE 19801
Attorney for Samantha Pettingill

John S. Malik, Esquire
100 East 14th Street
Wilmington, DE 19801
Attorney for Julie Pettingill

James A. Natalie, Jr., Esquire
3200 Concord Pike
P.O. Box 7329
Wilmington, DE 19803
Attorney for Gene Pettingill

OPINION AND ORDER ON DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE

Defendants Samantha, Julie and Gene Pettingill (hereinafter "Defendants") have brought Motions to Suppress (hereinafter collectively "Motion") before this Court. An evidentiary

hearing was held July 12, 2004. At the conclusion of the hearing, this Court ordered briefing on the Motion. Defendants arguments are twofold: (1) that the SPCA officer did not have legal authority to obtain a search warrant for the Defendants' residence and, therefore, anything seized or gained from the search conducted at the Defendants' residence should be suppressed; and (2) that even if the SPCA officer was permitted by law to obtain a search warrant, the affidavit in support of the warrant contains false and misleading information and fails without more and, further, it lacks the necessary probable cause to allow a warrant to issue. For the reasons stated below, this Court grants Defendants' motion.

FACTS

The Court finds the following relevant facts. Officer John Saville of the Delaware SPCA, on whose testimony both Defendants and State rely, on April 15, 2003, received a Bite Report from the Montgomery County, Pennsylvania Health Department. The Bite Report listed Defendant Julie Pettingill as the owner of the dog. Officer Saville drove to the Defendants residence at 107 Savannah Drive in Bear, Delaware, to investigate the dog bite incident. When he arrived at the residence, he noticed animal cages in the front yard. He also observed that all of the shades and curtains were drawn on the windows of the front of the house. He observed that one window on the second floor appeared to have something pressing the shade against the window. Officer Saville was unable to see inside the house. He was, however, able to see the inside of the garage and observed normal household items stored there.

When he went to the front door of the house to knock on the storm door, Officer Saville noticed a faint odor of cats. He opened the storm door and noticed a stronger odor, which in his experience was consistent with several animals being kept in a house and with the home not being clean. No one was home at the time, so the Officer placed a note on the door.

Upon returning to the SPCA, Officer Saville found out that the dog involved in the Bite Report he went to investigate was no longer owned by Julie Pettingill. He discussed his observations of the Pettingill residence with his supervisors and later learned that the Pettingills operated an animal rescue. He also learned that the Pettingills were in regular contact with the SPCA and that he himself knew the Pettingills from seeing them at the shelter almost every day. The very same day Officer Saville went to the Pettingills' residence, the Pettingills had brought cats to the SPCA for neutering. One of those cats had a bandage on its leg that appeared to have been there for some time. The other cats were thin and had eye and nose discharge.

Officer Saville drafted a search warrant application for the Defendants' residence and submitted it to a Delaware magistrate on April 17, 2003. He testified that he did attempt to relay the facts as they were known to him; however, he admitted that many portions of the affidavit of probable cause were false and misleading. Paragraph 2 of the affidavit stated that Julie Pettingill was the owner of the dog when in fact when he drafted and presented the affidavit in support of the warrant the Officer knew she was not. In paragraph 3, Officer Saville stated that prior to opening the storm door he noticed a distinct odor but he testified the odor was faint. In paragraph 4, he averred that upon opening the storm door he smelled fecal matter, urine and other animal products. He testified that he only smelled urine and fecal matter and that he did not rule out that the smell was coming from the animal cages in the yard which were within ten to fifteen feet of the door.

In paragraph 5 of the affidavit, Officer Saville stated that the "front windows of the house had items piled in front of them, on the inside." He testified that in fact he could not see inside the house and that only one window on the second floor appeared to have something pressing against the drawn shade. While Officer Saville did state in paragraph 6 that the Defendants ran

an animal rescue, he failed to include information which he then had that the Defendants had adopted out 350 cats they had obtained from the SPCA in the eighteen months prior to the search warrant application. Additionally, he failed to mention that as early as 9 days prior to the application, the SPCA had given cats to the Defendants.

Lastly, Officer Saville agreed that his description of the cats' health in paragraph 7 was misleading. He had described the cats brought to the SPCA by the Defendants as "extremely thin" when they were merely thin. He had also stated in the affidavit that one of the three cats brought to the SPCA for neutering had died prior to surgery. He testified that he did not know what had caused the cat's death because he did not review an autopsy report nor had he obtained any information from a veterinarian.

OPINION AND ORDER

The first issue the Court must address is whether SPCA Officer Saville was permitted under Delaware law to obtain a search warrant. Since SPCA officers are agents of the State of Delaware, they are subject to *11 Del.C. § 2301 et seq.* See *State v. Elliott*, 2003 Del.C.P.Lexis 50 (July 17, 2003). *Eleven Del.C. §2301* establishes by statute that "[n]o persons shall search any...house...without the consent of the owner (or occupant, if any) unless such search is authorized by and made pursuant to statute or the Constitution of the United States". The Court can find no authority that permits animal control officers to obtain search warrants. In fact, Delaware law points to the contrary.

A fair reading of *3 Del. C. §7901* shows that sheriffs and constables and members of any "police force" in the State are to "assist" agents such as Officer Saville in enforcing laws dealing with animals. Further, a fair reading of *3 Del. C. §7903* shows that a warrant or process once issued can be directed to such agent for execution. The definitions of "peace officer" in *11 Del.*

C. §1901 (2) and of “police officer” in *11 Del. C. §1911* do not appear to cover agents such as Officer Saville. The conclusion dictated by these provisions is that agents such as Officer Saville do not have authority to apply for a search warrant.

The statutory form for application for a search warrant, *11 Del. C. §2310*, supports this conclusion since it provides in part that the affiant applying for the search warrant “... personally appeared (name and rank of affiant and designation of police department of which affiant is a member), ...”. While these are not the sole forms which can be used (see *Dixon v. State, Del. Supr.*, 567 A 2d 854 (1959)), they are strong guides, and reinforce the conclusion that agents such as Officer Saville are not authorized to apply for search warrants. Such authority could have been granted by the legislature but appears to have been expressly denied.

But, assuming that Officer Saville was authorized under Delaware law to obtain a search warrant for the Defendants’ residence, there simply are not sufficient facts to establish probable cause to support the issuance of a search warrant in this case. Officer Saville candidly admitted that several of the facts he provided in the affidavit were false and misleading. When the false and misleading allegations contained in Officer Saville’s affidavit are excluded, the following relevant facts remain: (1) affiant noticed an odor while knocking on the front door; (2) when affiant opened the storm door he noticed an overwhelming odor which was that of fecal matter and urine; (3) several animal cages and travel carriers filled with dirty water and soiled newspapers were in the yard. Officer Saville also admitted that many important facts were left out of the affidavit. There was no mention of the fact that the Defendants had adopted hundreds of animals from the SPCA in the past two years nor that they were in regular contact with the SPCA. There is nothing in the affidavit to indicate that there were in fact animals actually inside the Defendants’ residence, let alone animals in need of immediate care. His affidavit also lacks

any kind of information as to the cause of death of one of the cats brought to the SPCA for neutering on the day he first visited the Pettingill residence.

There was insufficient evidence in the four corners of the affidavit to support a finding of probable cause for the issuance of the warrant for the search of Defendants' home.

The Court finds that the search warrant in this matter was granted improperly and the search of the Defendants' home was not legal and that any data or evidence taken in the search must be suppressed from use as evidence at trial.

IT IS SO ORDERED.

J., Retired¹

¹ Sitting by appointment pursuant to Del.Const., Art IV, §38 and 29 Del.C. §5610.