

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 19, 2005 Session

STATE OF TENNESSEE v. WILLIAM T. DAVIS

**Direct Appeal from the Circuit Court for Rutherford County
No. 55666 James K. Clayton, Jr., Judge**

No. M2004-03060-CCA-R3-CD - Filed September 15, 2005

The defendant, William T. Davis, pled guilty to one count of cruelty to animals, a Class A misdemeanor, and was sentenced to eleven months, twenty-nine days, suspended to probation. On appeal, he raises issues concerning the trial court's denial of his motion to suppress evidence that was acquired during a warrantless search of his private residence. As a condition of his guilty plea, the defendant reserved two certified questions of law that are dispositive of the case. We conclude that the certified questions are properly before this court¹ and that the first warrantless entry into the defendant's residence was justified under the exigent circumstances exception and the second entry was a continuation of the first to collect evidence that was in the plain view of the officers. We, therefore, affirm the trial court's denial of the defendant's motion to suppress.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ROBERT W. WEDEMEYER, JJ., joined.

Lance H. Selva, Murfreesboro, Tennessee, for the appellant, William T. Davis.

Paul G. Summers, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Jude P. Santana, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

¹ We note that the judgment does not contain any statement of the certified questions nor does it reference any other document that contains the questions. The technical record does contain a supplemental order issued on the same day as the judgment by the trial court that states the certified questions of law for appeal. The State does not contest that these certified questions of law are properly before this court, and we concur under the holding of State v. Armstrong, 126 S.W.3d 908, 908-09 (Tenn. 2003) (holding that a trial court's supplemental order stating the certified question of law for appeal entered after the filing of the final judgment met the State v. Preston, 759 S.W.2d 647 (Tenn. 1988), requirements for properly certifying a question of law to the appellate court).

FACTS

Procedural History

On June 8, 2004, the Rutherford County Grand Jury indicted the defendant on forty-seven counts of cruelty to animals. Ten counts were the direct result of two warrantless searches of the defendant's condominium located at 331 Calumet Trace in Murfreesboro, Tennessee, on December 28, 2003. On August 6, 2004, the defendant filed a motion to suppress all evidence seized from his residence on the basis that no warrant was issued for the searches and no exigent circumstances existed that justified either warrantless search. On September 30, 2004, the trial court held a hearing on the defendant's motion. On November 12, 2004, the court denied the defendant's motion to suppress, finding exigent circumstances existed that justified the warrantless entries. On December 2, 2004, the defendant pled guilty to one count of cruelty to animals and the remaining forty-six counts were dismissed. Pursuant to Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure, the defendant's guilty plea expressly reserved the right to appeal two certified questions of law:

(1) whether the foul odor emanating from inside the defendant's residence, coupled with the disheveled, cat feces laden appearance constituted an emergency allowing police officers to enter the residence to search for a person they believed may possibly have been in need of immediate aid; and

(2) whether the secondary warrantless entry and search by animal control officers was so detached in time and purpose from that of the initial entry by law enforcement officers that it required an independent legal justification due to the fact that any emergency situation that may have been existing had dissipated.

Suppression Hearing

At the September 30, 2004, motion to suppress hearing, Officer Anthony Whitehead of the Murfreesboro Police Department testified that on December 28, 2003, he responded to a loose animal call at the defendant's Calumet Trace condominium. Upon arriving, he talked with a neighbor who advised him that there was an "aggressive animal running around" and barking at children. Whitehead testified that he saw the animal near the defendant's residence and watched it run inside through the open front door. From the street, the officer could see inside the residence through the open front door and windows and described the condominium as being in "complete disarray" with trash and other items lying around. He saw feces at the front door and, as he got closer to the front steps, encountered a "very strong smell, just lots of feces around, just really, really potent, like it had been enclosed inside for awhile."

After the dog ran inside the defendant's residence, Officer Whitehead shut the front door to secure the animal and then called his supervisor because he feared a dead person might be inside the condominium. After his supervisor arrived, he and Officer Whitehead entered the condominium with a camera "to look and see if someone had passed away, and that's why maybe the animals were tearing the house up, why it was in disarray." The officer said they saw

several cats running around and trash piled up. He said the animals acted scared and two kittens “looked pretty sick.” As they walked around the residence, the officers observed cats, various amounts of trash, and feces throughout. Whitehead described the smell of the house as very strong, potent, and “[a]lmost unbearable.” He said the cats did not appear to be healthy. Asked about food and water, he said that “[t]here was no water at all” and, although there were bags of food in the kitchen, there were no bowls of food set out, just some food scattered around. Officer Whitehead testified that he was not qualified to handle animals and that he and his supervisor waited outside with the door closed for twenty to twenty-five minutes for the Animal Control officers to arrive because they did not want the animals to get out, nor did they wish to stay inside and smell the air.

