

## **Portsmouth animal cruelty suspect asks that her case be dismissed**

By CHARLES McMAHON

[cmcmahon@fosters.com](mailto:cmcmahon@fosters.com)

**Foster's Daily Democrat**  
**Tuesday, May 12, 2009**

PORTSMOUTH — The former city woman charged with two counts of animal cruelty for allegedly moving out of her Marjorie Drive apartment and leaving her caged rabbit exposed to the elements without food has asked that her case be dismissed.

Through her attorney, Kristen Gilmore, 38, of 116R Lafayette Road in North Hampton, has asked a District Court judge to dismiss a pair of animal cruelty charges alleging that she left her caged Angora rabbit exposed to the elements without food after she moved out of her Port City residence.

Police were tipped off to the alleged abuse on Nov. 6, 2008, when one of Gilbert's neighbors made an anonymous call to police informing them the animal appeared to have been left out without food and water. Portsmouth Animal Control Officer Patty Tate responded and found the animal in a cage in the backyard.

Police say the animal had no food or water and was living in its own excrement. Authorities took the animal to the Society for the Prevention of Cruelty to Animals, where an investigation at its medical center confirmed the alleged abuse.

A police affidavit filed by Portsmouth Police Officer James Noury indicates an evaluation of the animal by Dr. Susan Denault, a veterinarian, showed the rabbit was emaciated and its long hair was matted "to the point of immobility with legs matted to the body by fur."

The affidavit states Gilmore contacted Animal Control Officer Patricia Tate on Nov. 13 to report the animal stolen.

Gilmore's attorney, David Dow, filed a motion to dismiss the charges in Portsmouth District Court asking the judge to dismiss the charges because he believes Tate entered the residence without a warrant and took her property without permission.

Dow argues that the "warrantless" seizure was in violation of the Fourth Amendment and asks that any evidence, including but not limited to testimony and veterinary reports, be excluded.

State law indicates that a warrantless seizure of a person's property is acceptable if there is clear and imminent danger to the animal or if there is insufficient time to obtain a court order. In his motion, Dow argues that there was "ample time to secure a warrant because the seizure of the rabbit took place on a Thursday morning, meaning that the court was open and Tate could have obtained a warrant prior to the search and seizure.

A hearing on the motion to dismiss the charges and suppress evidence is expected to take place today at 1 p.m.