COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

TRIAL COURT DEPARTMENT
QUINCY DIVISION
NO. 2156CR000248

COMMONWEALTH

VS.

MARYANN RUSSO

<u>AMENDED MOTION TO DISMISS – LACK OF PROBABLE CAUSE</u>

The defendant is charged with G.L. c. 272 § 77, Animal Cruelty by Custodian. The defendant moves, pursuant to Mass. R. Crim P. 3(g)(2) and *Bradford v. Knights*, 427 Mass. 748, 695 N.E. 2d 1068 (1998), to dismiss the complaint in its entirety as the clerk magistrate who issued the complaint heard insufficient evidence to establish probable cause.

As the SJC cited in *Bradford,* "[i]f the person complained of believes that there was not probable cause to charge him with a crime, he may move to dismiss the complaint."

MARYANN RUSSO,
By her attorney,

/s/ Jason S. Bolio
Jason S. Bolio, Esq.
BBO # 654098
234 Copeland St, # 230
Quincy, MA 02169

Dated: March 23, 2022

6/14/22. OPS — The motion is allowed since I do not conclude that the statute contemplates an affirmative obligation to euthanize an animal [illegible] could be by its owner.

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

TRIAL COURT DEPARTMENT
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COMMONWEALTH

VS.

MARYANN RUSSO

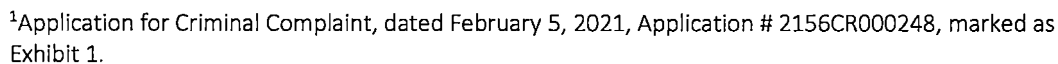
AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

Under oath, I depose and state that:

1. My name is Jason S. Bolio.
2. I am the attorney for the above-named defendant.
3. The above-named complaint charges Maryann Russo (*hereinafter* "Russo") with G.L. c. 272 § 77, Animal Cruelty by Custodian.
4. A reading of the Application for Criminal Complaint (*hereinafter* "Application")[1] is insufficient to establish probable cause to believe Russo committed a violation of G.L. c. 272, § 77.

Signed under the penalties of perjury this twenty-third day of March, 2022.

/s/ Jason S. Bolio
Jason S. Bolio, Esq.
BBO # 654098



[1]Application for Criminal Complaint, dated February 5, 2021, Application # 2156CR000248, marked as Exhibit 1.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

TRIAL COURT DEPARTMENT
QUINCY DIVISION
NO. 2156CR000248

COMMONWEALTH

VS.

MARYANN RUSSO

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

FACTS

On January 14, 2021, Danielle Genter of the Animal Rescue League of Greater Boston (*hereinafter* "ARL") spoke to Dr. Amanda Duffy (*hereinafter* "Duffy") regarding a client, MaryAnn Russo (hereinafter "Russo"), who wanted to take her dog out of the hospital against medical advice. *See* Exhibit 1 p. 2 ¶ 1. Duffy reported Russo brought the dog to the VCA South Shore Animal Hospital (*hereinafter* "VCA") last night. The dog was unable to stand or walk, had bed sores, a large necrotic mass, labored breathing and appeared to be in a considerable amount of pain. Id. at p. 2 ¶ 1.

"Chipper"[2] had been previously seen at VCA on December 25, 2020, Duffy recommended surgery to remove the large mass and Russo declined. Id. at. p. 2 ¶ 2. On January 14, 2021, when Duffy recommended euthanasia, Russo requested the surgery, Duffy declined and suggested Tipper may die during the surgery. Id. at. p. 2 ¶ 3. The Russo's indicated they would bring Tipper to another vet for a second opinion, Duffy

[2] The dog's name is misspelled throughout, his name was Tipper.

doubted that and contacted the ARL as she was concerned the dog was in pain, not breathing well and needed supplemental oxygen. Id. at. p. 2 ¶¶ 3-4.

Duffy made no observations that Tipper was malnourished, was being denied food, was being denied water, was being denied shelter, was being physically abused, was dirty or unkempt, was being kept in unsanitary conditions or otherwise neglected or being denied necessary sustinence. Id.

