

FILED

STATE OF MINNESOTA

AUG 29 2013

DISTRICT COURT

CASS COUNTY

**COURT ADMINISTRATION
CASS COUNTY**

NINTH JUDICIAL DISTRICT

Court File No. 11-CV-13-1381

In the Matter of the Search Warrant Executed on
On July 15, 2013, [REDACTED] in the
City of Pine River, MN

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR
JUDGMENT

The above-captioned matter came on for a hearing on August 21, 2013, before the Honorable Richard A. Zimmerman, Judge of District Court, in City of Walker, State of Minnesota, on Petitioner's motion for a hearing pursuant to Minn. Stat. § 626.21 requesting the return of property and suppression of evidence.

Stephen Grigsby, Esq., appeared with and on behalf of the Petitioner, Ms. Deborah Rowell. Assistant Cass County Attorney Benjamin Lindstrom appeared on behalf of the Respondent.

After the hearing, the Court afforded counsel the opportunity to submit written argument. On August 28, 2013, the Petitioner and the Respondent filed simultaneous briefs. This Court took this matter under advisement on August 28, 2013.

Based upon the file, testimony, arguments of the parties, the record, and all submissions herein, the Court hereby makes the following:

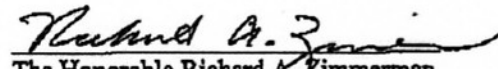
ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioner's motion pursuant to Minn. Stat. § 626.21 requesting the return of the seized dogs and the suppression of evidence is DENIED.
2. The Respondent's request that the \$10,000.00 security be distributed to the Cass County Sheriff's Office is DENIED.

3. Within ten days of the issuance of this Order, the Petitioner may pay the actual costs of care for all animals from the date of the seizure to the date Petitioner retrieves the animals. If the Petitioner pays all actual costs of care, then the seized dogs shall be returned to the Petitioner. If this occurs, the Petitioner shall comply with all statutory obligations and provide for the veterinary needs of the animals.
4. In the event that the Petitioner does not pay all actual costs within ten days of the issuance of this Order, her \$10,000 security shall be returned to her immediately.
5. If the Petitioner elects not to pay the actual costs of care for all animals, then the Cass County Sheriff's Department, with the help with the Animal Humane Society, is authorized to offer the seized dogs for adoption, foster care, or placement, or humane disposal after ten days of the date of this Order in accordance with Minn. Stat. § 343.235, subdiv. 1.
6. The contents of the attached Memorandum are incorporated herein and shall constitute the Findings of Fact and Conclusions of Law herein.
7. Let Judgment be entered accordingly.

Dated: August 29, 2013


The Honorable Richard A. Zimmerman
Judge of District Court

MEMORANDUM

I. THE PETITIONER IS NOT ENTITLED TO RELIEF UNDER MINN. STAT. § 626.21.

On July 15, 2013, the Cass County Sheriff's Office executed a search warrant at [REDACTED] in Pine River, Minnesota. During the execution of the search warrant, the police seized 102 dogs and 29 puppies. On July 19, 2013, the Petitioner filed a motion pursuant to Minn. Stat. § 626.21. She moved this Court to return the seized property and suppress any evidence obtained as a result of the search warrant. She alleged that the search warrant was executed maliciously in violation of Minn. Stat. § 626.22. The State is opposed to this motion.

As a preliminary matter, the Petitioner has claimed that she has an interest in the 102 dogs and 29 puppies. The Petitioner ran the kennel located at the property subject to the search warrant executed on July 15, 2013. The Respondent does not dispute that the Petitioner has an interest in the dogs. This Court finds that the Petitioner has an interest in the 102 dogs and 29 puppies seized.

Since the seizure of the dogs, Cass County has incurred actual costs of care of \$86,767.70, as of August 21, 2013. The Petitioner has posted a \$10,000 security to secure the return of the dogs. However, the Petitioner admits that she cannot afford to pay for all actual costs of care for the dogs.

The Petitioner asserts that she is entitled to relief under Minn. Stat. § 626.21. Said statute provides seven different bases for challenging the seizure of property. The Petitioner contends that the seizure of the dogs did not comport with certain provisions of Minn. Stat. § 626.21, and as such, she is entitled to the return of the dogs. The Petitioner did not make a claim for relief under Minn. Stat. § 626.21(2) or Minn. Stat. § 626.21(4).

