

STATE OF INDIANA )  
 )SS:  
COUNTY OF HANCOCK )

IN THE HANCOCK SUPERIOR COURT 2  
CAUSE NO. 30D02-1708-CM-1602

STATE OF INDIANA )  
 )  
vs. )  
 )  
CAROLE POPE )

**DEFENDANT’S MOTION FOR THE IMMEDIATE RELEASE OF ALL LIVE ANIMALS AND FOR A PRELIMINARY INJUNCTION AGAINST THE GOVERNMENT’S CONTINUED SEIZURE OF DEFENDANT’S ANIMALS**

Comes now the Defendant, Carole Pope, by counsel, I. Marshall Pinkus, and hereby moves the Court for an order compelling the government to immediately release to Defendant all animals seized from the government’s unlawful July 11, 2017 intrusion into her home, for an order enjoining the government from continuing to seize said animals, and in support thereof states as follows:

1. On July 11, 2017 the government, by and through the Greenfield/Hancock County Animal Management and Hancock County Sherriff’s Department, unlawfully entered Carole’s private home and unlawfully seized her property, to wit: twelve (12) dogs and four (4) horses. The facts of this unlawful search and seizure are set forth in Defendant’s *Brief in Support of Motion to Suppress* which is incorporated herein as if fully set out.

2. The government has unlawfully detained Carole’s animals since July 11, 2017, depriving said animals of the care and affection of their owner, subjecting the animals to sub-standard care by placing them at a shelter rather than with their owner, and imposing irreparable harm upon Carole’s livelihood by preventing her from engaging in her profession, forcing her to sell her home, and irreversibly damaging her professional reputation.

3. Carole is entitled to a preliminary injunction upon proving by a preponderance of the evidence “(1) a reasonable likelihood of success at trial; (2) the remedies at law are inadequate; (3) the threatened injury to the movant outweighs the potential harm to the nonmoving party from granting the injunction; and (4) the public interest would not be disserved by granting the requested injunction. Central Indiana Podiatry, P.C. v. Krueger, 882 N.E.2d 723, 727 (Ind. 2008).

A. Carole Will Succeed At Trial

There is a reasonable likelihood that Carole will succeed at trial because the Fourth Amendment to the United States Constitution prevents the government from prosecuting this cause given the government’s unlawful search of Carole’s home and seizure of her property. As set forth in her *Brief in Support of Motion to Suppress*, the search warrant affidavit used to search Carole’s private home and seize her property was defective in that it lacked probable cause.

More specifically, Greenfield/Hancock County Animal Management Officer Ronda Jester unlawfully obtained a search warrant by (1) failing to allege unlawful conduct; (2) creating a fictitious county ordinance; (3) knowingly making the false statement that Carole told her she had seven dogs inside when Officer Jester documented the day before that Carole had told her she had just five dogs inside; (4) violating Ind. Code § 35-33-5-2 by including in her search warrant affidavit an uncorroborated anonymous hearsay statement; and (5) knowingly omitted material exculpatory facts from her affidavit.

Given that Officer Jester knowingly misled the magistrate and the affidavit’s lacking of any indicia of probable cause, the government is not permitted to hide behind the good faith exception to the exclusionary rule, therefore none of the unlawfully obtained evidence will be permitted at trial. Consequently, there is a reasonable likelihood that Carole will succeed at trial.

B. Carole's Remedies At Law Are Inadequate

Carole's remedy for the government's unlawful conduct necessarily includes the return of her animals – alive. While it is true that Carole may seek redress for the government's unlawful conduct by obtaining money damages, “injunctive relief is not available where the breach can be adequately satisfied by money damages,” Cent. Ind. Podiatry, P.C., 882 N.E.2d at 732.