On January 15, 2021, at approximately 1126 AM, Sgt. Paul J. Patton (*hereinafter* "Patton") of the ARL received a voicemail message from Russo stating her dog was in good health, beginning to act normally again, was eating and drinking, getting off the couch, going to the bathroom again and not in pain. Id. at p.5 ¶ 1. Russo allegedly stated the doctor wanted to put the dog down instead of removing the mass and she would not be euthanizing the dog because of his improved health. Id. Patton left a voicemail message for Russo stating he needed to see Tipper however the call was never returned. Id. at p.5 ¶ 1

On February 4, 2021, Patton of the ARL visited the Russo home after making several unsuccessful attempts to contact Russo. Id. at p.3 ¶ 1, Id. at p .4 ¶ 1. Sylvia Russo (*hereinafter* "Sylvia"), Russo's mother, came to the door, said the dog was "ok" and when Patton asked if he could see the dog, he was invited inside. Id. at p.4 ¶ 1.

Upon entry, Patton observed a male approximately sixty years old with "mutton chop side burns" whom identified himself as Junior.[3] Patton observed a dog on the couch whom he initially thought was deceased, observed his legs were still, he was taking

[3] Sgt. Patton made no attempt to obtain identifying information of "Junior" and by describing him as having "mutton chop side burns" it appears as if he is mocking the Russo family.

hollow breaths and had raw looking sores on its front and back legs. Id. at p.4 ¶ 1. Sgt. Patton observed Tipper looked thin but was belly was distended. Id. at p.4 ¶ 1.

Tipper was laying on a 3' x 3' bed-like linen, in a diaper with newspapers surrounding him. Id. at p.4 ¶ 1. He made no mention of Tipper laying in urine or feces or being dirty and unkempt. Id. at p.4 ¶ 1. He told Sylvia the dog was dying. Id. at p.4 ¶ 1. Sylvia flipped the dog so Patton could see the other side and Patton observed the dog being "still and uncomfortable." Id. at p.4 ¶ 1. Patton observed Tipper gasp for air when being flipped. Id. at p.4 ¶ 1. Patton told Sylvia that Tipper needed immediate medical attention and was suffering. Neil Russo said "just let the dog die at home." Id. at p.4 ¶ 1. Sylvia and her husband Neil Russo asked Patton to leave and said he was not welcome to come back. Id. at p.4 ¶ 1.

I. The appropriate remedy for the Commonwealth's failure to present sufficient evidence to the Clerk Magistrate is dismissal of the complaint.

Massachusetts Rule of Criminal Procedure 3 governs the commencement of criminal proceedings in the District and Superior Court Departments. Rule 3 (a) reads in relevant part "a criminal proceeding shall be commenced in the District Court by a complaint...". ALM R. Crim. P. Rule 3(a) (2006). Rule 3(g)(2) states "the appropriate judicial officer shall not authorize a complaint unless the information presented by the complainant establishes probable cause to believe that the person against whom the complaint is sought committed an offense." ALM R. Crim. P. Rule 3(g)(2) (2006).

In Commonwealth v. McCarthy, 385 Mass. 160, 430 N.E. 2d 1195 (1982), the Supreme Judicial Court succinctly stated the law concerning what evidence must be presented to the grand jury in order for it to issue a valid indictment. In that case, the

Court held that, "at the very least the grand jury must hear sufficient evidence to establish the identity of the accused and probable cause to arrest him." A grand jury finding of probable cause is necessary if indictments are to fulfill their traditional function as an effective protection "against unfounded criminal prosecutions." Id. at 163, 430 N.E.2d at 1197 (*citations and footnote omitted)*.

II. The Commonwealth failed to present sufficient evidence to establish probable cause the defendant violated G.L. c. 272 § 77.

GL. c. 272 § 77

GL. c. 272 § 77 provides in relevant part "Whoever overdrives, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed...; or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment or protection from the weather, and whoever, as owner...of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes to be carried in or upon a vehicle...in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willingly authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty...shall be punished."