On cross-examination, Officer Whitehead acknowledged that if the condominium had not been in disarray and there had not been the smell of feces and urine, he would have secured the front door after the dog ran inside and left. He also acknowledged that he did not detect the odor of a decomposing body. Whitehead said that, prior to entering the house, he went to three neighbors to inquire as to the resident of the condominium but received no response. He made a license tag check on the car parked in the driveway, which did not come back as being owned by the defendant. He then “hollered a number of times inside” and walked around to the back of the condominium to see if anyone was inside but never got a response. Officer Whitehead acknowledged that the primary purpose for going inside the defendant’s residence was to make sure no one was dead or hurt, and he and his supervisor left once that purpose was served.

Asked about the condition of the animals, Officer Whitehead said that it was not apparent to him whether they were suffering from any disease and that he was not an animal expert. He did not examine the animals but felt it could not have been healthy for them to be inside breathing the air. Officer Whitehead testified that the Animal Control officers’ purpose for entering the condominium was to gather the animals. Whitehead acknowledged there was no search warrant for either entry into the house.

On redirect, Officer Whitehead testified that his common sense told him that the smell emanating from the condominium indicated to him that something was wrong and that he felt it could not be healthy for the cats to be confined inside smelling the feces.

Loreen Darley, a supervisor at the Rutherford County Animal Control, testified that she was called to the defendant’s residence for possible cat neglect. Describing the condition of the condominium, Darley said, “There was cat feces at the door, the doorjamb. There was trash all through the house, loads of paper, stuff everywhere, cats running through the house, ca[t] urine and feces on chairs and couches. There was dog feces, cat feces, and all kinds of urine all over the carpets.” Describing the animals’ condition, Darley testified, “Most of the animals had runny eyes, green mucus type stuff coming out of the eyes. There was also yellow and green mucus stuff coming out of their nose, which is usually common in feline upper respiratory infection.” She said there was no water in the condominium, and most of the food for the animals was “scattered across the floor, which was of course feces strewn, so the animals wouldn’t eat.” While she was gathering up the cats in the kitchen of the defendant’s condominium, she discovered a dead cat in the refrigerator which appeared to have been dead “at least a few days”; two dead cats and three snakes in the freezer of the refrigerator; over sixty cats, one dog, and two

snakes in a chest freezer in the garage; and thirty-five to forty cats in an upright freezer in the garage.

On cross-examination, Darley acknowledged that her purpose for entering the condominium was to gather evidence of animal abuse or neglect. She said she took photographs of the rooms, walls, and carpets for about forty-five minutes before examining the cats and putting them into carriers. When asked about a search warrant, Darley acknowledged she had the authority to get a search warrant and nothing kept her from getting one before entering and seizing the animals.

On November 12, 2004, the trial court entered a written order denying the defendant's motion, stating:

The Court finds that officers were called and did respond to a loose animal report. Upon arriving, a law enforcement officer located the loose animal, which then ran into the defendant's residence through an opened front door of the home. Upon approaching the front door to the residence, the law enforcement officer was able to visibly view the inside of the premises, which was in disarray and did smell of a strong odor. The Court further finds that the officer perceived that there might be someone about the inside premises unable to answer to the officer's presence. Believing there was an exigent circumstance justifying an entry into the premises to locate and aid any person who was present, but unable to respond, the Court finds that under the circumstances the entry and examination of the residence proper.

ANALYSIS

On appeal, the defendant argues that both the initial entry and search of his condominium by Officer Whitehead and his supervisor and the secondary entry and search by Animal Control officers were invalid because they entered the defendant's residence without a search warrant and no exigent circumstances existed justifying either warrantless entry. The State responds that exigent circumstances existed justifying both warrantless searches.

Standard of Review

We review the trial court's denial of the defendant's motion to suppress by the following well-established standard:

Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld. In other words, a trial court's findings of

fact in a suppression hearing will be upheld unless the evidence preponderates otherwise.

State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); see also State v. Hicks, 55 S.W.3d 515, 521 (Tenn. 2001). The trial court's application of law to the facts, as a matter of law, is reviewed de novo, with no presumption of correctness. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000).