Here, however, Carole's damages cannot be adequately redressed with money damages. The government is holding sixteen live animals – 16 souls. The government will have the option to kill these animals should Carole fail to make her monthly ransom payment of \$2,200.00. Alternatively, the government may give away or sell Carole's property to third parties should she fail to make these payments. See State's Motion to Give Animal Control the Power to Determine Disposition of Animals, filed August 7, 2017 (“ . . . to give Greenfield Hancock Animal Management the authority . . . to determine the disposition of the above mentioned animals for *adoption or euthanasia*. . . ) (emphasis added).

Carole has faithfully paid the government every month as required to keep her animals alive. She has been forced to sell her home in Hancock County so that her animals may live. Carole does not have the remaining funds to continue paying this bond. Her remedy at law is therefore inadequate in that any money she will receive cannot bring a soul back to life. Any money she may receive will not entitle her to reclaim ownership once the government sells her animals to a third party.

C. Carole Forever Losing Her Animals Outweighs Any Potential Harm To The Government.

The threatened injury to Carole – forever losing her 16 animals – far outweighs any potential harm to the government. As explained *supra*, Carole is facing the loss of 12 dogs and 4 horses should the government be able to continuing holding her animals. There is nothing this

Court can do to bring these animals back to life if the government decides to kill them should Carole fail to make a monthly bond payment. Moreover, Carole is also facing substantial economic hardship by having to sell her home just to afford these monthly payments. Additionally, her ability to earn a living has been suspended indefinitely and perhaps irreparably given the government's accusations levied against her.

While Carole faces significant and substantial injury, the government faces absolutely not harm. The government does not need these animals for trial – they are not evidence. The government seized the animals over five months ago – on July 11, 2017. The condition they will be in at the time of trial will not be substantially similar to the condition in which they were found (given they are living, breathing creatures), therefore they will be inadmissible at trial. See e.g. Ind. Rule of Evid. 402 (irrelevant evidence is inadmissible). Therefore, an order compelling the government to release the animals will not prejudice the government's ability to prosecute this case.

The government may attempt to argue that it will be harmed in that it has an interest in protecting the well-being of the animals, and that the animals will be harmed should they be returned to Carole given that she is facing seven (7) counts of cruelty to animals. This is a superfluous argument.

First, Carole is facing these charges because the government decided to file an Information against her. Carole is presumed innocent under the eyes of the law. She continues to enjoy this presumption unless and until a jury of her peers concludes otherwise.

Second, the government forfeited whatever interest it may have had in Carole's animals when it decided to violate the Fourth Amendment to the United States Constitution. Officer Jester's unlawful search warrant affidavit rendered the entire search of Carole's home unlawful,

therefore all evidence obtained will be unavailable for the government to use at trial. See generally *Defendant's Brief in Support of Motion to Suppress*. Had the government wished to invoke its interest in Carole's property, it could have - and was commanded to - follow the Constitution of the United States when doing so.

Third, Carole's animals face no harm in her care and custody. The government's own expert witness agrees. Cheryl Miller, DVM, of the Indiana State Board of Animal Health, evaluated Carol's dogs and horses<sup>1</sup> from July 14, 2017 through July 17, 2017. See Animal Welfare Case Report, Exhibit 1.

Dr. Miller concluded that Carole's dogs were just fine, that two of them were in fact "slightly overweight":

"In general the body conditions of the dogs were good with 'Denver' and 'Princess' being slightly overweight." Id. at 8.

Dr. Miller's only complaints were that the dogs had nails that were too long. Id.

Similarly, Dr. Miller concluded that Carole's horses were just fine as well:

"The 4 horses were all in adequate body condition. The stallion was slightly thin with his ribs being visible but he did have good muscling through his shoulders and hind quarters." Id. at 9.

The "slightly thin" horse that Dr. Miller referred to, "Commanche," nevertheless was given a "4" on the body conditioning scale. See Large Animal Evaluation Form, Ex. 2.