1. The Search Warrant is Not Insufficient on its Face.

The Petitioner asserts that the search warrant is insufficient on its face. Minn. Stat. § 626.21(3). She contends that the warrant lacks probable cause. The Respondent disputes this claim.

The United States and Minnesota Constitutions protect people from unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const. art. I § 10. Search warrants must be supported by probable cause. U.S. Const. amend IV; Minn. Const. art. I § 10. A search warrant is supported by probable cause if there is substantial basis. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). A substantial basis exists if there is "a fair probability, given the totality of the circumstances set forth in the affidavit before the issuing judge, including the veracity and basis of knowledge of persons supplying hearsay information, that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 214.

When reviewing a search warrant to determine if sufficient probable cause exists, "[a] magistrate's determination of probable cause should be paid great deference by reviewing courts." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001) (citing *Gates*, 462 U.S. at 236). The Fourth Amendment has a "strong preference for searches conducted pursuant to a warrant." *Id.* "To ensure that the search warrant requirement does not become so burdensome as to discourage the police from seeking review by such a neutral party, the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants." *State v. Harris*, 589 N.W.2d 782, 791 (Minn. 1999) (citations omitted).

In the present case, Investigator Tony Cyr of the Cass County Sheriff's Department served as the affiant for the warrant obtained on July 15, 2013. The search warrant application indicated that Investigator Cyr is a licensed peace officer with over twenty years of experience. He has had training in the area of neglect and inhumane treatment of animals, sponsored by the Golden Valley Humane Society.

In the search warrant application, Investigator Cyr stated the following facts to establish grounds for the issuance of the warrant. Ms. Ann Olson, a director of a nonprofit group known as Animal Folks, contacted Investigator Cyr. She informed of him of her concerns about animals located at [REDACTED]

[REDACTED] Pine River. Ms. Deborah Rowell, the Petitioner, was running a dog breeding operation at this property.

Investigator Cyr reviewed an affidavit from a complainant. Said affidavit indicated that the Petitioner had surrendered twelve dogs to Tracie Allen in 2012. Ms. Allen's affidavit stated that these dogs smelled poorly and had feces in their hair. Ms. Allen reported that the Petitioner would not allow her into any kennel areas and was protective over the activities at the kennel. The twelve dogs did not have proper veterinary care as indicated by old injuries which had healed without care. These dogs were extremely underweight and scared of many things, including human contact. After reviewing the affidavit, Investigator Cyr called Ms. Allen and confirmed her statements.

Investigator Cyr reviewed other affidavits and complaints filed regarding the Petitioner's care of animals from the Cass County Sheriff's Office files and from multiple Humane Societies. These complaints dated back to 1997 and showed an "extend[ed] line of complaints" against the Petitioner. Investigator Cyr noted that many of complaints were excused by officers and veterinarians.

The Petitioner's kennel is inspected by the USDA, which found multiple violations of Minnesota statutes, in the affiant's opinion. Investigator Cyr reviewed a warning from December of 2010 from the USDA regarding unrepaired enclosures for the Petitioner's animals.

Close to May 1, 2013, Investigator Cyr received a phone call from Ms. Amanda Libby and Mr. Jim Block. The couple had received a German Shepherd named Baby from the Petitioner and indicated that this dog had several issues, medical and psychological. Ms. Libby and Mr. Block informed the affiant that the Petitioner had posted pictures on Craigslist, depicting an underweight dog. They also stated that the dog had grooming issues and injuries. A veterinarian completed a medical evaluation of Baby and confirmed these issues on May 8, 2013. The affiant reviewed this report.

The affiant indicated that he reviewed a file provided by Ms. Olson which provided information similar to that provided by Ms. Libby and Mr. Block. Ms. Olson informed Investigator Cyr that the

Petitioner was selling rescue animals but failing to keep proper records in accordance with USDA standards. The Petitioner also failed to post certain notices at the kennel in violation of Consumer Protection Statutes.

