

Battenfelder, vet tech won't be testifying

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OSSIPEE — A Bartlett veterinarian and her vet tech will not have to testify in the animal cruelty case of Christina Fay, a judge ruled Tuesday in day five of the trial. Meanwhile, the defense is asking the judge to dismiss the charges against Fay.

Circuit Judge Charles Greenhalgh on Tuesday was asked to decide if Dr. Kate Battenfelder of True North Veterinary Hospital in Bartlett and her vet tech Stephanie Macomber must testify. Both are represented by William Albrecht of Albrecht and Weegar in North Conway.

The case began when police and members of the Humane Society of the United States had seized 84 Great Dane dogs from locations in Wolfeboro and Bartlett in June. The Conway Area Humane Society received another nine prior to the seizure. Fay, 59, of Wolfeboro faces a dozen charges that allege she kept the Wolfeboro dogs in squalid conditions and denied them adequate food and drink.

Greenhalgh heard from Albrecht and defense attorney Kent Barker in public before going behind closed doors to speak with the attorneys.

In public, Albrecht argued that Wolfeboro Police Chief Dean Rondeau considers Battenfelder a person of interest, which would make testifying problematic. He said this should have been dealt with months ago during the pretrial process.

After the court room was reopened, Prosecutor Tim Morgan said he consulted with Carroll County Attorney Michaela Andruzzi, and they believe nothing in the evidence points to the idea that Battenfelder and Macomber would qualify for immunity.

Defense Attorney Kent Barker said Battenfelder had seen Fay's dogs 289 times, and that gives her "special information" about the dogs' condition. He said without her testimony, Fay would be denied due process.

Greenhalgh sided with Albrecht.

"Upon consideration of arguments made by attorney Albrecht in open court and in camera (behind closed doors), I agree the majority of Dr. Battenfelder's testimony is likely to result in statements that could incriminate her, particularly in light of the fact that the Wolfeboro chief of police has been explicit that she is the subject of an investigation and potentially prosecution," said Greenhalgh. "So I am allowing Dr. Battenfelder to invoke her Fifth Amendment rights and grant the motion to quash the subpoena."

Greenhalgh said he would do the same for Macomber.

As a result of that and the state refusing to grant immunity, Barker moved to dismiss the case against Fay.

Greenhalgh said he would take that under advisement.

Later in the day, the prosecution rested, and the defense moved to dismiss the charges against Fay.

“We take a position that even in the light most favorable to the state there has not been sufficient evidence to prove beyond a reasonable doubt that Mrs. Fay is guilty of the charges that have been brought against her,” said Barker.

Barker went through each charge and described why she was not guilty.

In one example, Barker said Fay was charged for failing to treat cherry eye, a disease involving a tear duct. He said it’s a heritable condition and that Fay was having it treated when it became serious in her dogs.

As for the papilloma warts, Barker said they go away on their own. Barker added that Fay was following the direction of her vet in the treatment of the warts.

Barker said witnesses testified that the dogs didn’t seem to have access to water. He said that was because if the dogs eat or drink too much, they could die.

Another example of one of Barker’s arguments was about a particular dog who was suffering from “happy tail,” an injury caused when a dog bangs its tail on a hard surface.

He said that he understood that dogs held by HSUS developed that condition since the raid.

“It’s not our job, Mr. Cowles and I to prove anything negligent on the part of HSUS for their treatment of the dogs, but it’s ironic that the exact same thing that Mrs. Fay is being charged with and is placed upon her country for trial for is a condition that has happened since the government has had control of the dogs,” said Barker.

Prosecutor Simon Brown responded by objecting to Barker.

“The evidence of those complaints are basically the defendant negligently permitted an animal in her possession or custody to be subject to cruelty, inhumane treatment or unnecessary suffering of any kind,” said Brown. “Each of the complaints with respect to those five dogs alleges as part of the proof the living conditions of these dogs... a couple of them were dogs housed in a basement with no light or ventilation. With respect to all five of these dogs, it was alleged and shown in the state’s case that these dogs were forced to live, walk in and lay in a layer of feces and urine.”

Brown said the charges say that the dogs were living in high ammonia levels and suffered from a series of medical conditions.

In the complaint about cherry eye, Brown said that Fay knew one dog had cherry eye in March but waited till May to take the dog to the vet after it apparently went blind.

Regarding the accusation that the dogs were not given enough water, Brown said there was testimony from witnesses who didn't see water bowls left out. He said an expert witness said it's a standard of care that water would be available all the time or at least three times per day. He said there has been testimony and evidence that some dogs didn't get water within 24 hours.

Toward the end of the day, former Fay employee Ann Marie Pleickhardt took the stand in Fay's defense. She began working for Fay in March 2016 and left in April to have a baby, but she also did some work in May.

She testified that Fay had about five full-time employees but a few of them left, leaving Fay short-handed. She said Fay was trying to hire more people. Pleickhardt said while she was there, Fay made sure the dogs had the right amount of food, water and exercise, but when the routine was waylaid, things could get "chaotic."

Barker asked how the dogs felt about Fay.

"The dogs adored her. Every single dog loved her," said Pleickhardt. "She loved those dogs more than anything."

The continuation date for the trial has not been released.