A. The Application contains no allegation that Defendant cruelly drove, overdrove, drove when overloaded, overworked, tormented, mutilated, killed or otherwise caused Tipper to be overdriven, overloaded, tortured, tormented, mutilated or killed.

The Application contains no information to suggest Tipper was a working animal.

The evidence suggests Tipper was a house pet. There is no allegation Russo cruelly drove, overdrove, drove when overloaded, overworked or worked when unit for labor or otherwise caused Tipper to be overdriven, driven when overloaded, overworked, or worked when unfit for labor.

Further, neither Duffy nor Parlon provide any information that Tipper was tortured, mutilated or killed by Russo or that Russo caused Tipper to be tortured, tormented, mutilated or killed.

B. **The Application contains no allegation Russo deprived Tipper of necessary sustenance or caused Tipper to be cruelly driven, to be deprived of necessary sustenance, or failed to provide Tipper with proper food, drink, shelter, protection from the weather or sanitary environment.**

THE APPLICATION CONTAINS NO EVIDENCE DEFENDANT DENIED TIPPER NECESSARY SUSTENANCE – INCLUDING FOOD, WATER AND SHELTER

Commonwealth v. Waller, 90 Mass. App. Ct. 295, 296 (2016), involved a factual scenario where the defendant brought her dog into the veterinarian in extremely poor condition and was subsequently charged and convicted of animal cruelty. The veterinarian described the dog as emaciated. Id. at 296. Immediately after arrival at the veterinarian, CPR was performed unsuccessfully and the dog euthanized. Id. at 297.

The court in Waller affirmed the conviction for animal cruelty opining the dog was deprived of necessary sustenance. Id. at 296. An expert testified it would take approximately "four (4) to six (6) weeks of complete starvation for a dog to go from an ideal body condition to an emaciated condition." Id. at 297. The expert opined the dog died from severe malnutrition, specifically lack of food. Id.

In the Application, there is absolutely no evidence suggesting Tipper was denied food, water, shelter or any necessary sustenance. The veterinarian did not opine Tipper was starving or dehydrated or otherwise being deprived of any necessary sustenance. *See* Exhibit 1.

When Parlon visited the residence on February 4, 2021, unannounced, he made no observations the dog was lacking food or water. He observed Tipper to be sleeping on a couch, inside, surrounded by his family. Id.

Clearly, there is no evidence contained in the Application to suggest the Defendant deprived Tipper of necessary sustenance specifically food, water or shelter. Id.

B. THE APPLICATION CONTAINS NO ALLEGATION RUSSO FAILED TO PROVIDE TIPPER WITH ADEQUATE PROTECTION FROM THE WEATHER

There is no evidence in the Application either provided by Duffy or based upon Parlon's investigation that Tipper was ever denied protection from the weather. When Parlon came to the Residence, unannounced, he observed Tipper sleeping on a couch, inside, completely protected from the weather. Id.

C. THE APPLICATION CONTAINS NO EVIDENCE RUSSO FAILURED TO PROVIDE TIPPER A SANITARY ENVIRONMENT

Commonwealth v. Erickson, 74 Mass. App. Ct. 172 (2009) involved a matter where one (1) dog and a number of cats were observed inside a filthy apartment. The dog was crouched against the wall, surrounded by feces, emaciated, with bones visible through his skin. Id. at 174.

In the next room was a feces-covered area with boxes, garbage, and trash everywhere. Id. The smell was so foul the officers became lightheaded, several cats were found barely alive and forty-nine to fifty-one animal carcasses were found in the refrigerator and kitchen cabinets. Id. at 174. The defendant here was convicted of failure to provide a sanitary environment which ultimately was upheld on appeal.

In the case at bar, there is no allegation the Residence was filthy, feces-covered, foul smelling with several animals barely alive and many animals dead and left in the refrigerator and kitchen cabinets. *See* Exhibit 1.

