

[https://www.conwaydailysun.com/news/local/animal-cruelty-suspects-lawyer-wants-statement-tossed/article\\_e8a39e9e-5c77-11ed-a23a-d7427533224d.html](https://www.conwaydailysun.com/news/local/animal-cruelty-suspects-lawyer-wants-statement-tossed/article_e8a39e9e-5c77-11ed-a23a-d7427533224d.html)

## Animal cruelty suspect's lawyer wants statement tossed

Daymond Steer

Nov 7, 2022

Updated

11/11/2022



Brendan Elwell is seen in his booking mugshot. (POLICE PHOTO)

OSSIPEE — A Wolfeboro man who was indicted on 12 counts of cruelty to animals for beating and mutilating cats has asked a judge to throw out statements he made to police before waiving his Miranda rights.

Brandon Elwell, 26, of Wolfeboro was indicted in September of 2021 for alleged crimes that took place between the summers of 2020 and 2021. Several of the indictments say he placed the remains of small cats along the Bridge Falls Path between Glendon Street parking lot and Center Street in Wolfeboro. Other indictments allege he brutalized cats in various ways such as "bashing" a cat in the face with a hammer. On Thursday, Elwell is to appear before Judge Mark Attorri in Carroll County Superior Court for a suppression hearing.

Elwell was under police surveillance when he was arrested on June 25, 2022. Police had

followed him from his residence to Dunkin Donuts.

Elwell drove across the street, got out of his car and made a phone call to police because he noticed someone was following him. Officers arrested him while he was on the call.

On Oct. 21, his attorney, Public Defender Julia Nye filed a motion to suppress the defendant's statements. Nye said Sgt. Guy Maloney gave Elwell his Miranda warning that anything he said could be held against him in a court of law while Elwell was in the back of a police cruiser. Later, Elwell was asked if he had questions about his rights during a recorded interview at the police station. Elwell said he had no questions and the interview proceeded. At the end, Maloney gave Elwell a Miranda Rights form.

"The absence of explicit waivers is particularly concerning in this case when an experienced detective knew of the practice of giving the Miranda rights and importance of obtaining a Miranda waiver and failed to obtain it when he had opportunity to do so," said Nye.

Nye also said that before Maloney asked Elwell about the animals, Maloney asked Elwell about his grandmother. Maloney said he wouldn't 'air dirty laundry' about Elwell with the grandmother as long as Elwell was honest with him.

This, says Nye, is a violation of both the U.S. and state constitutions in that confessions must be voluntary and free of threats and implied promises.

"Mr. Elwell's statement was involuntary because he was arrested while seeking help from the police on the phone; he was interrogated without the proper waiver of Miranda warnings; and he relied on an implicit, if not direct, promise that the police would not involve his grandmother in their investigation," said Nye.

Nye asked the court to throw out the statements.

On Oct. 21, Assistant County Attorney Christopher Mignanelli filed an objection, saying that Maloney informed Elwell that he would record the conversation if Elwell wished to speak. That recording starts with Maloney stating that he had read the Miranda warning "on the road," meaning in the car and asked if Elwell had questions. Elwell didn't have any questions and continued to speak.

"It is important to highlight that in State v. Duffy that the New Hampshire Supreme Court stated: 'Where a defendant first orally indicates that he understands his right to remain silent and then initiates dialogue with the police, courts generally conclude that a knowing and voluntary waiver has occurred,'" said Mignanelli.

Mignanelli added that Elwell invited the questioning and asked Maloney, "Where would you like me to start?"

As for Maloney's comment about the grandmother, Mignanelli said Maloney didn't offer any promise of leniency that would have crossed the line.

"There is no advantage to be gained from what Sgt. Maloney stated and thus, the defendant freely made these statements regarding the incident in question," said Mignanelli. "Without a promise or other types of coercive forces, the defendant voluntarily gave information to the police."

Final pretrial in Elwell's case is scheduled for final pretrial Dec. 22 and jury selection Jan. 17.

---