

Third District Court of Appeal

State of Florida

Opinion filed September 16, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-640
Lower Tribunal Nos. 16-438-A-M and 18-375-M

Susanne Stephanie Nikola Kynast,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Monroe County, Timothy Koenig,
Judge.

Susanne S.N. Kynast, in proper person.

Ashley Moody, Attorney General, and Kayla Heather McNab, Assistant
Attorney General, for appellee.

Before FERNANDEZ, HENDON, and LOBREE, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

APPELLATE DIVISION

CASE NO: 18-CA-375-M
LOWER TRIBUNAL CASE NO: 16-MM-438-A-M

SUSANNE STEPHANIE NIKOLA KYNAST,

Petitioner

v.

STATE OF FLORIDA,

Respondent


ORDER DENYING AMENDED PETITION FOR WRIT OF MANDAMUS

THIS MATTER having come before the court upon the STATE OF FLORIDA'S
Response to the Amended Petition for Writ of Mandamus, and the court, having
reviewed the Response, and being otherwise fully informed in the premises, hereby

Orders as follows:

1. The Amended Petition for Writ of Mandamus is hereby DENIED AS MOOT.

DONE and ORDERED at Key West, Monroe County, Florida, this 12 day of
February, 2019.


TIMOTHY J. KOENIG
Circuit Judge

cc: Susanne Stephanie Nikola Kynast kynastsusanne@gmail.com
Office of the State Attorney – Marathon Division – via courier
The Hon. Ruth Becker, via courier

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

OCTOBER 28, 2020

SUSANNE STEPHANIE NIKOLA
KYNAST,
Appellant(s)/Petitioner(s),

CASE NO.: 3D19-0640

vs.

L.T. NO.: 16-438,
18-375


THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

Upon consideration, Appellant's pro se Motion for Rehearing,
Certification, and/or Written Opinion is hereby denied.

FERNANDEZ, HENDON and LOBREE, JJ., concur.

Appellant's pro se Motion for Rehearing En Banc is denied.

A True Copy
ATTEST


CLERK
DISTRICT COURT OF APPEAL
THIRD DISTRICT

cc: Kayla Heather McNab Office of Attorney General Susanne Stephanie Nikola Kynast

la

APPENDIX C

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

APPELLATE DIVISION

CASE NO: 18-CA-375-M
LOWER TRIBUNAL CASE NO: 16-MM-438-A-M

SUSANNE STEPHANIE NIKOLA KYNAST,

Petitioner

v.

STATE OF FLORIDA,

Respondent

2019 MAR 11 AM 8:49

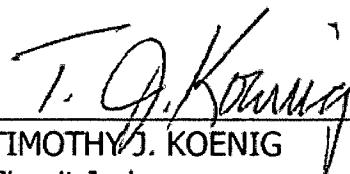
CLERK OF COURT

ORDER DENYING MOTION TO RECONSIDER

THIS MATTER having come before the court upon Petitioner's Motion to Reconsider, and the court, having reviewed the Motion, and being otherwise fully informed in the premises, hereby Orders as follows:

1. Petitioner's Motion to Reconsider is hereby DENIED.

DONE and ORDERED at Key West, Monroe County, Florida, this 6 day of March, 2019.


TIMOTHY J. KOENIG
Circuit Judge

cc: Susanne S. N. Kynast
Christina Cory, Esq.

kynastsusanne@gmail.com
ccory@keyssao.org

IN THE 16 JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY, FLORIDA

COURT DIVISION

CASE NO. 16-MM-438 AM

COURT MINUTES

COURT OPENED at 9:30 on 10/15/18

with the following officers present:

HONORABLE: Becker
STATE ATTORNEY: Hasson Cory
DEFENSE ATTORNEY: Heffernan
COURT REPORTER: FTR
BAILIFF: Clausen

FILED FOR RECORD
2018 OCT 15 AM 9:25
CLERK OF THE
MONROE COUNTY

STATE OF FLORIDA VS Susanne Kynast
CHARGED WITH Torment Animals
MOTION For Return of all Evidence

State has no objection to return of
all evidence since the case has been
Nolle Pros. As far as she knows everything
has been returned. The Dogs still have not been
returned. Judge states she has no jurisdiction
because there is no longer a case. motion
denied.

CLERK OF THE CIRCUIT AND COUNTY COURTS.

BY: Shawett DEPUTY CLERK, in attendance.

CCC-14

OFFICE OF THE STATE ATTORNEY
SIXTEENTH JUDICIAL CIRCUIT

Dennis W. Ward
State Attorney

4695 Overseas Highway, Suite 101
Marathon, Florida 33050

(305) 289-2593
Fax(305) 743-6692

To: The Honorable Kevin Madok, Clerk of Court
Re: ***State of Florida vs. Susanne Stephanie Nikol Kynast***
Case Number: 2016MM00438AM
Charge(s): 1-20) Cruelty to Animals 828.12 1 (1 M)
21) Abandon Vessel 823.11(1) (1 M)
22) Abandon Vessel 823.11(1) (1 M)
23) Nuisance Injurious to Public Health 9999 (1 *)
24) Public Health: Breeding Flies/Spreading Disease 9999 (1 *)

NOLLE PROSEQUI

The State of Florida hereby enters a Nolle Prosequi in this case for the following reasons:

Based on facts and circumstances surrounding this case, all parties are in agreement with this resolution. All pre-conditions of this nolle prosequi have been met. No further prosecution of Susanne Kynast warranted.

_____/s/ Christina Cory_____
Christina E. Cory
Assistant State Attorney
Florida Bar No. 106998
ccory@keyssao.org

Date: ____7/31/18____

cc: Jail records
Warrants
PTS
William J. Heffernan Esq.

