

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

FRAMINGHAM DISTRICT COURT
DOCKET NO: 1749CR000436

COMMONWEALTH

v.

LOUISE W. COLEMAN

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

On March 1, 2017, Lieutenant Alan Borgal, Agent and Special State Police Officer of The Animal Rescue League of Boston, Massachusetts, filed an application for a criminal complaint with the Framingham District Court to charge Louise W. Coleman ("defendant") with Animal Cruelty in violation of G.L. c. 272, § 77. An Assistant Clerk Magistrate issued the complaint that same day after finding there was probable cause to believe the crime had been committed. The defendant moves to dismiss the complaint for lack of probable cause. After a hearing before the court on May 12, 2017, and for the following reasons, the defendant's motion to dismiss is DENIED.

FACTS BEFORE THE ASSISTANT CLERK MAGISTRATE

The evidence before the Assistant Clerk Magistrate consisted of (1) a summary statement of facts; (2) a four page Inspection Report dated January 10, 2017 with thirteen exhibits; and (3) an eleven page Inspection Report dated January 26, 2017 with seventeen exhibits. The evidence provided, in pertinent part, the following:

Greyhound Friends (GF) is a rescue shelter in Hopkinton, Massachusetts. The defendant is the Executive Director of the facility. On December 14, 2016, Lt. Borgal,

along with others, went to the shelter to conduct an on-site inspection of the facility.

The defendant was at the facility during the inspection, and accompanied the inspectors throughout the inspection. The defendant answered the inspectors' questions about the shelter regarding, among other things, the facility's operations and maintenance, and the animals' medical treatment. After the visit, the defendant sent an email to Lt. Borgal (and others) regarding the handling of certain dogs that had been at the shelter for an extended period of time ("long stay dogs") as a response to some of the issues raised at the inspection.

Upon completion of the site inspection, Lt. Borgal found that "this kennel currently does not meet the standards for a licensed kennel under Chapter 140, section 137c []; the facility is not being maintained in a sanitary or humane manner." This finding was based on numerous issues that were discovered at the facility, including, but not limited to:

- There was an excess amount of feces in the outdoor yard area for isolation room
- There was an excess amount of feces in the outdoor yard area for main kennel
- The number of dogs present at the shelter exceeded the approved amount by 3
- The kennel is designed for approximately half of the number of dogs that are currently housed in it
- Medications were not properly kept and dispensed (the shelter is not authorized to dispense medications)
- Multiple dogs are wrongfully comingled as new arrivals despite arriving on different days, causing the doctor to sign health certificates improperly because some of those dogs failed to complete a required 48 hour isolation period
- Long stay dogs presented behavioral issues resulting from years of confinement with no plan to address such behavioral issues
- High level of odor of ammonia

- Kennel doors were repaired with wire that posed a danger to the dogs
- The facility itself was in disrepair in various ways as depicted in the exhibits

As a result of this inspection, the inspectors recommended that the Town of Hopkinton Animal Control Officer and Chief of Police be notified of the violations found.

On January 6, 2017, Lt. Borgal, along with others, went to the shelter to conduct a follow-up inspection of the facility. The defendant was at the facility during this inspection, she greeted the inspectors when they arrived, and she spoke to them about certain issues that had been raised at the last inspection. The inspectors found that none of the December 2016 violations had been rectified but for the fact that a volunteer began to clean up feces from the outdoor areas soon after the inspectors arrived. In fact, the number of dogs at the shelter that day exceeded the approved amount by 6—3 more than the last visit. When the inspectors addressed the lack of remediation, the defendant admitted that she failed to contact a handyman who usually handles issues at the kennel. She also informed the inspectors that she would contact her board of directors—a representation she had made before with apparently no follow up.

On January 13, 2017, Lt. Borgal, along with others, went to the shelter to conduct a follow-up inspection of the facility. The defendant was at the facility during this inspection. On this visit, none of the previous issues had been rectified, and on this date the outdoor areas again had an excessive amount of feces in them. Further, an employee was seen moving a long stay dog that the defendant told the inspectors on January 6th had “gone home” with the employee (implying that the dog had been adopted) from the back kennel to the inside of the defendant’s car to avoid detection.

In addition to the violations set forth in the December 2016 inspection, various

issues were raised at the January 13th inspection regarding potential spreading of diseases from certain dogs to others such as Hookworm and Giardiasis, which is a parasite that can be transferred to humans. Certain dogs from the shelter tested positive for these diseases, and this elevated the concern about the failure to properly clean the feces in common areas of the shelter.

Once again, the inspectors expressed concern that none of the issues had been addressed. The defendant informed the inspectors that she had contacted an electrician about performing some work to improve the conditions, and that she had met with her board several times to discuss the updates that were necessary.