When Parlon visited the Residence on February 4, 2021, he observed the Residence to be cluttered and trash to be present but he certainly wrote nothing about a feces-covered floor, dead animals, foul odors, and Tipper being emaciated. He never described the Residence as filthy. Id.

There was no evidence presented that the area where Tipper lay was filthy or unsanitary or covered with waste. The evidence suggested Tipper was wearing a diaper, and in the absence of evidence to the contrary, the inference is the diaper was clean. Id.

In the case at bar, clearly the Commonwealth failed to establish probable cause Defendant failed to create a sanitary environment.

C. THERE IS NO EVIDENCE CONTAINED WITHIN THE APPLICATION WHICH SUGGESTS TIPPER WAS DENIED OF FOOD, WATER, SHELTER OR PROTECTION FROM THE WEATHER.

The Application is devoid of any suggestion Tipper was denied food, water, shelter or protection from the weather. Id.

II. The Application contains no allegations Defendant inflicted cruelty upon Tipper.

G.L. c. 272 imposes criminal penalties on any person who "cruelly beats" an animal or "inflicts unnecessary cruelty" upon an animal in his charge." Commonwealth v. Zalesky, Jr., 74 Mass. App. Ct. 908 (2009).

Cruelty, in the context of G.L. c. 272 is defined as "[s]evere pain inflicted upon an animal...without any justifiable cause." Commonwealth v. Lufkin, 7 Allen 579. 581 (1863). Specific intent to cause harm is not required; "decisional law makes clear that in circumstances involving the direct infliction of pain on an animal, all that must be proved is that the defendant "intentionally and knowingly did acts which were plainly of a nature to inflict unnecessary pain.' Commonwealth v. Erickson, 74 Mass. App. Ct. 172, 177 (2009), *quoting* Commonwealth v. Magoon, 172 Mass. 214, 216 (1898).

The Application contains no evidence from the veterinarian or otherwise that Defendant was unnecessary cruel to Tipper, or committed acts which were plainly of a nature to directly and intentionally inflict pain upon Tipper. Id.

Clearly, the Commonwealth failed to establish Defendant inflicted cruelty upon Tipper.

III. The Application does not support a finding of probable cause Defendant willfully abandoned or knowingly and willfully subjected Tipper to unnecessary torture, suffering or cruelty, or permitted Tipper to be subjected to unnecessary torture, suffering or cruelty.

G.L. c. 272 prohibits knowingly and willfully abandoning or otherwise authorizing or permitting (an animal) to be subjected to unnecessary torture, suffering, or cruelty of any kind.

The Court in Erickson held "The heightened mental state of 'knowing' and 'willful' conduct was included by the legislature in only two portions of G.L. c. 272... namely, (1) where a person 'willfully abandons an animal and (2) where someone 'knowingly and willfully causes [an animal] to be subjected to unnecessary torture suffering, or cruelty."

Knowingly means in full awareness or consciousness: deliberately. Willfully means "intentional rather than accidental." Commonwealth v. Paton, 63 Mass App. 215, 219 (2005); Erickson at 176.

A. THE APPLICATION CONTAINS NO EVIDENCE RUSSO ABANDONED TIPPER

The Affidavit contains no evidence or information that Russo willfully abandoned Tipper. *See* Exhibit 1.

B. THE APPLICATION LACKS ANY ALLEGATION RUSSO CARRIED TIPPER OR CAUSED TIPPER TO BE CARRIED IN A VEHICLE, OR OTHERWISE, IN AN UNNECESSARILY CRUEL OR INHUMANE MANNER OR IN A WAY AND MANNER THAT MIGHT ENDANGER THE ANIMAL CARRIED THEREOF.

Commonwealth v. Magoon, 172 Mass. 214 (1898), involved a factual situation where Magoon purchased a sick horse and transported him eight (8) to ten (10) miles to his home. Evidence was presented that in carrying the horse, Magoon greatly and unnecessarily injured the horse, and that from the evidence his intent to be cruel and his knowledge he was cruel could be inferred. Id. at 215. Evidence was also presented that Magoon was not unnecessarily cruel, the horse lay comfortably while carried and he did not intend to injure the horse. Id. at 215. The defendant was convicted.