IN THE COUNTY COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY

Florida Keys Society for the Prevention
of Cruelty to Animals (FKSPCA),
Petitioner.

Case No.: 16-~~CO~~-79-M (Animal Control)
Hon. Ruth Becker

v.

SUSANNE STEPHANIE KYNAST and
RAYMOND GEISEL,
Respondents.

ORDER GRANTING AMENDED VOLUNTARY DISMISSAL

THIS CAUSE came before the Court upon Amended Notice of Voluntary Dismissal filed by Petitioner, Florida Keys Society for the Prevention of Cruelty to Animals (FKSPCA); upon review of the Notice and the case file, the Court finds:

1. Respondents' animals, of which Petitioner has had custody, are listed as evidence in the misdemeanor case styled: State of Florida v. Susanne Kynast, Case No.: MM-M-16-438; as such, this instant action which Petitions for Custody, Control and Disposition of Animals pursuant to F.S. 828.073 and Monroe County Code 4-47 is moot as the FKSPCA has no authority to release Respondents' animals. Custody and Disposition of the animals will be in accordance with the resolution and disposition of Case MM-M-16-438;
2. Petitioner has represented to this Court that Ms. Susanne Kynast, Respondent, has paid the FKSPCA Four Thousand Dollars (\$4,000.00) for the cost of care and has executed a Release of Claims in favor of the FKSPCA, and the Court, having been otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED:

That the instant case is hereby dismissed.

30 **DONE AND ORDERED** in Chambers at Marathon, Monroe County, Florida, this
day of July, 2018.


Ruth Becker
County Court Judge

Copies to:

Christine Limbert-Barrows (Limbert-Christine@monroecounty-fl.gov)
William J. Heffernan, Jr., Esq. (Bill@wjhlawoffice.com)
Susanne S. Kynast c/o Bill@wjhlawoffice.com
Raymond Geisel c/o stevens@marathonlaw.com

CLK. CIR. CT.
MONROE COUNTY, FLA.

2018 JUL 30 PM 4:23

FILED FOR RECORD

IN THE COUNTY COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
MIDDLE KEYS CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

vs.

SUSANNE STEPHANIE NIKOL KYNAST,
Defendant.

Case Number: 2016-MM-438-A-M

FILED
CLERK OF COURT
MONROE COUNTY, FLA

2018 MAY -4 PM 2:42

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

This matter came before the Court on Defendant's Motion to Suppress heard February 21, 2018, and continued on April 6, 2018, and the Court having heard testimony, received evidence, and having reviewed written arguments and memorandums from counsel, finds as follows:

INTRODUCTION

Defendant seeks suppression of evidence consisting of animals seized from her vessel, as well as videos and photographs taken during the search of the boat and seizure of the animals.

FACTS

The Defendant in this case is charged by Information with 20 counts of Cruelty to Animals (one dog, five cats, nine iguanas, and five turtles), two counts of Derelict Vessel, one count of Nuisance Injurious to Public Health, and one count of Public Health: Breeding Flies/Spreading Disease.

This case began upon an investigation into a belief that the Defendant had disappeared into the night on her paddle board after the death of one of her dogs. The officers involved became concerned that she may have been in a suicidal state. This concern arose out of information relayed by her husband, Raymond Geisel, who has a history of psychological instability. Additionally, when the officers were able to contact the Defendant, she made statements about being content if God wanted to take her also. However, in her testimony, she adamantly denied that she would in fact cause harm to herself. Rather, she stated that she wanted to be alone to grieve the death of her dog.

Ultimately, after the Defendant had spent the night on a remote island, the officers boarded her vessel on July 5, 2016, and brought her to the Guidance Clinic of the Middle Keys pursuant to a Baker Act referral.

The officers testified that, in furtherance of their belief committing the Defendant was necessary, she attempted to leap off the boat transporting her to land. However, the Defendant gave a reasonable explanation that she was trying to ascertain whether the dog the officers had taken into the aft of the boat was safe. She testified about her considerable experience with boating, and that she would never have tried to jump off the boat.

On July 6, 2016, officers returned to the Defendant's boat and seized the numerous caged reptiles and the cats.

The Defendant in this case, as described in her undisputed testimony, is a highly educated, eccentric woman. Her testimony established that many of the animals involved in this case are rescued iguanas that have been injured in some fashion. One of them had sustained an injury to its jaw and could be fed only liquids. Her testimony indicated that she has extensive knowledge of the feeding habits and needs of the reptiles she kept on the deck of her boat. She went into great detail to state what they ate, what their feeding habits were, when and how they were fed. She also spoke in detail as to the "toiletry" habits of the reptiles.

Ms. Kynast has a home in Maine. She testified that she was in the process of packing up belongings in anticipation of her seasonal move to Maine, which she claimed accounted for some of the disarray on the boat.

The officers involved in this matter were understandably alarmed at the odor and animal waste seen in and around the cages. Additionally, the facts indicated a boat in considerable disrepair, as seen by the conditions inside the cabin where the cats were located. Testimony of Animal Control Officer Smith indicated that the conditions inside the cabin of the boat were horrendous. There was an overwhelming odor of cat urine, which had soaked pillows in the cabin.

The Defendant asserts that after the seizure of the animals, there was no evidence to establish that the animals were in anything other than good condition. The State did not present any evidence from the veterinary facility that cared for the animals after their seizure. Testimony was presented that some of the animals were overheated and dehydrated.

It is undisputed that no warrant was obtained before officers boarded her boat and entered the cabin area.

APPLICATION OF LAW AND CONCLUSION

The Court agrees with the State that the issue of whether or not reasonable grounds existed to make the Baker Act referral of Ms. Kynast to the Guidance Clinic is not material to the issue of whether the officers were justified in returning to the boat on July 7, 2016, when the search and seizure of the animals occurred.