Subsequently, on January 20, 2017, the kennel license was suspended by the town until the necessary repairs were completed, and the Massachusetts Department of Agriculture issued a cease and desist order preventing the kennel from importing dogs from outside the state to the shelter.

On March 1, 2017, Lt. Borgal applied for a criminal complaint based upon these reports, and his summary, and the clerk issued the complaint.

RULINGS OF LAW

The defendant contends that the case should be dismissed on several grounds. First, the defendant argues that the crime for which she is charged is unconstitutionally vague. The defendant also contends that the evidence presented in the application for complaint is insufficient to establish probable cause to believe that the defendant: (1) had “charge or custody” of the dogs at GF; and (2) that the defendant failed to provide the dogs at GF with a sanitary environment.

The Statute/Elements of the Crime

Massachusetts General Laws, Chapter 272, Section 77 provides in pertinent part that: “Whoever, [] having the charge or custody of an animal, either as owner or otherwise, [] unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather [] shall be punished...” In order to prove the defendant guilty of this charge under the theory that she unnecessarily failed to provide the animals at the shelter with a proper sanitary environment, the Commonwealth must prove beyond a reasonable doubt that (1) the defendant had the charge or custody of an animal, either as owner or otherwise; and (2) the defendant unnecessarily failed to provide the animal with the proper sanitary environment.

Constitutionality of G.L. c. 272, § 77

The defendant argues that the animal cruelty statute is unconstitutionally vague and thus violates her due process rights because it fails to define the term “sanitary environment.” “In accordance with canons of statutory construction, a statute is presumed to be constitutional.” *Commonwealth v. McGhee*, 472 Mass. 405, 412-13 (2015). “Criminal statutes must be sufficiently specific so as to give fair notice as to what conduct is forbidden.” *Commonwealth v. Adams*, 389 Mass. 265, 270 (1983), citing *Rose v. Locke*, 423 U.S. 48, 49–50 (1975). The constitutional right to due process is violated when those of common intelligence must guess at a statute’s meaning. See *McGhee*, 472 Mass. at 413.

However, “if the language which is challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and

practices, it is constitutionally adequate.” See *Commonwealth v. Gallant*, 373 Mass. 577, 589 (1977); see also *Commonwealth v. Carter*, 474 Mass. 624, 631, n. 11 (2016). “Proscribed conduct, however, is not always capable of precise legal definition.” *Commonwealth v. Reyes*, 464 Mass. 245, 249 (2013). “Accordingly, legislative language need not be afforded ‘mathematical precision’ in order to pass constitutional muster.” *Id.* “When a statute does not define its words we give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose....” *Commonwealth v. Robinson*, 444 Mass. 102, 105 (2005). “[E]ven a vague statute may be made constitutionally definite by giving it a reasonable construction.” *Commonwealth v. Sefranka*, 382 Mass. 108, 111 (1980).

Commonwealth v. Pictrowski, 84 Mass. App. Ct. 1112 (2013) (unpublished 1:23 decision) is directly on point. In *Pictrowski*, the court upheld the constitutionality of G.L. c. 272, § 77, finding that the word sanitary was not vague because the facts of the case fell squarely within the law’s “hard core” proscriptions, as opposed to being on “the margins.” The defendant relies on *Pictrowski* for the contention that the facts here do not fall squarely within the “hard core” of the law’s proscriptions, but rather are on “the margins.” The defendant argues that the sanitary environment here was not as egregious as that in *Pictrowski*, and thus the facts here render the statute unconstitutionally vague.

I disagree. Here, G.L. c. 272, § 77 is sufficiently clear and definite. There is a common understanding in the English language of the term “sanitary environment”. Indeed, it is reasonable to conclude that a sanitary environment is one that is clean and therefore healthy. (the #2 Webster’s New Basic Dictionary definition of sanitary is “free

from elements, as filth or bacteria, that endanger health.”) Moreover, the facts set forth in the application for complaint are not at “the margins,” but fall within the law’s “hard core proscriptions.” Two inspection reports detail a litany of issues with the cleanliness of the facility and how it could have and was affecting the health of the animals who lived there. For these reasons, the statute does not violate the defendant’s rights to due process under the federal and state constitutions.

Sufficiency of the Facts Set Forth in Complaint Application

The defendant argues that the complainant did not present sufficient evidence to establish probable cause that (1) the defendant had the charge or custody of an animal, either as owner or otherwise; and (2) the defendant unnecessarily failed to provide the animal with the proper sanitary environment. See G.L. c. 272, § 77.