I. Initial Entry

The defendant argues the initial entry into his residence by police officers was not justified under any warrant exceptions. The State counters that, under the totality of the circumstances, the officers were justified in entering the defendant's residence without a warrant under the exigent circumstances exception. We agree with the State.

A. Warrantless Entries and Exigent Circumstances Exception

The Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides the basis for our analysis:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Additionally, Article 1, section 7 of the Tennessee Constitution provides

[t]hat the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

The Tennessee Supreme Court has explained that “[t]he purpose of the prohibition against unreasonable searches and seizures under the Fourth Amendment is to ‘safeguard the privacy and security of individuals against arbitrary invasions of government officials,’” State v. Yeorgan, 958 S.W.2d 626, 629 (Tenn. 1997) (quoting Camara v. Municipal Court, 387 U.S. 523, 528, 87 S. Ct. 1727, 1730 (1967)), and that “[A]rticle I, section 7 is identical in intent and purpose with the Fourth Amendment,” id. (quoting State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997) (quoting Sneed v. State, 221 Tenn. 6, 13, 423 S.W.2d 857, 860 (1968))). Therefore, “under both the federal and state constitutions, a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.” Id. (citing Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032 (1971); State v. Bartram, 925 S.W.2d 227, 229-30 (Tenn.

1996)). Accordingly, a trial court begins with the presumption that a warrantless search or seizure is unreasonable and the burden is on the State to demonstrate that one of the exceptions to the warrant requirement was applicable at the time of the search or seizure.

The United States Supreme Court has recognized “that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant.” Michigan v. Tyler, 436 U.S. 499, 509, 98 S. Ct. 1942, 1949 (1978) (citations omitted). One compelling reason, and an exception to the warrant requirement, can be found under the so-called “exigent circumstances” exception doctrine. As this court stated in State v. Tyler, 598 S.W.2d 798, 801 (Tenn. Crim. App. 1980), “[w]arrantless searches are per se unreasonable under the Fourth Amendment unless the search falls within an exception to this rule, such as searches incident to arrest, consent searches, and searches justified by some exigency or emergency.” The exigent circumstances exception includes the broadly recognized right of law enforcement officers to act in an emergency situation to protect life. Judge Warren E. Burger, later Chief Justice of the United States Supreme Court, explained in Wayne v. United States, 318 F.2d 205 (D.C. Cir. 1963), the need of officers sometimes to enter a premises without a warrant to take immediate life-saving action:

[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. . . . A myriad of circumstances could fall within the terms “exigent circumstances” . . . , e.g., smoke coming out a window or under a door, the sound of gunfire in the house, threats from the inside to shoot through the door at police, *reasonable grounds to believe an injured or seriously ill person is being held within*.

Id. at 212 (emphasis added).

The United States Supreme Court has noted that it “do[es] not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 2413 (1978) (footnotes omitted). This court stated, in State v. Coulter, 67 S.W.3d 3 (Tenn. Crim. App. 2001), that when applying the exigency exception doctrine “the State ‘must establish that the circumstances as they appeared at the moment of entry would lead a reasonable, experienced law enforcement officer to believe that someone inside the house . . . required immediate assistance.’” Id. at 42 (quoting United States v. Arch, 7 F.3d 1300, 1304 (7th Cir. 1993)). An objective standard is applied when determining the reasonableness of the officer’s belief that an emergency situation exists. Root v. Gauper, 438 F.2d 361, 364 (8th Cir. 1971). The Root court explained the objective standard thusly:

“In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. . . . And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?”

Id. at 364-65 (quoting Terry v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)).

In 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 6.6(a) (4th ed. 2004), Professor LaFave noted that “this probable cause requirement, must be applied by reference to the circumstances then confronting the officer, including the need for a prompt assessment of sometimes ambiguous information concerning potentially serious consequences.” Id. As such, LaFave noted that “the question is whether ‘the officers would have been derelict in their duty had they acted otherwise.’” Id. (quoting State v. Hetzko, 283 So. 2d 49, 52 (Fla. Dist. Ct. App. 1973)). LaFave further noted that “[t]his means, of course, that it ‘is of no moment’ that it turns out there was in fact no emergency.” Id. (citing State v. Hedley, 593 A.2d 576, 582 (Del. Super. Ct. 1990)).