However, the officers spent considerable time after Ms. Kynast was taken to the Guidance Clinic, discussing what their next steps would be. They also wanted to consult with the animal control officer to relay what they had seen on the boat on July 6, 2016.

The Court finds there was ample time to obtain a warrant in this case, as law enforcement decided they would not return to the boat until the following day.

While the deck of the boat may have been "in plain view," that is clearly not the case with the interior cabin. This boat was not in the situation of vessels addressed in the cases cited by the State., e.g., United States v. Villamonte-Marquez, 462 U.S. 579 (S.Ct.1983). The Defendant's boat was not in operation upon the waters. The boat was moored in Boot Key Harbor, and it was clear from the Defendant's testimony about packing for Maine, and the condition of the boat, that she was not about to "travel in any direction upon contiguous waterways." When she wanted solitude after the death of her dog, she went off on her paddle board, not by way of the boat.

The State contends that if a warrant were required, the exceptions of exigent circumstances and plain view would apply in this case. The Court finds that the exigent circumstances were created when law enforcement chose to "Baker Act" the Defendant, removing her from the boat and her animals. As indicated above, the cabin was not "in plain view."

It is therefore **Ordered and Adjudged** that Defendant's Motion to Suppress is granted.

DONE and ORDERED in Marathon, Monroe County, Florida this 4 day of May 2018.



RUTH BECKER
COUNTY JUDGE

cc:

Office of the State Attorney
Office of the Public Defender

5.4.18
KH

IN THE COUNTY COURT
IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NUMBER: 2016-MM-438-A-M

SUSANNE STEPHANIE KYNAST

Defendant.

MOTION TO SUPPRESS EVIDENCE IN UNLAWFUL WARRANTLESS SEARCH

COMES NOW the Defendant, SUSANNE STEPHANIE KYNAST by and through her undersigned attorney, W.J. Heffernan, Jr., and pursuant to Fl. R. Crim P. 3.190 (g) showing as grounds therefore the following:

ITEMS SOUGHT TO BE SUPPRESSED

All iguanas, cats, turtles, dogs and any other animals found and illegally seized aboard Defendant's sailing vessel Florida Registration Number FL 6272 NW on July 5th and 6th of 2016 by a joint task force of FKASPCA, Florida Wildlife Commission, US Coast Guard and the Monroe County Sheriffs Department together with all videos, photographs and observations connected with the illegal search.

FACTS AND LAW FORMING THE BASIS FOR SUPPRESSION

- a) The Fourth Amendment of the Constitution protects against warrantless search and seizure except in a very narrowly defined set of circumstances falling under the emergency exception to the warrant requirement.
- b) The first stage of entry, search, and seizure occurred on 7/5/16 when MCSO and FWC officers conducting a welfare check came to Susanne Kynast's vessel. Susanne Kynast had not told anyone that she was home (on her vessel) and had in fact texted her husband that she was not home because she wanted to be left alone. She was below deck in the bathroom (head) when the FWC boat docked at her vessel. She did not respond to the officers calling since she had been crying and was ashamed to be seen that way. The officers, receiving no answer and having no indication that she was home proceeded to enter the private areas of her vessel. In the discovery for Susanne Kynast's criminal case they claim to have seen her from the response boat which is impossible considering the angles involved, as any video of her boat (FL 6272NW) or that response will show. Still not seeing her they cleared the vessel and started to leave. In the process of clearing it they literally destroyed the interior of the boat where Susanne Kynast had been packing all her belongings into storage totes in preparation for leaving for her house in Maine on 7/6/16. They broke a garbage bag she had ready for disposal and dumped over at least 6 storage totes full of packed items, spreading

the garbage through the contents. By starting to leave (as can be seen on their body cam video), they proved that they in fact did not have hard information that Susanne Kynast was aboard. However, in the process of leaving they allowed a cat to run into the mess they had created by leaving a compartment door open. When respondent came out of the bathroom to rescue it, they arrested her.

- c) *Riggs v. State Supreme Court of Florida*, December 15, 2005 918 So. 2d 274 30 Fla. L. Weekly S845 states that “The Fourth Amendment, which protects against unreasonable searches, requires [...] that the police reasonably believe that an emergency exists.” Citing *People v. Smith*, 7 Cal. 3d 282, 101 Cal. Rptr. 893, 496 P. 2d 1261 (1972)), it discusses a case where the evidence obtained during a warrantless entry was suppressed because “the belief upon which the officer acted was the product not of facts known to or observed by him, but of his fanciful attempt to rationalize silence into a justification for his warrantless entry.” That case involved a wandering child and a search of her apartment for what the officers claimed was possibly her mother in distress. “Although the girl informed the officer that her mother was not in the apartment the officer knocked on the door. Receiving no answer the officer entered without a warrant.” If the initial search was not constitutional, then all subsequent actions as well as the seizure of respondents’ dog Slinky from the vessel were illegal as well.
- d) In Respondents’ case Susanne Kynast had clearly assured her husband via text and a MCSO deputy over the phone around midnight on 7/4/16 that she had merely gone away from her residence to privately grieve for her dog and that she had no intention of hurting herself. She had also clarified that her cellphone charge had been used up during her long conversation with the deputy and that she would be out of communication. When she reestablished communication with her husband she gave him no indication that she had returned to her vessel and told him that in fact she had not since she did not want to interact with him at that point due to the extreme stress his mental health issues cause her. She at no point gave MCSO any indication that she was aboard her vessel, and when they approached she was not visible from the deck, and there was no dinghy present. The fact that the officers started to leave after not seeing her initially is proof that they did not in fact have reasonable belief that she was on her vessel.
- e) *Riggs v. State Supreme Court of Florida*, December 15, 2005 918 So. 2d 274 30 Fla. L. Weekly S845 (citing *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978)) also states that “the Fourth Amendment does not bar police officers from making warrantless entries when they reasonably believe that a person within is in need of immediate aid... The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.” The key here is the term “immediate aid”. The concern for her mental health occurred when Susanne Kynast spoke with the MCSO officer on midnight of 7/4/16, 15 hours earlier, from an offshore island. If they in fact believed her to be home (rather than simply wanting an excuse to search what they apparently believed was also Raymond Geisel’s residence), the suspicion of immediate danger does not make sense since she then clearly had the mental capacity to kayak several miles on the open ocean, return home safely and charge up her cellphone to reestablish contact, all of which are clear indications of a competent frame of mind. As a matter of fact Susanne Kynast’s mental state had dramatically improved when she received the message from Marathon Vet Hospital that she did not cause her dog’s death, as evidenced by the fact