Probable Cause Standard of Law for Motion to Dismiss

Massachusetts Rules of Criminal Procedure 3(g)(2) provides that a clerk shall not issue criminal complaint unless the complainant presents information establishing probable cause to believe that the offense was committed. “The probable cause standard on a motion to dismiss a complaint is identical to that applied in the analysis of a motion to dismiss an indictment for lack of probable cause.” *Commonwealth v. Ilya*, 470 Mass. 625, 627 (2015). Probable cause exists when the facts and circumstances within the knowledge of the police are sufficient to warrant a prudent person in believing that the individual against whom the complaint is sought committed or was committing an offense. See *Commonwealth v. Stewart*, 469 Mass. 257, 262 (2014). The test is objective. As such, law enforcement is only required to have entertained rationally

“more than a suspicion of criminal involvement, something definite and substantial, but not a prima facie case of the commission of a crime, let alone a case beyond a reasonable doubt.” *Commonwealth v. Santaliz*, 413 Mass. 238, 241 (1992), quoting *Commonwealth v. Rivera*, 27 Mass.App.Ct. 41, 45 (1989). In other words, probable cause “requires more than mere suspicion but something less than evidence sufficient to warrant a conviction.” *Commonwealth v. Roman*, 414 Mass. 642, 643 (1993), quoting *Commonwealth v. Hason*, 387 Mass. 169, 174 (1982).

Charge or Custody

Here, the application and accompanying reports establish probable cause to believe that the defendant had “charge or custody” of the dogs at GF. As the Executive Director, it is reasonable to believe that the defendant is in charge of the facility from her title. There is a common understanding that one with such a title is the head of the organization and therefore “in charge.” Moreover, the defendant greeted the inspectors at each of the three on-site visits. She also accompanied the inspectors during the inspection, answered questions they had about the facility, and even followed up on certain issues with emails to the inspectors (see exhibits to reports). This more than sufficient to demonstrate probable cause.

Sanitary Environment

There is also probable cause to believe that the defendant unnecessarily failed to provide the animals with the proper sanitary environment. The defendant cites several unpublished decisions where the Appeals Court held that there was enough evidence for animal cruelty convictions to stand pursuant to G.L. c. 272 § 77 to show that the

facts in those cases are far more egregious than those here. However, all of the cases cited regard whether there was sufficient evidence beyond a reasonable doubt—a much higher standard than the probable cause standard applied here.

The defendant's reliance on Commonwealth v. Treftry, 89 Mass. App. Ct. 568 (2016), is similarly displaced. In that case, in finding the defendant not guilty after a bench trial (the judge did find the defendant guilty of a different animal abuse charge), the trial judge stated he rendered that verdict because G.L. c. 277, § 77 requires conduct "much more egregious than that we've seen here." *Id.* at 574. Like the cases cited above, that comment by the trial judge concerned whether the charge had been proved beyond a reasonable doubt, not whether there was probable cause to believe the crime had occurred. Furthermore, that case was about a different clause of the animal cruelty statute, i.e. whether cruel conditions were present, not the clause the complainant is basing his complaint on here—whether there was a failure to provide a sanitary environment.

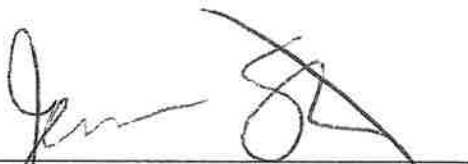
Here, two detailed inspection reports set forth a host of issues with the cleanliness of the facility and how it can and was affecting the health of the animals who lived there. Some of the issues were as follows:

- There was an excess amount of feces in the outdoor yard area for isolation room
- There was an excess amount of feces in the outdoor yard area for main kennel
- The number of dogs present at the shelter exceeded the approved amount by 3
- The kennel is designed for approximately half of the number of dogs that are currently housed in it
- Medications were not properly kept and dispensed (the shelter is not authorized to dispense medications)

- Multiple dogs are wrongfully comingled as new arrivals despite arriving on different days, causing the doctor to sign health certificates improperly because some of those dogs failed to complete a required 48 hour isolation period
- Long stay dogs presented behavioral issues resulting from years of confinement with no plan to address such behavioral issues
- High level of odor of ammonia
- Kennel doors were repaired with wire that posed a danger to the dogs
- The facility itself was in disrepair in various ways as depicted in the exhibits

Moreover, various issues were raised at the January 13th inspection regarding potential spreading of diseases from certain dogs to others such as hookworm and Giardiasis, which is a parasite that can be transferred to humans. Certain dogs from the shelter tested positive for these diseases, and this elevated the concern about the failure to properly clean the feces in common areas of the shelter. These facts demonstrate probable cause to believe that the defendant unnecessarily failed to provide the animals with the proper sanitary environment.

For all of these reasons, the defendant's motion to dismiss the complaint is DENIED. So Ordered.



Jennifer A. Stark
Associate Justice of the District Court

Dated: July 12, 2017