In the present appeal, the defendant correctly notes that our focus should center on the reasonableness of the officers’ belief that an emergency situation existed which required their entry into the defendant’s residence without first obtaining a search warrant. The reasonableness of that belief must be judged on the basis of their knowledge at the time they entered the defendant’s residence. See People v. Thompson, 770 P.2d 1282, 1285 (Colo. 1989) (“The circumstances must be evaluated as they would have appeared to a prudent and trained police officer at the time the decision to conduct the warrantless search is made.”) (citing People v. Malczewski, 744 P.2d 62, 66 (Colo. 1987)). Under the facts of the present appeal, the defendant argues the “foul odor” and “disheveled appearance” of his residence did not, by themselves, create a sufficient exigency that justified the officers’ warrantless entry. We disagree. Officer Whitehead, responding to a loose animal call, found the front door of the defendant’s condominium open, even though it was December. After the dog ran inside, Whitehead approached the condominium to secure the dog and encountered a “really, really potent” smell of feces and urine and observed the residence to be in “complete disarray.” After failing to get a response from inside, he notified his supervisor and the two decided to make sure no one inside was in need of assistance. These facts, known to the officers at the time they decided to enter the defendant’s residence without a warrant, justified their belief that someone inside might be in need of assistance and unable to call out. Indeed, we believe this is the type of situation where it would have been a dereliction of the officers’ duties not to have entered and made sure no one inside was in need of assistance. See Hetzko, 283 So. 2d at 52 (holding officers who, responding to a disturbance complaint, found the unresponsive defendant sitting in a chair with his front door wide open “would have been derelict in their duty” had they not made a warrantless entry to check on him).

The defendant relies on the Colorado Supreme Court opinion, Condon v. People, 489 P.2d 1297 (Colo. 1971), to support his contention that the officers were not justified in believing

exigent circumstances existed based on their observations that the defendant's condominium was in disarray and with a foul smell. In Condon, police broke into a house without a warrant after detecting a smell they thought could be a decomposing body. Once inside, the officers did not find a dead body but did encounter marijuana plants and subsequently arrested the defendant residents. The court, suppressing the evidence after determining that the odor of a decomposing body was insufficient to justify a warrantless entry, explained:

We are of the opinion that the odor of a decomposing body, however unpleasant and discomfoting, does not give rise to an emergency *in and of itself* sufficient to allow an invasion of the privacy of the defendant's home without a search warrant. It would have been a small matter indeed, when weighed against the intrusion involved, for one officer to obtain a warrant, for which there was certainly probable cause, while another kept the premises under surveillance if this was deemed necessary. There was no apparent danger to any person or property. To put the matter sharply, if there had been a decomposing body, there would be no hope of revival at any rate. It is also well to note here an incongruity in the police actions during the search. After testifying to their concern with the odor emanating from the two basement windows, the evidence then discloses that the basement was searched only after the upstairs bedrooms, the main floor, and the closets and cupboards on these floors had been searched. These preliminary searches were unwarranted under the circumstances and appear highly inconsistent with the original intent of the entry onto the premises.

Id. at 1300 (emphasis added).

We find the current case clearly distinguishable from Condon, where the officers entered a closed house solely on the basis of encountering a smell they thought was a decomposing body. In this case, Officer Whitehead acknowledged that he did not detect the smell of a decomposing body but instead that of animal feces and urine. Although he testified that the officers entered the house to look for a dead body, he later explained they entered to “see if anyone [was] inside, if they [were] hurt or had passed away.” Further, his opinion was based on more than just an obnoxious smell, for he found the defendant's front door open although it was December, the residence in disarray, and a loose dog running around. We conclude that the officers had reasonable grounds, under the totality of these circumstances, to believe someone inside the defendant's residence may have needed help.

The defendant also takes umbrage with Officer Whitehead's delay in immediately entering the condominium. Specifically, he argues that the officer's taking time to knock on three neighbors' doors, run a license tag check on the car found in the defendant's driveway, yell inside the house, and walk around to the back of the house before waiting on his supervisor to enter the residence belies the officer's reasonable belief that exigent circumstances existed to justify a warrantless entry. We disagree, instead, and find Officer Whitehead's conduct to have been reasonable under the circumstances. It has been said that “[d]elay alone . . . does not bar reliance on the emergency aid exception.” State v. Sharp, 973 P.2d 1171, 1176 (Ariz. 1999) (holding a delay of entry of forty minutes did not bar police officers from making a warrantless entry based on emergency circumstances); see also Foutz v. City of West Valley City, 345 F. Supp. 2d 1272, 1277 (D. Utah 2004) (holding that officers were justified in making a warrantless