In upholding the conviction, the court in *Magoon* wrote "The defendant's guilt did not depend upon whether he thought he was unnecessarily cruel, but upon whether he was so in fact. It need not appear that he knew that he was cruel, and that he was willing

to do so, but only that he intentionally did acts which were plainly of a nature to inflict pain, and so were unnecessarily cruel. Id. at 216.

There is no evidence contained within the Application which suggests Russo intentionally committed any act which was plainly of a nature to inflict pain and unnecessarily cruel. *See* Exhibit 1.

There is certainly no evidence to suggest Russo unnecessarily injured Tipper, in any way, during transportation. *See* Id.

C. *THE APPLICATION CONTAINS NO EVIDENCE RUSSO KNOWINGLY AND WILLFULLY SUBJECTED TIPPER OR PERMITTED TIPPER TO BE SUBJECT TO UNNECESSARY TORTURE, SUFFERING OR CRUELTY.*

Commonwealth v. Turner[4], 145 Mass 296 (1887) involved a case where the owner of a domesticated fox arranged an event where his fox would be hunted by a number of dogs. The fox was released, minutes later the dogs were released, and a half-hour (1/2) later the fox was discovered dead. Id. at 299.

The court held Turner knowingly and willfully subjected the fox to unnecessary suffering and wrote "The right to kill a captive fox does not involve the right to inflict unnecessary suffering upon it in the manner of death, any more than the right to kill a domestic animal involves the right to inflict unnecessary suffering upon it, or cruelly kill it. It cannot be said...that throwing a captive fox among dogs, to be mangled and torn by them, is not exposing it to unnecessary suffering." Id. at 301.

[4] This matter was charged under the former animal cruelty statute Pub. Sts. C. 207, § 53.

Commonwealth v. Thornton, 113 Mass 457 (1873) involved an indictment for knowingly and willfully authorizing a dog to be subjected to unnecessary torture, suffering and cruelty. Id. The facts alleged Thornton "knowingly and willfully ...permitted said dog to be bitten, mangled and cruelly tortured by a certain other dog." In affirming the validity of the indictment, the court wrote "we have no doubt these facts constitute an offense within the spirit and letter of the statute."[5] Id.

In order to establish probable cause, that Russo knowingly and willfully authorized or permitted Tipper to be subjected to unnecessary torture, suffering or cruelty, the Commonwealth must demonstrate Russo acted intentionally and deliberately. *See* Erickson at 176; *See also* Paton at 219.

The Commonwealth must demonstrate Russo intentionally did acts which were plainly of a nature to inflict pain, and were so unnecessarily cruel. *See* Magoon at 216.

Facts held to constitute knowingly and willfully authorizing a dog to be subjected to unnecessary torture, suffering and cruelty include: allowing a dog to be bitten, mangled and tortured by another dog: Thornton at 457; the carrying of a sick/injured horse resulting in great and unnecessary injury for eight (8) to ten (10) miles; Magoon at 215; and the release of a fox to be hunted and killed by dogs. Turner at 299.

All of the cited cases and jurisprudence relevant to this matter involve allegations of deliberately torturing, suffering or cruelty an animal unnecessarily or avoidably. There is no evidence contained in this case which suggests anything like that. *See* Exhibit 1.

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[5] The statute here was St. 1869, c. 344 § 2.

There is no suggestion Russo subjected or inflicted unnecessary cruelty or torture upon Tipper. There are no allegations Russo abused or allowed anyone to abuse Tipper, or tortured, caused suffering or was cruel to Tipper in any way. *See* Id.

Tipper was dying. The Application contains no allegation Russo caused the condition which was causing Tipper's death. Even if Tipper were suffering prior to death, that was unavoidable. Tipper may very well have been near death but Russo did cause that condition, his death was unavoidable and there was no evidence Tupper was in unnecessary pain. *See* Id.