On April 12, 2013, the affiant did drive by the Petitioner's residence. He observed outdoor kennels with multiple dogs. He made this observation from a public street.

During the month of June 2013, the affiant spoke to two veterinarians who had experience with the animals residing with the Petitioner. Dr. Ebert explained that he was a part of a group from the Humane Society who investigated the Petitioner's kennel about six years ago. He informed the affiant that the wooden kennels were not impervious to moisture and other issues, including food contamination. The Pine River Police Department did not pursue charges based on these problems.

The affiant also spoke with Ms. Kathy Marcussen of the Staples Vet Clinic. She had a client that had purchased two puppies from the Petitioner. Both puppies had several issues, including worms and parasites. After two weeks, the puppies were euthanized due to their medical conditions.

Finally, the affiant continued to receive complaints from Ms. Olson and the Humane Society regarding the Petitioner and her kennel. He believes these complaints are evidence of violations of Minn. Stat. §§ 325F, 343, and 346. On the basis of the foregoing allegations, the affiant requested a search warrant of the Petitioner's kennel. He sought a warrant authorizing him to seize various property, including multiple breeds of dogs. On July 15, 2013, the Honorable Jana Austad signed the search warrant.

The Petitioner argues that the search warrant application failed to show that a crime has been committed or that evidence of a crime would be discovered. He asserts that Investigator Cyr improperly addressed violations of civil matters as a part of the search warrant application, including the allegation that the Petitioner violated Minn. Stat. § 325F. The Petitioner alleges that a violation of Minn. Stat. § 325F is a civil infraction.

A violation of Minn. Stat. § 325F may result in the imposition of a criminal penalty. Minn. Stat. § 325F.792, subdiv. 1 (“A violation of any United States Department of Agriculture statute or regulation covering animal breeders or groomers, pet dealers, or the transportation of dogs or cats is a misdemeanor.”). Moreover, the inclusion of facts pertaining to the violation of a civil statute in a search warrant is not prohibited. A violation of a noncriminal statute can still establish a fair probability that evidence of a crime will be found in a particular place. *See State v. McGrath*, 706 N.W.2d 532, 544 (Minn. Ct. App. 2005).

The search warrant contains sufficient facts to support a probable cause finding that evidence of a crime would be recovered. The search warrant application specifically alleges that evidence of crimes related to Minn. Stat. §§ 343 and 346 would be located. Both of these statutes provide for criminal penalties upon a showing of animal neglect. Minn. Stat. §§ 343.21, 346.44. The facts support an inference that evidence of animal neglect and deprivation of nourishment would be found on the Petitioner’s property at the time the warrant was requested.

Based on the foregoing, this Court finds that the search warrant contained facts that support a probable cause finding that evidence of a crime would be found on the Petitioner’s property. The search warrant was sufficient on its face. Therefore, the Petitioner’s request for relief on the basis of Minn. Stat. § 626.21(3) is denied.

2. There is Probable Cause to Believe the Existence of the Grounds on Which the Warrant Was Issued.

The Petitioner alleges that probable cause did not exist to believe the existence of the grounds on which the warrant was issued. Minn. Stat. § 626.21(5). She asserts that the grounds on which the warrant was issued—the facts alleged by the affiant—were not credible. The Respondent disputes this contention.

Probable cause exists to believe the existence of the grounds on which the search warrant was issued upon a finding of the existence of a substantial basis. *See Gates*, 462 U.S. at 214. A substantial

basis exists if there is "a fair probability, given the totality of the circumstances" exists to believe the facts alleged existed. *See id.* Therefore, this Court must assess whether it is reasonable and probable to believe that the facts alleged in the search warrant existed.

In the search warrant application, Investigator Cyr alleged that the Petitioner sold dogs. The Petitioner contends that she never sold any dogs. Investigator Cyr testified that he inferred that sales occurred from the information provided to him. In the search warrant application, Investigator Cyr stated that Ms. Libby and Mr. Block had responded to a Craigslist ad depicting an underweight dog. They responded to the ad and obtained the dog.