entry into an apartment under the exigent circumstances exception despite a thirty-to-thirty-six-minute delay). As stated earlier, the officer's conduct is judged from an objective viewpoint, what a reasonable law enforcement officer would have done under the same or similar circumstances. We conclude that any reasonable police officer who encountered a residence with its front door open in December, a loose dog running around, and that was in "complete disarray" and smelling profusely of animal feces and urine reasonably would have suspected that something may have happened to the occupants and entered the home in an effort to see if anyone inside needed assistance. The fact that Officer Whitehead took the time in an attempt to determine to whom the condominium belonged and if anyone was at home does not in any way diminish his good faith belief that there might have been someone inside in need of immediate assistance. We, therefore, find the initial warrantless entry into the defendant's residence was justified under the exigent circumstances exception to the Fourth Amendment.

II. Second Entry by Animal Control

The defendant argues the second entry into his condominium by Animal Control officers was a completely separate and new entry into his home that required independent legal justification, either a warrant or its own exigent circumstances. Specifically, he asserts that if we "determine that the initial intrusion of the officers into the residence was justified by the necessity of ascertaining whether any person about was in need of possible aid, then once the exigency which justified the warrantless entry had ended, the need to get a warrant began." The State responds that new exigent circumstances existed justifying the secondary warrantless entry and seizure of the animals: the officers' reasonable belief that the animals were in need of assistance. We disagree with both arguments and conclude, as we will explain, that the second entry was an extension of the first and the evidence was legitimately seized under the plain view doctrine.

A. Plain View Doctrine

In Mincey, the United States Supreme Court cautioned that "a warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation.'" 437 U.S. at 393, 98 S. Ct. at 2413 (quoting Terry, 392 U.S. at 25-26, 88 S. Ct. at 1882). This does not mean, however, that evidence seized during a warrantless search justified by exigent circumstances is not admissible when the evidence was in the plain sight of the police officers. In Mincey, the Court held that "the police may seize any evidence that is in plain view during the course of their legitimate emergency activities." 437 U.S. at 392, 98 S. Ct. at 2413 (citing Tyler, 436 U.S. at 509-10, 98 S. Ct. at 1950- 51; Coolidge v. New Hampshire, 403 U.S. 443, 465-66, 91 S. Ct. 2022, 2037-38 (1971)). In a later case, Arizona v. Hicks, 480 U.S. 321, 107 S. Ct. 1149 (1987), the Court further explained that

Mincey v. Arizona, . . . , in saying that a warrantless search must be "strictly circumscribed by the exigencies which justify its initiation," was addressing only the scope of the primary search itself, and was not overruling by implication the many cases acknowledging that the "plain view" doctrine can legitimate action beyond that scope.

Id. at 325-26, 107 S. Ct. at 1153 (citations omitted).

Addressing the plain view doctrine, this court explained the circumstances under which an officer can seize items without a warrant:

The plain view doctrine provides that, under certain circumstances, the police may seize evidence in plain view without a warrant. Coolidge, 403 U.S. at 465, 91 S. Ct. at 2037 (plurality opinion). Under the federal constitution, prerequisites to the application of the plain view doctrine include: (1) the officer did not violate constitutional mandates in arriving at the location from which the evidence could plainly be seen; (2) the officer had a lawful right of access to the evidence; and (3) the incriminating character of the evidence was “immediately apparent,” i.e., the officer possessed probable cause to believe that the item in plain view was evidence of a crime or contraband. Minnesota v. Dickerson, 508 U.S. 366, 375, 113 S. Ct. 2130, 2136-2137, 124 L. Ed. 2d 334 (1993); Soldal v. Cook County, Illinois, 506 U.S. 56, 65-66, 113 S. Ct. 538, 545-546, 121 L. Ed. 2d 450 (1992); Horton v. California, 496 U.S. 128, 136-137, 110 S. Ct. 2301, 2308, 110 L. Ed. 2d 112 (1990); Hicks, 480 U.S. at 326-327, 107 S. Ct. at 1153-1154. Accordingly, when an officer enters private premises pursuant to exigent or emergency circumstances, the officer may generally seize any apparently incriminating items located on the premises in plain view. Furthermore, an officer may “record by photography scenes presented to [his] plain view.” Bills v. Aseltine, 958 F.2d 697, 707 (6th Cir. 1992); see also People v. Reynolds, 672 P.2d 529, 532-533 (Colo. 1983).

