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10 **IMAGED**

11 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
12 YELLOWSTONE COUNTY

13 STATE OF MONTANA,

Cause No.: DC 09-18

14 Petitioner,

Judge Susan P. Watters

15 vs.

16 LINDA KATHERINE KAPSA,

**ORDER DENYING  
DEFENDANT'S SECOND  
MOTION TO DISMISS  
BASED ON CONTINUOUS  
COURSE OF CONDUCT**

17 Respondent.

18  
19 **ORDER**

20 This matter comes before this Court on Defendant Linda Kapsa's  
21 Second Motion to Dismiss based on Continuous Course of Conduct. The  
22 parties have provided briefs and a hearing was held on June 30, 2009. In  
23 consideration of the record and for good cause shown;

24

**IT IS HEREBY ORDERED** that the Defendant's Motion to Dismiss is DENIED.

DATED this 2<sup>nd</sup> day of July 2009.

Susan P. Watters  
DISTRICT JUDGE

**MEMORANDUM**

## Background

9 On December 11, 2008, a search warrant was granted and executed on  
10 Linda Kapsa's property. The affidavit in support of the search warrant alleged  
11 abuse of 12 separate animals, in addition to the animals' lack of access to  
12 food or water and adequate shelter. *State's Resp. to Def.'s Second Mot. to*  
13 *Dismiss based on Continuous Course of Conduct and Br. in Supp.* 5 (June 19,  
14 2009). The State seized ten dogs, two cats and thirteen animal remains from  
15 Kapsa's ranch. *Id.* at 2.

17 On December 29, 2008, another search warrant was granted in  
18 reference to Kapsa's property. The affidavit in support of the search warrant  
19 alleged abuse of 13 separate animals, in addition to inadequate shelter for the  
20 animals and numerous deceased dogs on the property. *Id.* at 5. On  
21 December 30, 2008, the State seized 189 dogs, 27 chickens, 10 cockatiels,  
22 one cat and eleven animal remains. *Id.* at 2.

24 On January 13, 2009, the State charged Linda Kapsa with one count of  
25 aggravated animal cruelty with regard to the animals seized on December 11,

1 2008, and another count of aggravated animal cruelty with regard to the  
2 animals seized on December 30, 2008. *Id.* at 9.

3 Kapsa filed the instant motion to dismiss on June 4, 2009. The State  
4 filed its response on June 19, 2009. Kapsa filed her reply on June 29, 2009.

5 **Discussion**

6 Kapsa argues that Counts I and II should be dismissed because the  
7 crime of aggravated animal cruelty requires a continuing course of conduct  
8 which can only be charged once the conduct ceases, pursuant to § 45-1-  
9 205(7)(a), MCA. *Def.'s Second Mot. to Dismiss based on Continuous Course of*  
10 *Conduct and Br. in Supp.* 7 (June 4, 2009). Kapsa argues that the same  
11 conduct was used as the basis for the December 11, 2008 search warrant, the  
12 December 30, 2008 search warrant and the State's Motion to Modify Release  
13 Order, thus, the State has conceded that Kapsa's conduct has not ceased and  
14 she cannot be charged pursuant to statute. *Id.* at 9.

15 The State argues § 45-1-205(7)(a) is merely a statute of limitations tool  
16 and has no bearing on the State's ability to charge Kapsa with two counts of  
17 aggravated animal cruelty. *State's Resp. to Def.'s Second Mot. to Dismiss*  
18 *based on Continuous Course of Conduct and Br. in Supp.* at 6. The State also  
19 argues that because Count I and Count II are based on conduct related to  
20 independent groups of animals, each count is properly separate from the  
21 other and is not multiplicitous. *Id.* at 10.

22 This Court finds Kapsa's continuing course of conduct argument is  
23 misplaced. Kapsa fails to provide any legal authority for her proposition that

1 the cruelty to animals statute contemplates a continuing course of conduct  
2 and thus, that § 45-1-205 applies to her situation. Moreover, the plain  
3 language of § 45-1-205 indicates that the purpose of the statute is to provide  
4 the periods of limitation for crimes, and a formula for when those periods  
5 begin to run. § 45-1-205(7)(a) plays the latter role, stating “[a]n offense is  
6 committed either when every element occurs or, when the offense is based  
7 upon a continuing course of conduct, at the time when the course of conduct  
8 is terminated. Time starts to run on the day after the offense is committed.”

9  
10 While § 45-1-205(7)(a) sets out when a crime has been committed, and thus  
11 how long the State has remaining to prosecute the crime, nothing in § 45-1-  
12 205(7)(a) indicates any limitation whatsoever on the State’s ability to *charge* a  
13 crime.

14 Even assuming the cruelty to animals statute contemplates a  
15 continuing course of conduct and assuming § 45-1-205(7)(a) stands for the  
16 proposition that a continuing course of conduct offense cannot be charged  
17 until the conduct ceases, this Court finds Kapsa’s argument still fails. The  
18 plain language of § 45-1-205(7)(a) indicates that an offense is committed when  
19 the course of conduct is *terminated*, not when it “stops” of the accused’s own  
20 volition as Kapsa proposes. Obviously, Kapsa’s continuing course of conduct  
21 that led to the first count of aggravated animal cruelty was terminated when  
22 the 12 animals were seized from Kapsa’s ranch on December 11, 2008 as to  
23 those 12 animals. Likewise, the continuing course of conduct that led to the  
24 second count of aggravated animal cruelty was terminated when over 200

1 animals were seized from her property on December 30, 2008 as to those 200-  
2 plus animals.

3 Accordingly, this Court finds Kapsa's alleged continuing course of  
4 conduct ceased at the time the animals were seized, each offense was  
5 "committed" respectively, and Counts I and II were properly charged.  
6

7 **Conclusion**

8 Based upon the foregoing, Defendant's Second Motion to Dismiss based  
9 on Continuous Course of Conduct is DENIED.  
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21 cc: Yellowstone County Attorney's Office  
State Public Defender's Office  
22

23 **CERTIFICATE OF SERVICE**

24 This is to certify that the foregoing was duly served by mail/hand  
upon the parties<sup>2009</sup> their attorneys of record at their last known  
addresses this 2009 day of July 2009.  
25

BY Rebecca T. Schelline  
Judicial Assistant to Hon. Susan P. Watters