The Petitioner contends that she actually traded a cockatiel for the dog but did not receive any money from the trade. The Respondent correctly notes that a sale is defined as "the transfer of property or title for a price." Black's Law Dictionary, 8th ed. Even if the exchange occurred in the manner the Petitioner described, it was still a sale. The foregoing facts provide probable cause to believe that the Petitioner sold dogs.

In addition, the Petitioner asserts that the affiant failed to obtain more recent records. She claims that the affiant's reliance on outdated records fail to provide probable cause to believe the facts he alleged in the application. The Petitioner provided two recent inspection reports from the USDA dated April 23, 2012, and April 26, 2012, that indicate the Petitioner's kennel passed inspection. Ex. 74, 75. While it is true that the affiant included facts obtained from files dating back to 1997, he also included recent witness statements from April 13, 2013, and May 1, 2013. He made his own observations of the Petitioner's kennel on April 12, 2013. The inclusion of past records does not demonstrate a lack of probable cause to believe the facts the affiant alleged.

The Petitioner also asserts that the affiant failed to include relevant facts in the search warrant application, and as a result, the search warrant application misled the Court. Specifically, the Petitioner presented the minutes of the Pine River City Council Meeting held on April 13, 2004. Ex. 73. In the

minutes, Dr. Ebert represented to the Council that the Petitioner had resolved all deficiencies with her kennel, and the police would not pursue charges. In the search warrant application, the affiant included information obtained from speaking with Dr. Ebert. The affiant specifically stated that Dr. Ebert informed him that the Petitioner cured some of the deficiencies and that the police did not pursue charges as a result. Furthermore, the affiant credibly testified that he was unaware of the minutes from the Pine River City Council Meeting. This Court finds that the affiant did not provide misleading information in the search warrant application.

The search warrant application shows that the affiant conducted a thorough investigation. He not only reviewed affidavits and files, but he personally spoke with witnesses who had information regarding the care of the Petitioner's dogs. He also obtained a medical evaluation of one of the dogs and spoke to local veterinary clinics. This Court finds that probable cause exists to believe the facts alleged in the application. Therefore, the Petitioner's request for relief on the basis of Minn. Stat. § 626.21(5) is denied.

3. The Warrant Was Legally Executed.

The Petitioner contends that the search warrant was illegally executed in violation of Minn. Stat. § 626.21(6). She asserts that the warrant failed to include statutorily mandated language according to Minn. Stat. § 626.14 and replaced said language with language restricting the right of the police to search seize beyond 8:00 p.m. Because the police continued to search her property past 8:00 p.m., she contends the warrant was illegally executed. The Respondent disputes this assertion.

Minn. Stat. § 626.14 specifically provides that a search warrant may be served only in the daytime unless the court determines that "a nighttime search is necessary." "The policy behind prohibiting nighttime searches in the absence of specific judicial authorization in the warrant is to protect the public from the 'abrasiveness of official intrusions' during the night." *State v. Stephenson*, 245 N.W.2d 621, 624 (Minn. 1976) (citations omitted). The Minnesota Supreme Court has explicitly held that,

"This policy is not violated if the search begins in the daytime even though it continues into the nighttime." *Id.*

In the present case, the police began to search at 10:30 a.m., during the daytime. The search continued until approximately 9:10 p.m., into the nighttime. The continuation of the daytime search into the nighttime does not constitute an illegal execution of a search warrant. This Court finds that the police legally executed the search warrant.

4. The Warrant Was Not Improvidently Issued.

The Petitioner alleges that the warrant was improvidently issued. Minn. Stat. § 626.21(7). She contends that this provision grants this Court the authority to correct an error where it misread the facts or was misled, even if it did so inadvertently. It allows this Court to do what justice requires. The Respondent disputes that the warrant was improvidently issued.

The Petitioner contends that the search warrant was improvidently issued because Investigator Cyr was seeking a warrant as a part of an investigation into a civil violation of Minn. Stat. § 325F. This Court has already addressed this argument in Section II.1 of this Memorandum. In short, a violation of Minn. Stat. § 325F may lead to the imposition of a criminal penalty. Minn. Stat. § 325F.792. Moreover, the inclusion of a violation of a civil statute is permissible in a search warrant application. The reference to a possible civil violation did not mislead the court. This Court finds that the warrant was not improvidently issued and denies the Petitioner's request for relief pursuant to Minn. Stat. § 626.21(7).

