

IN THE MAGISTRATE'S COURT OF CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

vs.

WARRANT NO.: CR-CR-11-304

MARK STARLING

Defendant

ENTRY OF DISMISSAL PRIOR TO ACCUSATION

COMES NOW the State of Georgia, by Solicitor-General Carroll R. Chisholm, Jr., and hereby enters a Dismissal Prior to Accusation in the above-captioned case, upon the grounds set forth as follows:

The Defendant was charged with Cruelty to Animals under O.C.G.A. 16-12-4(b) for killing four mice in the Lamar Dodd School of Art at the University of Georgia on November 30, 2010. The evidence shows that the Defendant developed an art project for one of his art classes at the University of Georgia involving four mice. He presented the project idea to his professor and informed him that the mice would be in a cage in one room with a video camera filming them. There would be a wireless feed from the video camera to a video monitor in a separate room with a red button next to the screen. The screen would be out of focus and if a person pushed the red button, the screen would come into focus showing the mice being shocked by electrodes attached to their bodies. The person would then realize that they caused the mice to be shocked by pushing the button. The Defendant's professor did not approve of the project so the Defendant proposed using a horn to startle the mice instead of electrodes to shock them and this version of the project was approved.

FILED 11/29/2011
2011 NOV 29 PM 1:20
CLERK CLERK'S OFFICE
CLARKE COUNTY, GA

On November 30, 2010, after presenting this project to his class in the Lamar Dodd School of Art, the Defendant began disassembling the exhibit. The Defendant had previously asked the class if anyone wanted to keep the mice. According to the Defendant, no one took the mice, so while he was transferring them into a box for transport out of the school, one of the mice bit him on the finger and got away from him. In an interview with the University of Georgia Police Department, the Defendant said that was when he used a 2x4 piece of wood to kill all four mice because they had become a nuisance at that point. The Defendant told police that he did not want the mice to get out in the school and cause problems.

Three witnesses saw the incident. Leighton Tso said in a written statement to police that he saw the Defendant "squish" the mice with the small end of a plank but the Defendant did not show any aggression. A second witness, Tyler Rosebush said he heard a pounding noise coming from the Art X lounge in the Lamar Dodd School of Art and saw the Defendant pounding a piece of wood into a box used for carrying mice. He also told police that he did not see any of the mice get out of the box but he did not observe the Defendant during the entire incident. The third witness, Mary Owen, told police in a written statement that she was talking to Mr. Rosebush when she heard a loud noise and could see that it was coming from the Defendant who was hitting a piece of wood onto a table. She did not know what he was doing until she went over to the Defendant and could see the dead mice in the box. Ms. Owen was familiar with the Defendant's project from being in his art class and she had previously suggested that he return the mice to the pet store from where he had purchased them. Ms. Owen said that the Defendant apologized to the class for his actions the next time they met.

In his interview with the University of Georgia Police Department, the Defendant also apologized for his actions and said, "I totally admit now that I was wrong." He also said that he thought it was legal to kill mice as he had used traps to kill them on previous occasions.

After further review, the State determines that although probable cause existed for the warrant in this case, the State will not be able to prove the charge beyond a reasonable doubt. O.C.G.A. 16-12-4(b) states, "A person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect." The State believes it can prove beyond a reasonable doubt that the Defendant intended to cause death or unjustifiable physical pain or suffering to the mice. The Defendant initially wanted to electrocute the mice as part of his project and was told by his professor he could not. Still, he ended up killing all four mice with a piece of wood at the end of his project in the Lamar Dodd School of Art.

The issue, however, would be whether the State can prove beyond a reasonable doubt that the mice in this circumstance were animals protected under O.C.G.A. 16-12-4(b) or whether they would be excluded as pests under O.C.G.A. 16-12-4(a)(1) which says the term, "[a]nimal" shall not include any fish nor shall such term include any pest that might be exterminated or removed from a business, residence, or other structure." After reviewing the evidence in this case including written statements and recorded interviews of witnesses to the event and the Defendant's interview, the State does not believe a fact finder will find beyond a reasonable doubt that the mice in this case were animals protected by O.C.G.A. 16-12-4(b).

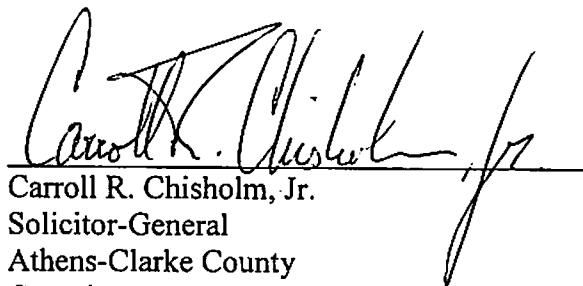
The Defendant told police in his interview that the mice were feeder mice used to feed other animals and that he thought it was legal to kill mice as he had done so before with traps. He also stated that he was concerned that the mice might get loose in the building and cause problems after one had bitten him and escaped from its box. Although a witness, Mr. Rosebush, told police he did not see any of the mice get out of the box, he also said he did not observe the Defendant during the entire incident. If a fact finder were to accept the Defendant's account of the incident, they could conclude that the mice were pests after one bit him and tried to escape. Additionally, if these mice had successfully escaped the custody of the Defendant in the Lamar Dodd School of Art, there is a good chance they might have been considered pests and exterminated as contemplated in O.C.G.A. 16-12-4(a)(1). Applying the facts and circumstances of this case to the definition of animal in O.C.G.A. 16-12-4(a)(1), the State does not believe a fact finder will find beyond a reasonable doubt that that these mice were not pests and were animals protected by the "Cruelty to Animals" statute.

It is also important to note that following the issuance of this warrant, Dr. Alan Campbell, the Assistant Vice President for Student Support at the University of Georgia met with the Defendant about this matter. One of the reasons Dr. Campbell met with the Defendant was to determine whether UGA's Behavioral Assessment and Response Council (BARC) needed to take any action. BARC is a group of key administrators who assess and determine the appropriate response to students who exhibit threatening behavior to self and/or others. The State spoke to Dr. Campbell about his meeting with the Defendant and he said that the Defendant was cooperative, non-hostile, and appreciated the nature of concern. Through the meeting Dr. Campbell did not see a need

for any additional action to be taken by BARC. Additionally, the Defendant has no previous criminal history and has no other arrests in the year since this incident occurred.

Therefore, based on the evidentiary concerns previously discussed, the findings at the University of Georgia, and the fact that the Defendant does not have any other criminal history, the State elects to terminate prosecution in the interests of justice.

Respectfully submitted this 29th day of November, 2011.



Carroll R. Chisholm, Jr.
Solicitor-General
Athens-Clarke County
Georgia Bar No. 124926