



LEGAL UPDATE

FAILURE TO EUTHANIZE SICK DOG WAS NOT ANIMAL CRUELTY

Commonwealth v. Russo, Supreme Judicial Court (July 15, 2024).

RELEVANT FACTS

On January 13, 2021, the defendant brought her 14-year-old cocker spaniel Tipper to the animal hospital. The dog was unable to stand or walk and “exhibited significant pain with labored breathing.” The veterinarian told the defendant there was nothing to be done to improve Tipper’s condition and recommended euthanasia. The defendant said she would bring Tipper to another veterinarian to be euthanized.

Being skeptical that the defendant would follow through with having Tipper seen elsewhere, the veterinarian reported the situation to the Animal Rescue League (ARL) and said the defendant removed the dog from the hospital against medical advice.

An investigator for the ARL went to the defendant’s home on February 4. The defendant was not home, but her mother was there with Tipper. The investigator saw Tipper lying on the couch, surrounded by newspaper and wearing a diaper. Tipper at first appeared deceased, but upon closer inspection was observed to take shallow periodic breaths. The dog appeared thin with a distended stomach and sores on both her front and back legs. The investigator stated that the dog was in need of immediate medical attention, but the mother disagreed.

The mother showed the investigator a bag of pill bottles and loose pills which she said were pain medicine for Tipper, but that Tipper no longer needed them. The investigator stated that

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

Tipper was clearly suffering and needed immediate medical attention. The investigator was ultimately asked to leave.

A criminal complaint alleging animal cruelty was issued in February. The defendant filed a motion to dismiss for lack of probable cause. The Commonwealth's theory was that the defendant permitted the dog to experience unnecessary suffering. A judge dismissed the complaint. The Commonwealth appealed.

DISCUSSION

MGL c 272 § 77 was enacted to prevent animal cruelty that is either intentional or neglectful. The statute begins with a long list of things people shall not do. The last clause, under which this prosecution was brought, it is a criminal offense when an owner or custodian of an animal "knowingly and willfully authorizes or permits [an animal] to be subjected to unnecessary torture, suffering or cruelty of any kind." Unlike the initial list of things not to do, this clause requires a showing of "heightened mental state" in that the defendant must have knowledge and act willfully.

"Therefore, to establish a violation of G.L. c. 272, § 77, the Commonwealth must prove that the defendant consciously authorized or permitted something that the defendant was aware would subject an animal to 'unnecessary torture, suffering or cruelty of any kind.'"

"To prove the defendant acted 'willfully,' we conclude that the Commonwealth must show the defendant intended both the underlying action and its harmful consequences. In other words, the defendant must intend for the animal to be subjected to 'unnecessary torture, suffering or cruelty.'"

The court found that the Commonwealth failed to establish that the defendant acted willfully in this case. The defendant had brought the dog to the animal hospital and then brought the dog home when she was told there was nothing that could be done to alleviate the pain short of euthanasia. The defendant also made efforts to make Tipper comfortable during the time he had left.

"These allegations do not create a reasonable inference that the defendant intended for Tipper to unnecessarily suffer."

The court cautioned that the decision of the court should not be read to condone the actions of the defendant or to infer that the court has taken a "position one way or the other regarding complicated and heartbreaking end of life decisions."

Based upon the facts presented, the court found the defendant committed no crime. The order dismissing the complaint was affirmed.