To suggest Russo consciously and intentionally caused Tipper to suffer is obscene and without reason and not supported in any way by the facts in the Application. *See* Id.

When Patton came to the residence, unannounced, he was allowed inside. He made observations that Tipper was sick but made no observations Tipper was abused or neglected in any way. Patton observed Tipper laying on the couch, with his family, on a blanket, with a diaper. This is not abuse, this is loving care. *See* Id.

Further, at the VCA, Russo requested Duffy complete surgery which was previously recommended but she refused as she was afraid Tipper would die. If Duffy was suggesting euthanasia, it is unreasonable to not make every attempt possible to save Tipper, including surgery. That is the request of a loving animal parent, made without regard for cost or chances of success, the fact the surgery had any chance of success was enough for Russo to request it. This does not demonstrative of abuse, it is demonstrative love, grief and selflessness. *See* Id.

Duffy chose not to do so and then called the ARL to report Russo for not agreeing to immediately kill Tipper and to seek the advice of his regular veterinarian or to deliberate as to the correct decision. *See* Id.

IV. Failure to euthanize is not a violation of GL. c. 272 § 77

There are no reported cases under G.L. c. 272 which sustain animal cruelty allegations for failure to euthanize. There are no civil remedies which allow for the involuntary euthanasia of a dog which are relevant to the case at bar. The following are the only statutory authorities for the euthanasia of a dog:

> G.L. c. 140 § 157 (a), (c)(vii), provides in relevant part "a person may file a written complaint regarding a dangerous or nuisance dog, and after a hearing may order the dog euthanized;"

> G.L. c. 140 § 158, provides in relevant part "[a] animal control officer may...euthanize a dog...if found to be in violation of an order of a hearing authority or a district court and may euthanize a dog, in a humane manner, if it is living in a wild state;"

> G.L. c. 140 § 160, provides in relevant part "The mayor of a city...after written notice to a keeper of a dog...known to have killed livestock or fowl...then and there (may) euthanize the dog...unless such owner...shall give a bond of $200;"

> G.L. c. 140 § 163, provides in relevant part "If the mayor...determines after notice to the parties and a hearing...the identity of the owner or keeper of a dog.... found to have...maimed or killed livestock or fowl thereby causing damages for which the owner of the livestock or fowl may become entitled to compensation from the city...the mayor shall serve upon the owner within twenty-four (24) hours' notice to euthanize the dog in a humane manner;"

> G.L. c. 140 § 167, provides in relevant part "The mayor...may order all dogs shall be restrained from running at large...which shall be published for at least two (2) days...Following publication a police officer...not sooner than twenty-four (24) hours after publication...(may) euthanize all dogs in a humane manner that are found running in contrary to this order."

According to Parlon, he is extraordinary in his knowledge of animal abuse with his training, experience and education. It is without reason to claim he was ignorant of the above-mentioned processes for involuntarily seizing and euthanizing a dog.

The facts in the case at bar do not come close to meeting the requirements of any statute authorizing involuntary euthanasia, Parlon had to know that. The above statutes involve due process of law, including hearings, and the rights of owners to be heard prior to euthanasia.

The opposite occurred here. Parlon intentionally fabricated felony animal abuse allegations with the obvious intent to euthanize Tipper without any due process for Russo or her family. Parlon clearly acted unlawfully and violated her civil rights. *See* Id.

V. Analysis

Russo cannot be said to have acted with felonious intent. At worst she hung on to her dog, whom her entire family adored, and struggled with the realization that the end was near. The Affidavit contains no information Russo abused or hastened Tipper's death in any way.

Parlon treated this family with absolute disrespect and disregard. Neil is in his nineties (90's), Sylvia in her last eighties (80's), and Russo's brother in his sixties (60's.) Parlon unnecessarily goes out of his way to attempt to shame and embarrass these people, like it is a joke. His conduct to the family during this time of crisis and the sarcastic, mean reports he authors are absolutely disgusting.