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<sup>1</sup> The health of the cats seized are irrelevant. Carole does not own the cats seized. As explained in her Brief in Support of Motion to Suppress, Carole informed the officers on July 10, 2017 that the cats were feral, they did not belong to her, and that they roam her rural Hancock County land and that of her neighbors. Despite having this information, the government nonetheless is using five of these feral cats as a basis for five of the seven counts against her. See Counts I, II, III, IV, and V.

Of critical importance, the government entered into an Agreed Order with Carole on August 14, 2017 wherein the parties agreed that Carole would pay \$5 per day for each of her 12 dogs and \$100 per month for each of her 4 horses. Carole is not paying for the cats because they are not hers. Nevertheless, the government continues to prosecute her as to these feral cats.

In fact, all of Carole's dogs and horses scored a four or higher. See Id.; Small Animal Evaluation Form, Ex. 3. According to the Nestle Purina Body Condition System, used by Dr. Miller, it is "ideal" for dogs go have a body condition score "BCS" of 4-5. See Nestle Purina Body Condition System Chart, Ex. 4. Similarly, "healthy horses usually have a score between 4 and 6. . ." C.M. Brady et al, Introduction to Body Condition Scoring Horses, Purdue University Cooperative Extension Service, October 2002, Ex. 5.

Therefore, the government's own witness, Dr. Miller, has concluded that all of Carole's dogs and horses were healthy and ideal at the time the government seized them. The government faces no harm by the granting of the injunction, whereas the injury to Carole (and her animals) is substantial and irreparable.

D. The Public Interest Will Be Served By Returning The Animals to Carole

The public's interest will be furthered by returning to Carole that which the government unlawfully stole from her. The public has an interest in ensuring that the government follows the rules, that the government adhere to the restrictions placed upon it by the United States Constitution. Given that the government violated Carole's Fourth Amendment rights when unlawfully invading her home and seizing her property, the public's interest is furthered by returning that property to Carole. Indeed, this is the entire premise of the exclusionary rule, to serve as a deterrent to officers who may wish to violate the law. See e.g. United States v. Leon, 468 U.S. 897, 906 (1984).

Additionally, the public's interest is furthered by decreasing the strain placed on the local government of Hancock County and the City of Greenfield. These governments are currently housing, feeding, providing medical treatment, and are caring for Carole's animals. While Carole is paying the monthly bond, the governments are nonetheless spending taxpayer dollars to care

for the animals by paying for expenses in excess of the ordered \$2,200 monthly payment. Moreover, given that Carole is likely to succeed at trial given the government's violation of her Fourth Amendment rights, whatever bond monies she has or may pay will be returned to her in damages obtained through her legal remedies.

Finally, the Hancock County animal shelter has decreased capacity given these animals are currently being held there. Returning these animals to Carole will free up space at the shelter and the time of the workers there to care for other animals who are actually in need. As the government concedes, these animals are "exhausting the space and food supply of the animal control facility." See *State's Motion to Give Animal Control the Power to Determine Disposition*.

There is no public interest furthered by the government's continued retention of Carole's animals. As explained *supra*, the government cannot use them as evidence at trial and the animals were found to be in ideal health when seized from Carole's home.

### **CONCLUSION**

Carole has shown by a preponderance of the evidence that she has a reasonable likelihood of succeeding at trial given the government's violation of the Fourth Amendment; that her remedies at law are inadequate given money damages cannot bring her animals back to life or return them to her once sold; that the substantial injury to Carole and her animals – including death - outweighs the non-existent harm to the government; and that the public interest will be furthered by returning the animals to their rightful owner and relieving the burden on the taxpayers of Hancock County.

Carole respectfully requests the Court issue an order enjoining the government from continuing to seize Carole's 12 dogs and 4 horses, ordering the government to immediately release the animals to Carole, and for all other relief just and proper in the premises.

Respectfully Submitted:

/s/ I. Marshall Pinkus  
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Counsel for Defendant Carole Pope

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been duly served upon the following by filing the same with the IEFS on the date of filing:

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