that she was in the process of caring for her animals when she was arrested. It is important to note that even in her distraught state of mind the night before, the safety of the emergency responders was her foremost consideration. In response to the deputy's request to state her location she explained clearly to him that she was safely on an offshore island, but that she did not want to disclose her exact location to MCSO out of fear that the responders would be injured in a rescue attempt (a reasonable concern since a squall had come up, causing large waves, and an MCSO boat had been considerably damaged on the jagged coral rocks of the island during a nighttime rescue on 7/4/08 in which respondents had assisted).

- f) If the officers can prove that they had clear and convincing evidence that Susanne Kynast was aboard and in distress, then *Thompson v. Louisiana*, 469 U.S. 17, 105 S. Ct. 409, 83 L. Ed. 2d 246 (1984) applies where the initial entry is justified by the call for help from a suicidal person, but the search that was conducted 35 minutes later without a warrant based on the fact that she had apparently murdered her husband in the house was not. "On petition for certiorari, the Supreme Court held that: although police may make warrantless entries on premises where they reasonably believe that person within is in need of immediate aid, injured petitioner's attempt to get medical assistance by call from her home did not evidence diminished expectation of privacy on her part [...] such call for help could not be seen as invitation to general public that would convert home into sort of public place for which no warrant to search would be necessary."
- g) *Riggs v. State* Supreme Court of Florida, December 15, 2005 918 So. 2d 274 30 Fla. L. Weekly S845 (citing *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997)) clarifies that "an entry based on an exigency must be limited in scope by its purpose. Thus, an officer may not continue her search once she has determined that no exigency exists." Hence once the officers located Susanne Kynast and secured her, they had ended the possible exigency (her alleged risk of suicide), and could not continue searching. They also had to limit their search to searching for her instead of documenting conditions on the vessel which had nothing to do with her alleged suicidal behavior (all conditions alleged in paragraph 2 of the petition).
- h) "When a search or seizure is conducted without a warrant the government bears the burden of demonstrating that the search or seizure was reasonable" (*Hilton v. State*, 961 So. 2d 284, 296 (Fla.2007))
- i) The officers left Susanne Kynast's boat with her and returned 18 hours later, thereby negating the emergency provision "the emergency exception permits police to enter [...] private premises to preserve life, property, or render first aid, provided they do not enter with an accompanying intent either to arrest or search" (*Hornblower v. State*, Supreme Court of Florida Oct. 27, 1977 351 So. 2d 716) Since they waited 18 hours to return, they clearly did not believe that an emergency existed whereby respondents' animals were in imminent danger, or they would have returned immediately to preserve their life (and her property). Instead they went home and according to paragraph 3 of the petition "agreed to return to the vessel to further investigate and document the existing living conditions and standards of care" the next day. This is a clear definition of an intent to search without an intent to preserve life in an emergency. *Hornblower v. State*, Supreme Court of Florida Oct. 27, 1977 351 So. 2d 716 states that "In his testimony, the officer acknowledged that he intended to enter and search the trailer before he ever approached the mobile home. To sustain respondent's argument would be to endorse the precise kind of conduct which the Fourth

Amendment seeks to proscribe. [...] notwithstanding the existence of probable cause, to carry its burden, the State needs to show that there was insufficient time to secure a search warrant. In effect, if time to get a warrant exists, the enforcement agency must use that time to get a warrant.” It goes on to state clearly that “law enforcement officers may not sit and wait as here (when they could be seeking a warrant), then utilize their self-imposed delay to create exigent circumstances. [...]” The facts of the case make it absolutely clear that this is exactly what happened. The officers removed respondent from her vessel while she obviously had just started to care for her animals on their regular daily schedule. The officers were aware of that because they literally fell over the food packages and water containers she had set out outside the cages, and because the animals had obviously not yet received their daily care. The respondent made it clear that Raymond Geisel (who does not reside with her) needed to be notified immediately to care for the animals, and she was assured that he had already been contacted and that they would do so again. The officers then failed to do so in a timely manner, virtually assuring that the animals would not be cared for until the next morning (iguanas sleep at night and feeding them in the dark only results in their food drying and rotting before they can eat it in the morning, and cleaning their cages while they sleep results in excessive stress and a risk of injury). They then returned 18 hours later at 9 am the next morning (at the exact time at which they could expect that Susanne Kynast would be able to contact Raymond Geisel herself), to document the fact that the animals were hungry and dirty, an issue they themselves had created. In those 18 hours the officers had plenty of time to obtain a warrant but did not do so, an issue which comment [3] on the draft petition points out.