The legislature has not seen it fit to pass a law allowing for the seizure of a sick animal for euthanasia against the wishes of the owner. The judiciary has not interpreted this statute to include failure to euthanize.as constituting animal cruelty.

Parlon swore an oath when he became a Massachusetts State Trooper, specifically he swore to "uphold the laws of Massachusetts and the constitution of the United States." He clearly failed to do so in this matter. His opinion about a piece of legislation or its interpretation through the judiciary is immaterial. If he believes change is necessary, that can be accomplished through advocacy through the legislature. Parlon cannot simply act contrary to the law and attempt to justify his actions by basing his conduct on a disagreement with the law or an alleged noble purpose.

Child molesters do not believe molesting children should be illegal. The legislature determined otherwise. This is no different.

No one has the right, according to the legislature, to euthanize an animal over the objection of the owner absent certain circumstances, no circumstance relating to the health of the animal. The decision to euthanize is one of the most difficult decisions a person is ever confronted with. Tipper was part of the family; he was the center of the Russo's life.

Maybe Russo unrealistically believed Tipper would recover. When confronted with crisis, reason sometimes is replaced by panic. To suggest Russo intentionally and deliberately tortured, caused suffering or cruelty is absurd.

Russo being prosecuted is absurd.

Had Russo been abusing Tipper it is highly unlikely she would have presented him to the VCA twice within one (1) month, bore the cost of such visits, and after being told Tipper was near death offering to pay for a surgery which Duffy believed would be unsuccessful. *See* Id.

Parlon easily could have investigated whose veterinarian Tipper regularly saw and inquired there. He chose not to.

The fact that a person is sick and dying does not mean someone committed a crime against them or caused them to be sick and dying. The same can be said for an animal. The fact Tipper was sick and dying does not mean anyone abused him or caused him to be sick and dying.

Tipper was fourteen (14.).

All people have some measure of difficulty when someone or something they love dies. Attempting to save that person or animal, no matter how unreasonable, is not abuse, it is a symptom of love and being human.

The ARL had no right to seize Tipper. He was not evidence of any crime. He was an elderly dog whom was dying in the comfort of his home surrounded by his family. A veterinarian wanted to end his life and his family wanted to keep trying. There is no criminal intent there.

Parlon did visit the residence the day before applying for SW0069. It is curious that given he saw plain and obvious evidence of animal abuse, and given his extraordinary training and experience with animal abuse cases, that he simply did not just seize Tipper.

It certainly appears as if Parton knew he could not lawfully seize Tipper and did so by acting disingenuously and requesting this be done through a search warrant, issued by someone who clearly lacks the extraordinary training and experience in animal abuse cases as does Parlon.

This speaks to Parlon's intent where he clearly and intentionally violated the laws of the Commonwealth of Massachusetts, and failed to uphold the Constitution of the United States, by making a disingenuous and illegal request through the Court in an attempt to mitigate his own responsibility. This is clear evidence of bad faith.

There is and was never probable cause to believe Russo nor her family committed any crime to support the issuance of a criminal complaint. I certainly do not fault the Assistant Clerk Magistrate; however, I do not believe these facts ever should have been presented for criminal charges. The Application was not made in good faith.

CONCLUSION

For the reasons stated above, the Defendant respectfully requests this motion be allowed and the criminal complaint dismissed in its entirety.

/s/ Jason S. Bolio
Jason S. Bolio, Esq.
BBO: 654098
234 Copeland St, Suite 230
Quincy, MA 02169

Dated: March 23, 2022

CERTIFICATE OF SERVICE

I, Jason S. Bolio, counsel for the Defendant and hereby certify that I caused a true and accurate copy of the foregoing Motion to Dismiss, Affidavit of Counsel in Support of Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss was served on counsel to the Commonwealth, ADA Tracey Cusick on March 23, 2022 via electronic mail.

Dated: March 23, 2022

/s/ Jason S. Bolio

Jason S. Bolio, Esq.
234 Copeland St, Suite 230
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