Coulter, 67 S.W.3d at 43. ____

Having already found that the officers’ initial warrantless entry into the defendant’s condominium was justified under the exigent circumstances exception, we conclude as well that the officers were free to seize any evidence, that came within their plain view, of a crime. The defendant argues that, because Officer Whitehead acknowledged that it was not apparent to him that the animals were suffering from any disease or were abused, they could not be seized. To justify a seizure under the plain view doctrine, the evidence’s criminal nature must have been “immediately apparent” to Officer Whitehead or, as stated in Coulter, the officer must have “possessed probable cause to believe that the item in plain view was evidence of a crime or contraband.” Id. Officer Whitehead and his supervisor encountered cats that appeared unhealthy and were living in deplorable conditions. The officers did not have to know with certainty that the animals were victims of animal cruelty, for they only needed to have probable cause to believe so in order to seize them. We conclude the physical and living conditions of the animals gave the officers sufficient probable cause to believe there may be evidence of animal abuse or neglect and were justified in having them seized by Animal Control.

The defendant also argues the plain view doctrine should not apply in this case because Officer Whitehead and his supervisor did not personally seize the animals during their initial entry into his residence but instead allowed Animal Control officers, during the second entry into the residence, to make the seizure. Although the defendant agrees that officers who are lawfully present may seize any evidence that is in their plain view, he argues that those from Animal

Control were not “lawfully located” in his residence. Rather, according to his argument, their entry constituted a second unlawful warrantless entry because once Officer Whitehead and his supervisor found no one in need of assistance inside the condominium, any possible exigent circumstances that may have justified the initial warrantless entry had ended. However, we conclude the entry by the Animal Control officers was not a secondary entry but simply was a continuation of the initial entry. This court previously has acknowledged the doctrine of warrantless subsequent entries:

In upholding "warrantless 'second entries' made by the police following the termination of the emergency that justified an initial entry," Wofford v. State, 952 S.W.2d 646, 653 (1997), courts in several of our sister states have held that,

when a law enforcement officer enters private premises in response to a call for help, and during the course of responding to the emergency observes but does not take into custody evidence in plain view, a subsequent entry shortly thereafter, by detectives whose duty it is to process evidence, constitutes a mere continuation of the original entry. Under such circumstances, it is permissible for the detectives to [seize,] photograph and take measurements [of], without a search warrant, . . . evidence which was in the plain view of the initial responding officers.

State v. Magnano, 204 Conn. 259, 528 A.2d 760, 764 (1987); see also State v. Spears, 560 So. 2d 1145, 1150-1151 (Ala. Crim. App. 1989); Wofford, 952 S.W.2d at 653-654; State v. Johnson, 413 A.2d 931, 933-934 (Maine 1980); Hunter v. Commonwealth, 378 S.E.2d 634, 635-636 (1989); La Fournier v. State, 280 N.W.2d 746, 750-751 (1979). “Whether a subsequent entry is detached from an initial exigency and warrantless entry or is a continuation of the lawful initial entry can be determined only in light of the facts and circumstances of each case,” including the time interval between the two entries and the extent to which the later officers do no more than the initial responding officer or officers would have been justified in doing. La Fournier, 280 N.W.2d at 750; cf. Tyler, 598 S.W.2d at 801-802.

Coulter, 67 S.W.3d at 44.

Applying the “continuing entry” rationale to the present appeal, we find that the animals Officer Whitehead and his supervisor observed in plain view, during their initial entry into the defendant’s residence, were seizable because the officers had probable cause to believe they were evidence of animal abuse or neglect. The facts clearly show that the officers were not equipped to seize animals, for they had neither gloves to handle nor cages to carry the animals in. Thus, we believe the officers were justified in calling Animal Control to the defendant’s residence to seize the animals rather than attempt to do so themselves. They stepped outside and closed the door to the defendant’s condominium to make sure the animals did not escape and to avoid having to breathe the air inside for longer than necessary. Animal Control officers arrived within twenty to twenty-five minutes after the police officers finished their initial search. We do not find this small amount of time that lapsed between the searches created two distinct entries

but conclude the second by Animal Control simply was a continuation of the officers' justified initial entry.

CONCLUSION

Based on our analysis of the record, we find the initial warrantless entry into the defendant's condominium to be justified under the exigent circumstances exception to the Fourth Amendment and further find the second entry by Animal Control was simply a continuation of the initial entry and seizure of the animals was justified under the plain view doctrine. Accordingly, we affirm the judgment of the trial court.

ALAN E. GLENN, JUDGE