- j) “As stated by the United States Supreme Court in *Johnson v. United States* 333 U.S. 10, 68 S. Ct. 367, 92 L. Ed. 436 (1948): The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate’s disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people’s homes secure only in the discretion of police officers.” (*Hornblower v. State*, Supreme Court of Florida Oct. 27, 1977 351 So. 2d 716). The officers were fully aware that FL 6272NW was Susanne Kynast’s home while residing in Marathon.
- k) During the intervening hours between the arrest and the search, the officers left Susanne Kynast’s vessel completely unprotected after having taken her off in handcuffs in plain view of the entire anchorage, leaving her vessel open to thieves, vandals, and people potentially doing harm to her animals, whether by malicious intent or by ill-conceived efforts to ‘help’ them, such as attempting to ‘pet’ them which would result in injuries from them throwing themselves into cage walls (the cages are constructed of non-injurious vinyl-covered wire, but a terrified iguana can still receive injuries from crashing into the sides) and dumping over

and emptying out their water containers while attempting to escape, or to feed them (inappropriate foods would result in rotten food being present in cages). Consequently none of the conditions observed 18 hours later can legally be related to her. The officers also allowed the garbage they had spread in the cabin along with the fresh meat, leafy greens, and vegetables she had bought as animal food as well as her personal food to rot in the tropical heat and attract flies and other insects. The chaos they had created in the main cabin by dumping over all the storage containers would have taken hours to clean, also preventing Raymond Geisel late that night from effectively taking care of her animals since medications, supplies, cages, and carriers were now buried under piles of previously neatly stored items. It is perfectly conceivable that he made the situation worse by trying to find certain critical items in the dark and locating a cat the officers had allowed to escape into the dangerous area. It is inconceivable why law enforcement then proceeded to charge Susanne Kynast based on those conditions (which they had caused!) 18 hours later.

- l) During the warrantless search on 7/6/16 ACO Hugh Smith was the sole investigator downstairs who took all the photos and videos in clear violation of MCC 4-38 (5) which states "in response to there being a clear indication of "animal in distress" as defined by F.S. §828.12, the animal control officer is authorized and empowered in accordance with the provisions of this chapter to enter upon private premises (excepting entry into the private areas of buildings or enclosures constructed to provide privacy, unless in possession of a search warrant) for the purpose of inspecting those premises to determine if the owners of dogs, cats, or animals harbored, kept or possessed on the premises have complied with the provisions of this chapter. [...] The provisions of this subsection shall include, but not be limited to, investigation of, and seizure for, cruelty to animals." The cabin area on Susanne Kynast's vessel FL 6272NW which includes her bedroom and bathroom (where the cats were) certainly is "an enclosure constructed to provide privacy".
- m) The stipulation in MCC 4-38 (5) that the ACO can enter upon private premises was also clearly held to be illegal by an Advisory Legal Opinion of the Florida Attorney General "In light of the rule set forth and the conclusions reached in AGO 081-38, I must conclude that a municipality has no home rule power to grant an animal control officer or his assistants the authority to serve citations or criminal process or process in the nature of criminal process, or to authorize the entry onto private property without the consent of the owner or occupant thereof for the purpose of capturing dogs for impoundment, or to make affidavits necessary to authorize arrests and searches. See also AGO's 081-39; 079-83; cf. 078-132. [...] Nothing [...] suggests that the impounding officer or animal control officer is vested with the authority [...] to enter onto private property without the consent of the owner or occupant to capture dogs. [...] statutes, ordinances and rules purporting to authorize administrative searches without a warrant under regulatory statutes have been held violative of the Fourth Amendment" (1982 Fla. Op. Atty. Gen. 29 (Fla. A.G.), Fla. AGO 082-12, 1982 WL 174159 Office of the Attorney General, State of Florida AGO 082-12, March 2, 1982)
- n) While ACO Hugh Smith was engaged in his illegal warrantless search of the cabin area, and the subsequent illegal seizure of the cats, law enforcement officers on deck were ripping up

cages to search underneath them, also without a warrant.

- o) Despite their efforts Hugh Smith admits in the discovery that the animal's health was not in danger at the time.
- p) No efforts were made by any officers to determine how much longer Susanne Kynast would be at the guidance clinic, if Raymond Geisel was taking care of the animals, or if Susanne Kynast had made or would be able to make alternate care arrangements.
- q) Post seizure the animals were immediately assessed at Marathon Vet Hospital, and while respondents were never provided with their medical records, their bill which they did receive shows that no interventions were necessary for any of them (not a single medication, injection, etc. was billed), meaning that they were perfectly healthy even after having been left alone and the extreme stress of capture and transport.
- r) It is finally important to note that Susanne Kynast's boat was a non-moving residence, and not a moving vessel stopped in transit (see distinction in *Caroll v. U.S. Supreme Court of the United States*, March 2, 1925, 267 U.S. 132 45 S. Ct. 280 39 A.L.R. 790 69 L. Ed. 543).
- s) Based on the above facts respondents believe that all evidence on Susanne Kynast's vessel FL 6272NW – photos, videos, descriptions, and witness statements, and all items and animals seized were obtained in violation of the protections guaranteed by the United States Constitution, and in violation of State Law and the Monroe County Code. None of the instances of warrantless entry were justifiable, but the breach was most blatantly obvious for the search on 7/6/16 (and subsequent searches), and especially the search of the downstairs area. Even the draft petition points out that defect in comment [3].
- t) Respondents therefore respectfully request that this Honorable Court find that the search and seizure conducted on Susanne Kynast's vessel and residence FL 6272NW was not reasonable and therefore prohibited by the Fourth Amendment, and that this Honorable Court therefore order all evidence suppressed and all seized items – physical property and animals – returned immediately.

WHEREFORE, the Defendant, respectfully moves this Honorable Court to enter its Order granting the Defendants Motion to Suppress all evidence above listed illegally seized by law enforcement on July 5th and 6th 2016.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by fax to the Office of the State Attorney, 4695 Overseas Highway, Marathon, FL33050 this January 2, 2017.

W.J. Heffernan, Jr., Esq.

