

Court of Appeals, State of Michigan

ORDER

People of MI v Nickysha York

Docket No. 309960

LC No. 11-010285-AR

Kirsten Frank Kelly
Presiding Judge

Michael J. Talbot

Christopher M. Murray
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the April 11, 2012, order of the Wayne Circuit Court affirming the dismissal of the charges against defendant based on insufficient evidence hereby is REVERSED. The prosecution's theory under both MCL 750.49(2) and MCL 750.50(2)(f) was that defendant possessed the pit bulls at issue. Testimony at the preliminary examination established that defendant owned and lived in the home where authorities found seven pit bull terriers, equipment to train animals to fight and medications to treat injuries sustained by animals. Four of the pit bulls had wounds that experts opined had been sustained in dogfights. The totality of the evidence at the preliminary examination supports that a reasonable person could find a sufficient nexus between the defendant and the dogs, equipment and medications for a finding of constructive possession. See *People v Wolfe*, 440 Mich 508, 519-20; 489 NW2d 748 (1992). The record therefore contained evidence sufficient to show probable cause for a reasonable person to believe that the felony of knowingly possessing animals used for animal fighting was committed and that defendant committed that felony. Further, it is undisputed that the four dogs used for dogfighting suffered neglect, torture or pain. The record contained evidence from which a reasonable inference could be drawn that defendant possessed the dogs, or that defendant had charge or custody of the dogs as the owner of the home where the dogs were kept. A reasonable person could conclude that defendant negligently allowed the dogs to suffer because she lived in the home where the dogs were caged and trained for fighting, was aware of the dogs, and it may be reasonably concluded that she was aware of the training equipment and medications, which were in plain view. The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JAN 03 2013

Date


Chief Clerk