

Court rules 'warrantless search' behind cat hoarding case (4:51 p.m.)

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LAS CRUCES - An investigation that led to a professional couple's arrest for allegedly hoarding cats relied on "a warrantless search," the New Mexico Court of Appeals has ruled.

The Mesilla home of Lester and Carol Boyse, a New Mexico State University research assistant and a department head at NMSU, respectively, first came to the attention of police in 2008, when someone reported a smell, which was coming from two dead horses on the property, off Mesilla Hills Drive.

Mesilla Marshal Jeff Gray "saw evidence of numerous problems" and because the courts were closed for the day, called Magistrate Court Judge Oscar Fritze and obtained verbal approval for a warrant, according to the appellate court's decision, which was issued Sept. 19. Inside the home, authorities reported finding about 101 cats, including four dead cats in the freezer.

That warrant "was invalid and the evidence should have been suppressed," the court of appeals decided, in ordering that the case be sent back to state court for a new decision.

The court of appeals had not previously determined that telephonic warrants are not permitted in New Mexico, according to the opinion.

Five states, including New Mexico, do not recognize telephonic warrants because they lack "a written showing of probable cause," required by the New Mexico Constitution. "The mere existence of a sworn writing is not enough to satisfy the requirements of (the constitution)," the court wrote, adding that it construed the constitution's rules to mean "not simply that a sworn writing must exist somewhere, but also that it must be shown to and considered by the issuing court before the warrant issues."

The opinion states that "with appropriate protections, telephonic warrants may well be useful and advisable," but that "under our current law, telephonic warrants are not permissible. If New Mexico is to adopt them, it is for our Supreme Court to formulate rules that would render them valid." After the search, three living horses were placed in foster care, two reportedly suffering from severe hoof problems requiring at least a year of therapy. Only seven of the cats were deemed healthy enough to be saved, while 96 had to be euthanized due to upper respiratory infections, mouth ulcers and fight wounds.

Carol Boyse told investigators she tried to medicate the cats and find them homes, according to court records.

Most of the seized cats were wild barn cats, defense attorney Jeff Lahann said last year.

"They might feed them or whatever, but basically, Ms. Boyse is very big into animal rescue," he said in 2010. "She donates lots of money and time to lots of organizations - throughout the country - that deal with animal rescue."

In 2010, state district court Judge Fernando Macias sentenced the couple to the minimum sentence: five year's probation and ordered them to have no more than three pets and to avoid business ventures that involve the care or housing of animals. The two had faced up to 106 years in prison on animal cruelty charges, which the district attorney's office said wasn't realistic due to their lack of criminal history.

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