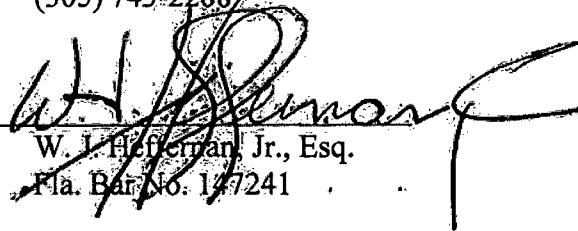
Counsel for Defendant

9703 Overseas Highway

Marathon, Florida 33050

(305) 743-2288

By:

A large, stylized handwritten signature in black ink, appearing to read 'W.J. Heffernan, Jr.', is written over the printed name and bar number.

W. J. Heffernan, Jr., Esq.

Fla. Bar No. 147241

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT
PROPERTY RECEIPT

COPY

County Where Seized: MONROE		Date Seized: 07/05/16	Incident #: FWSB-16-0FF-8273
Facility Location: MONROE COUNTY ANIMAL CONTROL		Time Seized: 1030	Citation #: N/A
Telephone Number: 305-743-4800		Owner Notified: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Method	Evidence Tracking #:
Type of Case: <input type="checkbox"/> Federal <input checked="" type="checkbox"/> State <input type="checkbox"/> Felony	Type of Seizure: <input checked="" type="checkbox"/> Evidence <input checked="" type="checkbox"/> Property		Exact location where property was seized:
<input checked="" type="checkbox"/> Misdemeanor		BOOT KEY HARBOR, VESSEL FL-6272-NW	

Charge(s) or Type of Offense: 147 COUNTS - CAPTIVE WILDLIFE VIOLATIONS, ANIMAL CRUELTY, PUBLIC HEALTH VIOLATIONS

Purpose: ☒ Trial ☐ Recovery ☐ Constructive Seizure ☒ Investigation ☒ Safekeeping ☐ Laboratory ☐ Lost/Abandoned

Codes: CD = Co-Defendant C = Claimant D = Defendant O = Owner P = Possessor S = Suspect

Code	Name (Last, First, Middle)	Race/Sex	DOB	Address	Phone
S	KYNAST, SUSANNE, STEPHANIE	W/F	12/07/72	15 SALEM STREET, MACHIAS, ME 04654	UNKNOWN
S	GEISEL, RAYMOND, HUNTER	W/M	09/16/85	5101 OVERSEAS HWY, MARATHON, FL 33050	UNKNOWN

Item #	Qty	Description	EVIDENCE/CUSTODIAN USE ONLY Storage Location
1	9	CAPTIVE WILDLIFE AS PETS: 9 IGUANAS SEIZED, IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	
2	5	CAPTIVE WILDLIFE AS PETS: 5 TURTLES SEIZED, IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	
3	4	DOMESTIC FELINE (CATS) SEIZED, IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	
4	3	FIVE GALLON BUCKETS REQUIRED TO TRANSPORT SEIZED TURTLES, IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	
5	2	LARGE GREEN WIRE CAGES REQUIRED TO TRANSPORT SEIZED IGUANAS IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	
6	2	MEDIUM BLACK WIRE CAGES REQUIRED TO TRANSPORT SEIZED IGUANAS IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	

NOTICES

The Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement hereinafter is referred to as "FWC."

UNCLAIMED EVIDENCE: Pursuant to F.S. 705.105 title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency 60 days after the conclusion of the proceeding. If the owner (or their legally appointed agent) does not contact FWC prior to the conclusion of the 60 day period, and there is no request or motion to return property or to appeal, items may be disposed of by FWC.

LOST/ABANDONED PROPERTY: Pursuant to F.S. 705.103 property will be held for 90 days from the date of seizure. The rightful owner or a person who initiates a claim for lost/abandoned property must contact FWC and follow the procedure outlined in Florida Statute and the policies of the FWC. If after 90 days, of which the first 45 days the Agency published intent to destroy, no owner or proper legal claim for the lost/abandoned property occurs, the property may be disposed of by FWC.

ARRESTEE/PRISONER PROPERTY: Property maintained for safekeeping by FWC, but not evidentiary in value will be held for 90 days. After 90 days, if the owner (or legally appointed agent for the owner) is unable to retrieve their property, the property will be identified as abandoned and disposed, pursuant to F.S. 705.103. Property cannot be shipped to a correctional facility. **OPTION:** By my signature, _____ / print name _____, I authorize FWC to dispose/destroy item number(s) _____ as listed above, prior to the 90 day period.

FLORIDA CONTRABAND AND FORFEITURE ACT: Pursuant to F.S. 932.701-932.704, proceeding shall be conducted by the FWC Legal Office.

Possessor	Seizing or Impounding Officer
I hereby acknowledge that the items listed herein represent property taken from my possession and that I have received a copy of this receipt for my records. Should any of the above "NOTICES" apply to me, I am responsible for contacting the FWC Division of Law Enforcement at the telephone number indicated above.	I hereby acknowledge that the above represents all property impounded by me in the official performance of my duty as a law enforcement officer.
Signature: _____	Signature: <u>Kyle Plussa</u>
	Type or Print Name: OFFICER KYLE PLUSSA (FWC) ID: NS10AW744

Destruction Witnessed by: _____
Type or Print Name ID Signature Date

CHAIN OF CUSTODY

Item #	Reason for Transfer In/Out	Method of Transfer In Person / Mail	Print Name and Sign	Rank or Responsibility	Date	Time
1-8	SEIZED FROM SCENE	X	KYLE PLUSSA <u>[Signature]</u>	LEO	7/05/16	1030
1-8	TRANSFERED TO ANIMAL CONTROL	X	HUGH SMITH <u>[Signature]</u>	ANIMAL CONTROL OFFICER (CUSTODIAN)	7/05/16	1100