5. Cass County Did Not Illegally Seize the Dogs.

The Petitioner alleges that Cass County illegally seized the dogs in violation of Minn. Stat. § 626.21(1). She asserts that this provision provides a catch-all for any illegality not listed in the remaining six grounds of the statute. For this reason, this Court is addressing the first ground listed in

Minn. Stat. § 626.21 after its discussion of the other grounds the Petitioner has alleged. The Respondent contends that the police legally seized the dogs.

The Petitioner asserts that the police failed to provide proper care for the dogs after the seizure occurred. Minn. Stat. § 346.39, subdiv. 2 provides that dogs must be provided with water to drink of their free choice. According to Ms. Katie Crosby, the Petitioner's daughter, the police placed the dogs in kennels without water for at least three hours on a hot day. Ex. 78-80. The police allegedly did not place water in the kennels until around 5:30 p.m. or 6:00 p.m. The Petitioner contends that the damage caused to dogs by the deprivation of water constituted an illegal seizure of the dogs.

The police seized the dogs the moment the dogs were taken from the Petitioner's kennels. The Petitioner fails to cite to any statute or case that would provide support for her argument that the maltreatment of the dogs after the seizure constitutes an illegal seizure. If the police did fail to give the dogs water after the seizure, this fact does not void the seizure itself.

The Petitioner has not alleged any other grounds that would fall under the catch-all provision provided in Minn. Stat. § 626.21(1). The failure of the police to give the dogs water following the seizure does not invalidate the seizure under the law. This Court finds that the dogs were not illegally seized and denies the Petitioner's request for relief made pursuant to Minn. Stat. § 626.21(1).

II. THE PETITIONER SHOULD HAVE THE OPPORTUNITY TO PAY ALL ACTUAL COSTS OF CARE TO SECURE THE RETURN OF THE DOGS; THE RESPONDENT IS NOT ENTITLED TO KEEP THE \$10,000 SECURITY THE PETITIONER POSTED.

At the motion hearing pursuant to Minn. Stat. § 626.21 on August 21, 2013, the parties requested clarification of the Order filed on August 16, 2013, regarding the disposition of the seized dogs. Minn. Stat. § 343.235 governs the disposition of the seized dogs. A person claiming an interest in the animal is "liable for all actual costs of care, keeping, and disposal of the animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law." Minn. Stat. § 343.235, subdiv. 3(d).

The Petitioner asserted that she would not be liable for the full costs of the care for the dogs if she prevailed on her motion under Minn. Stat. § 626.21. She asserted that if the seizure was not substantially justified, then she was entitled to the return of the dogs at no cost. The Respondent sought clarification as to whether the posting of the security meant that the seized dogs should be released to the Petitioner.

After the issuance of the Findings of Fact, Conclusions of Law, and Order filed on August 16, 2013, the Petitioner posted a \$10,000.00 security. Said Order stated that the Petitioner may "Post security in the amount of \$10,000.00 to provide for the animals' actual cost of care and keeping to prevent the disposition of the animals from the date of the seizure until the anticipated release date." The Order also gave the Petitioner the option to pay for the actual costs of care for the animals.

It appears that the Order issued on August 16, 2013, contemplated that the Petitioner's \$10,000 security would temporarily prevent the disposition of the dogs. When the Order was issued August 16, 2013, this Court had not decided the issue of whether the seizure was substantially justified by law. In the event the Court found that the seizure was not substantially justified by law, the Petitioner would not be liable for all actual costs pursuant to Minn. Stat. § 343.235, subdiv. 3(d).

Because the seizure was substantially justified by law, it is clear that the Petitioner is liable for all actual costs prior to the return of the seized dogs. The Petitioner is now aware of her obligation to pay all actual costs. This Court will give the Petitioner the opportunity to pay the actual costs of care for the animals within ten days of this Order, akin to the provision 1b of the Order dated August 16, 2013. In the event that the Petitioner does not pay all actual costs within ten days, her \$10,000 security shall be returned to her immediately.

R.A.Z.