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Supreme Court rules against Great Dane owner

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Christina Fay is seen in March 2018 as animal cruelty charges pending against her are read during the opening day of her trial in Carroll County Superior Court. She is flanked by her attorneys (from left) Kent Barker, Jeremy Cohen and James Cowles. (BEA LEWIS/POOL PHOTO)

CONCORD — The New Hampshire Supreme Court has affirmed the conviction of former Wolfeboro resident Christina Fay on 17 counts of animal cruelty in an opinion released Wednesday morning.

This sets the stage for a Superior Court judge to lift the stay on the sentence she imposed a couple years ago.

In March 2018, a Carroll County Superior Court had found Fay guilty of 17 counts of animal cruelty. Fay, now 62, was convicted of neglecting about 75 Great Danes that she kept at a mansion she owned in Wolfeboro. A few months later, she was sentenced to a year in jail, suspended for five years; fined about \$50,000; and ordered to pay almost \$2 million in restitution to The Humane Society of the United States, which seized the dogs and took care of them for years as the case wound through the court system; and \$18,700 to the town of Wolfeboro. She was also required to participate in counseling.

After her sentencing, Fay told Superior Court Judge Amy Ignatius she planned to appeal the verdict to the state Supreme Court. During the appeal, most of the sentence was stayed.

State of New Hampshire v. Christina Fay was argued before the high court Feb. 12.

The 11-page opinion was written by N.H. Supreme Court Justice Anna Barbara “Bobbie” Hantz Marconi. The court said it agreed with Attorney General Gordon MacDonald and Senior Assistant Attorney General Susan McGinnis that the Superior Court convictions should stand.

The role of The Humane Society of the United States and Wolfeboro police in seizing the Great Danes was the focus of many of the arguments the court heard from Fay’s attorney, Theodore M. Lothstein of Lothstein Guerriero of Concord.

Wrote Hantz Marconi: “In summation, we conclude that the State did not violate Part I, Article 19’s requirement that the manner of a search warrant’s execution be reasonable by failing to obtain authorization for HSUS’ involvement prior to the warrant’s execution.

“As the State Constitution is at least as protective as the Federal Constitution in these circumstances, we further conclude that the State did not violate the Fourth Amendment’s reasonableness requirement,” she wrote.

“Additionally, the defendant has failed to demonstrate that her right to privacy was violated. Because we have concluded that a constitutional violation did not occur, we need not address the defendant’s arguments regarding whether suppression of the evidence obtained from the search would be an appropriate remedy for such a violation.”

Fay filed her appeal paperwork in July of 2018. Lothstein’s argument was that the Superior Court failed to suppress evidence gathered by Wolfeboro police.

He said it was an invasion of Fay’s privacy to allow Humane Society workers to take photos and videos of the raid and then to use them on social media to raise \$189,000, plus another \$135,000 worth of in-kind donations for the private agency.

Lothstein also argued that the judge who issued the search warrant should have been told about the HSUS’ involvement beforehand.

However, Hantz Marconi wrote: “We fail to see how civilian involvement that is reasonable at the time of the warrant’s execution would somehow become unreasonable because the officers intended to utilize civilian aid when they acquired the warrant but did not obtain the magistrate’s express authorization to do so.”

Deputy County Attorney Steve Briden was the prosecutor in the 2018 Superior Court trial. He said the reason that restitution isn’t settled is because the dogs weren’t placed in new homes when Superior Court sentencing occurred.

Briden said it gives him peace of mind that the case is done and the sentence will finally be imposed.

The HSUS hailed the decision. Its director of shelter outreach and engagement, Lindsay Hamrick, said: We are extremely pleased that the N.H. Supreme Court today affirmed Ms. Fay’s conviction on 17 counts of animal cruelty, finding no constitutional violation with the search of her property in June 2017 and the seizure of 84 Great Danes in dire and cruel circumstances.

“As the court noted, the HSUS had the resources to handle large-scale animal seizures, including access to large trailers with air conditioning to transport the dogs, and could provide them with adequate housing. We were pleased to be able to share these resources with the Wolfeboro Police Department to support their efforts in this case. We extend our deepest appreciation to the department and the Office of the Carroll County Attorney’s office for their commitment to justice for these dogs who were found living in squalor.”

She went on to say that the dogs have been getting love from their adopted families, and she thanked the Legislature for “passing regulations that require commercial breeders to be licensed and inspected in an effort to prevent this cruelty from occurring again.”

Fay still has a federal civil case involving the HSUS and the town of Wolfeboro pending, but Briden said that case won’t have an impact on the case the Supreme Court just decided.

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