CONTINUED FROM PREVIOUS PAGE

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FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT
PROPERTY RECEIPT

County Where Seized: MONROE		Date Seized: 07/05/16	Incident #: FWSS-16-0FF-6273
Facility Location: MONROE COUNTY ANIMAL CONTROL		Time Seized: 1530	Citation #: N/A
Telephone Number: 305-743-4800		Owner Notified: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Method	Evidence Tracking #:
Type of Case: <input type="checkbox"/> Federal <input checked="" type="checkbox"/> State <input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony	Type of Seizure: <input checked="" type="checkbox"/> Evidence <input checked="" type="checkbox"/> Property		Exact location where property was seized: BOOT KEY HARBOR, VESSEL FL-6272-NW

Charge(s) or Type of Offense: **147-COUNTS - CAPTIVE WILDLIFE VIOLATIONS, ANIMAL CRUELTY, PUBLIC HEALTH VIOLATIONS**

Purpose: ☒ Trial ☐ Recovery ☐ Constructive Seizure ☒ Investigation ☒ Safekeeping ☐ Laboratory ☐ Lost/Abandoned

Codes: CD = Co-Defendant C = Claimant D = Defendant O = Owner P = Possessor S = Suspect					
Code	Name (Last, First, Middle)	Race/Sex	DOB	Address	Phone
S	KYNAST, SUSANNE, STEPHANIE	W/F	12/07/72	15 SALEM STREET, MACHIAS, ME 04654	UNKNOWN
S	GEISEL, RAYMOND, HUNTER	W/M	09/16/85	5101 OVERSEAS HWY, MARATHON, FL 33050	UNKNOWN

Item #	Qty	Description	EVIDENCE CUSTODIAN USE ONLY Storage Location
9	1	DOMESTIC CANINE (DOG) SEIZED, IN CUSTODY OF MONROE COUNTY ANIMAL CONTROL	

NOTICES

The Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement hereinafter is referred to as "FWC."

UNCLAIMED EVIDENCE: Pursuant to F.S. 705.105 title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency 60 days after the conclusion of the proceeding. If the owner (or their legally appointed agent) does not contact FWC prior to the conclusion of the 60 day period, and there is no request or motion to return property or to appeal, items may be disposed of by FWC.

LOST/ABANDONED PROPERTY: Pursuant to F.S. 705.103 property will be held for 90 days from the date of seizure. The rightful owner or a person who initiates a claim for lost/abandoned property must contact FWC and follow the procedure outlined in Florida Statute and the policies of the FWC. If after 90 days, of which the first 45 days the Agency published intent to destroy, no owner or proper legal claim for the lost/abandoned property occurs, the property may be disposed of by FWC.

ARRESTEE/PRISONER PROPERTY: Property maintained for safekeeping by FWC, but not evidentiary in value will be held for 90 days. After 90 days, if the owner (or legally appointed agent for the owner) is unable to retrieve their property, the property will be identified as abandoned and disposed, pursuant to F.S. 705.103. Property cannot be shipped to a correctional facility. **OPTION:** By my signature, _____ / print name _____, I authorize FWC to dispose/destroy item number(s) _____ as listed above, prior to the 90 day period.

FLORIDA CONTRABAND AND FORFEITURE ACT: Pursuant to F.S. 932.701-932.704, proceeding shall be conducted by the FWC Legal Office.

<p style="text-align: center;">Possessor</p> <p>I hereby acknowledge that the items listed herein represent property taken from my possession and that I have received a copy of this receipt for my records. Should any of the above "NOTICES" apply to me, I am responsible for contacting the FWC Division of Law Enforcement at the telephone number indicated above.</p> <p>Signature: _____</p>	<p style="text-align: center;">Seizing or Impounding Officer</p> <p>I hereby acknowledge that the above represents all property impounded by me in the official performance of my duty as a law enforcement officer.</p> <p>Signature: <u>KYLE PLUSSA</u></p> <p>Type or Print Name: <u>OFFICER KYLE PLUSSA (FWC)</u> ID: <u>N910/M744</u></p>
--	---

Destruction Witnessed by:

Type or Print Name	ID	Signature	Date
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CHAIN OF CUSTODY

Item #	Reason for Transfer In/Out	Method of Transfer In/Out	Print Name and Sign	Rank or Responsibility	Date	Time
1	SEIZED FROM SCENE	X	KYLE PLUSSA <u>[Signature]</u>	LEO	7/05/16	1530
1	TRANSFERED TO ANIMAL CONTROL	X	HUGH SMITH <u>[Signature]</u>	ANIMAL CONTROL OFFICER (CUSTODIAN)	7/05/16	1600

Original - Property Records Custodian
Copy - DLE Region Office
Copy - Possessor / Owner / Recipient

