

OPINION AND ORDER ON STATE'S MOTION FOR RE-ARGUMENT

The State filed a motion for re-argument to the Opinion and Order issued by the Court on October 25, 2004. Defendants were to file any response to the State's motion by November 18, 2004, and have declined to do so.

The data submitted by the State in its motion was not submitted to the Court in any prior filing. Based on the data submitted by the State, the Court finds as follows:

The enabling legislation for the government of New Castle County allows the County to have a police department which, in effect, mirror generally the powers allowed by the State to any police department or police force. 9 Del. C. Ch. 19.

Pursuant to the authority so granted, New Castle County, in New Castle County Code, Section 4.02.001(H), has provided that Animal Control Officers can exercise all police powers in discharging their duties. The section states:

“Animal Control Officer shall have all powers and authority of County Police Officers, limited however, to the powers and authority incident to the enforcement of this Section and other statutes, ordinances and regulations concerning ... the prevention of cruelty to animals and the taking and impounding of animals.”

The Court, therefore, rescinds its first finding and conclusion in the Opinion and Order dated October 25, 2004. The Court finds and concludes that SPCA Officer Saville was authorized to apply for and to execute a search warrant. The Defendants' Motion to Suppress to the extent it is based upon Defendants' first argument, i.e. lack of authority to obtain and execute a search warrant, is denied.

The Defendants' Motion to Suppress, to the extent it is based upon Defendants' second argument, i.e. sufficiency of the evidence and data submitted in support of the search warrant, is granted.

The Opinion and Order dated October 25, 2004, is reiterated but limited to the findings and conclusions relating to the Defendants' second argument.

IT IS SO ORDERED

J.¹

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