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT
PROPERTY RECEIPT

County Where Seized: MONROE		Date Seized: 07/07/16		Incident #: FWSB-16-OFF-6273																													
Facility Location: MONROE COUNTY ANIMAL CONTROL		Time Seized: 1600		Citation #: N/A																													
Telephone Number: 305-743-4800		Owner Notified: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Method		Evidence Tracking #:																													
Type of Case: <input type="checkbox"/> Federal <input checked="" type="checkbox"/> State	<input checked="" type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony	Type of Seizure: <input checked="" type="checkbox"/> Evidence <input checked="" type="checkbox"/> Property		Exact location where property was seized: RED SUV, 74TH ST AND US-1, MARATHON																													
Charge(s) or Type of Offense: 147 COUNTS - CAPTIVE WILDLIFE VIOLATIONS, ANIMAL CRUELTY, PUBLIC HEALTH VIOLATIONS																																	
Purpose: <input checked="" type="checkbox"/> Trial <input type="checkbox"/> Recovery <input type="checkbox"/> Constructive Seizure <input checked="" type="checkbox"/> Investigation <input checked="" type="checkbox"/> Safekeeping <input type="checkbox"/> Laboratory <input type="checkbox"/> Lost/Abandoned																																	
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S	KYNAST, SUSANNE, STEPHANIE	W/F	12/07/72	15 SALEM STREET, MACHIAS, ME 04854	UNKNOWN																												
S	GEISEL, RAYMOND, HUNTER	W/M	09/18/85	5101 OVERSEAS HWY, MARATHON, FL 33050	UNKNOWN																												
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Signature: _____			Signature: <u>KYLE PLUSSA</u>																														
Type or Print Name: _____			Type or Print Name: OFFICER KYLE PLUSSA (FWC) ID # 10610W744																														
Destruction Witnessed by: _____																																	
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1	SEIZED FROM SCENE	X	KYLE PLUSSA <u>KYLE PLUSSA</u>	LEO	7/07/16	1600																											
1	TRANSFERRED TO ANIMAL CONTROL	X	HUGH SMITH <u>HUGH SMITH</u>	ANIMAL CONTROL OFFICER (CUSTODIAN)	7/07/16	1630																											

Original - Property Records Custodian
Copy - DLE Region Office
Copy - Possessor / Owner / Recipient

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT
PROPERTY RECEIPT

County Where Seized: MONROE		Date Seized: 07/11/16		Incident #: FWSS-16-0FF-9273																													
Facility Location: MONROE COUNTY ANIMAL CONTROL		Time Seized: 1330		Citation #: N/A																													
Telephone Number: 335-743-1800		Owner Notified: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Method		Evidence Tracking #:																													
Type of Case: <input type="checkbox"/> Federal <input checked="" type="checkbox"/> State Felony	Type of Seizure: <input checked="" type="checkbox"/> Evidence <input checked="" type="checkbox"/> Property		Exact location where property was seized: BOOT KEY HARBOR, VESSEL FL-6272-NW																														
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1	TRANSFERED TO ANIMAL CONTROL	X	HUGH SMITH <u>HUGH SMITH</u>	ANIMAL CONTROL OFFICER (CUSTODIAN)	7/11/16	1400																											



Susanne Kynast <kynastsusanne@gmail.com>

Re: Request for Return of Property - Susanne Kynast - FWC Evidence: 16-8273; Kynast - Criminal Case 16MM438

1 message

Susanne Kynast <kynastsusanne@gmail.com>

Tue, Aug 7, 2018 at 2:57 PM

To: "Dipre, Kim" <kim.dipre@myfwc.com>, William Heffernan <bill@wjhlawoffice.com>

Dear Lt. Dipre,

Thank you so very much for your help in this matter, and thank you again for being so helpful and kind last week! I am looking forward to hearing from Attorney Heffernan. Please do what you can to ensure the safety of the other items held for you apparently by various custodians specifically the two dogs, 7 iguanas, 2 turtles, and 1 cat which are currently unaccounted for. Just to be clear, I am according to the notice on your property receipts hereby claiming all evidence in my case Incident # FWSB-16-OFF-8273 due to the dismissal of said case. Please let me know if I can be of any assistance to you in this at all. I love my animals very much and am looking forward to having them returned to me.

Sincerely,
Susanne Kynast

On Aug 7, 2018 1:58 PM, "Dipre, Kim" <kim.dipre@myfwc.com> wrote:

Dear Ms. Kynast,

In response to your request for returning property to you and your inquiry about the location and condition of two dogs and several iguanas, I consulted with the Assistant State's Attorney Ms. Christina Cory. Ms. Cory will be communicating directly with your attorney, Mr. Heffernan on the issues related to this case.

At this time, FWC will continue to maintain the items currently held in our evidence facility until further direction from the court or Ms. Christina Cory.

Respectfully,

Lieutenant Kim Dipre

Florida Fish and Wildlife Conservation Commission

Division of Law Enforcement, SB

2796 Overseas Highway, Suite 100

Marathon, FL 33050

Office: 305-289-2320

Desk: 305-676-3256





Susanne Kynast <kynastsusanne@gmail.com>

Susanne Kynast animals

1 message

Susanne Kynast <kynastsusanne@gmail.com>

Thu, Aug 2, 2018 at 5:15 PM

To: Limbert-Christine <limbert-christine@monroecounty-fl.gov>, William Heffernan <bill@wjhlawoffice.com>

Attorney Limbert-Barrows:

As you are aware, my criminal case has now been officially nolle processed. As you have kindly stated in your dismissal of the civil matter, the FKSPCA was holding the evidence for the State, without any authority to dispose of it. In your dismissal of the civil case you admit that the disposal of the evidence shall be in accordance with the resolution of the criminal case. Since that case has been dropped, ALL the evidence now becomes returnable.

This is a formal notice making you aware that the FKSPCA in response to the nolle process is now legally obligated to return all the property, specifically the two (2) dogs Chrissy and Dozer, and needs to formally account for the whereabouts of cat Emily, 7 iguanas, and 2 turtles. All of those animals were formally listed as evidence in the case, along with various physical items which are also unaccounted for.

You have been extremely helpful in facilitating the return of some of the animals, and I fully expect that we will be able to easily resolve the remaining matters. However, as you are undoubtedly aware, failure to return the evidence would not be a civil matter between me and the FKSPCA, but rather criminal destruction of evidence by a custodian. I therefore urge you to ensure the safety of all remaining animals, especially the 2 dogs which as trained service dogs are valued in the tens of thousands of dollars, and facilitate their immediate return.

As always thank you so very much for your help in this matter!

Sincerely,
Susanne Kynast