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Hennepin County, M

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

State of Minnesota

Plaintiff,

vs.

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Court File No. 27-CR-17-12396

Kathleen Evelyn Rouna,

Defendant.

On August 31 2017, the parties appeared before this Court for an Evidentiary Hearing on Defendant's motion to suppress. Defendant filed a letter brief in support of her motion on September 12, 2017. The State filed its response on September 13, 2017.

Dawn M. O'Rourke, Assistant Hennepin County Attorney, appeared and submitted argument on behalf of the State of Minnesota.

Kindahl R. Larson, Assistant Hennepin County Public Defender, appeared and submitted argument on behalf of Defendant.

Based upon all the files, records, and submissions, herein,

IT IS HEREBY ORDERED that:

1. Defendant's Motion to Suppress is **DENIED**.
2. The attached Memorandum is incorporated into this order.

BY THE COURT:

Dated: 10/13/17

Kathryn L. Quaintance
Judge of District Court

MEMORANDUM

NOW THEREFORE, based upon the evidence adduced, the argument of counsel, and all the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

The State has charged Defendant with one count of Overworking or Mistreating Animals-Cruelty under Minnesota Statute §343.21(7), for events alleged to have occurred on or about March 2, 2017. On August 31, 2017, the parties appeared before this Court for an Evidentiary Hearing. Defendant challenged law enforcement's justification for the search of her home in order to remove her cat. The Court heard several hours of testimony from two Minneapolis Animal Care and Control Officers, Vocke and Schendel. Defendant testified on her own behalf.

On March 2, 2017, Officer Vocke was dispatched to conduct a welfare check on Defendant's cat after a veterinary clinic reported that Defendant inquired how long it would take her cat to die if it was denied food and water. Officer Vocke was familiar with Defendant's address from previous dispatches on unrelated animal concerns. Defendant resides at a duplex with multiple occupants and entrances. None of the doorbells are marked with a corresponding resident. Due to the difficulty in identifying Defendant's unit, Officer Vocke chose to make contact by phone. Defendant answered and Officer Vocke explained she was there to check on the welfare of Defendant's cat. Defendant became upset with Officer Vocke and the veterinary clinic. Defendant reported that her cat was old and in declining health. Officer Vocke testified that Defendant said she was prompted to withhold food and water from her cat because it started to urinate outside the litter box. Officer Vocke told Defendant that to starve the cat was a crime because Defendant was required to provide adequate care for her animal.

Officer Vocke provided Defendant with two options. First, Defendant could release her cat to Animal Control for euthanasia at no cost to her. Second, Animal Control could transport the animal to a veterinary clinic of Defendant's choosing. Defendant denied both offers. Officer Vocke again asked to see the cat, but Defendant said she would not let anyone into her apartment and ended the call. Officer Vocke called animal crimes Investigator Michael Frye, who directed her to stay in the area while he tried to contact the Defendant by phone. Officer Schendel, a lead officer with Minneapolis Animal Care and Control, arrived ten to twenty minutes later to assist. The two decided to approach Defendant's home.

Officer Schendel knocked on the front door of the left side of the duplex. Defendant was collecting mail from her mailbox and answered the door. She remained initially denied the officers access to her cat. After more discussion Defendant reluctantly brought her cat to the front door. Both Officer Vocke and Office Schendel testified that the animal was in very poor condition and needed immediate care. The cat tried to stand and immediately fell over. Officer Vocke testified that the cat was emaciated and its eyes were crusted over by discharge. Officer Schendel told Defendant that he needed to take her cat based on its poor condition, which constituted exigent circumstances. Defendant reiterated that she would not allow anyone to remove the animal. Animal Control called the Minneapolis Police Department for assistance.

Defendant reentered her apartment with the cat and Officer Schendel placed his foot in the door to prevent the door from closing. Defendant began to scream that she would not allow the cat to be taken. Defendant retreated inside her residence with the animal. Officer Schendel kept the door open until the arrival of Minneapolis Police. Minneapolis Police accompanied Officer Schendel into Defendant's apartment to retrieve the cat located under a table near the front door of Defendant's unit. Defendant testified that the Officers entered her home without

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consent. Defendant also claimed that her cat seventeen year old cat was dying of cancer and had refused food.

CONCLUSIONS OF LAW

Defendant argues that officers lacked justification to search her property in order to seize her cat. Defendant also claims that the emergency aid exception does not apply to animals because they are property. The State argues the emergency aid exception does apply under evolving case law and public policy favoring protection of animal life.

I. THE EMERGENCY AID EXCEPTION APPLIES TO NONHUMAN LIFE

Including nonhuman life in the emergency aid exception is an emerging topic in constitutional law. Minnesota case law has yet to fully address this issue. However, other jurisdictions have applied the exception to animals. In *Commonwealth v. Duncan*, the Massachusetts Supreme Judicial Court applied the emergency aid exception to the seizure of emaciated dogs by way of a public policy argument. 467 Mass. 746, 747 (2014). In *Duncan*, concerned citizens called police after observing the poor condition of three dogs on their neighbor's property. *Id* at 748. When officers arrived they heard whimpering and weak barking. *Id.* They peered over a fence and saw two deceased dogs and one that was alive, but emaciated. *Id.* Officers were unable to contact the property owners and animal control was called to take possession of all three animals. *Id.*

Other States have also sought to increase protections to animals under the emergency aid exception. The Court of Appeals of Wisconsin has held that it is reasonable to provide "aid to relatively vulnerable and helpless animals when faced with people willing or even anxious to mistreat them." *State v. Bauer*, 127 Wis.2d 401, 409 (1985). Similarly, "the highest courts of District of Columbia and Montana... have held that "needless suffering and death" of animals is

an "exigent circumstance [ ] justifying the warrantless search for and rescue of the animals." *Duncan* at 753 (citing *State v. Stone*, 321 Mont. 489, 498, 92 P.3d 1178 (2004) and *Tuck v. United States*, 477 A.2d 1115, 1120 (D.C. 1984)).

Additionally, Minnesota has an established public interest in preventing cruelty to animals. Minnesota Statutes Chapter 343 sets out numerous protections for animals and criminal penalties for those who mistreat them. Authorities are allowed to remove animals under Minnesota Statute §343.29, subd. 1., which states "[a]ny peace officer, animal control officer, or agent of the federation or county or district societies for the prevention of cruelty, may remove, shelter, and care for any animal which is not properly sheltered from cold, hot, or inclement weather or any animal not properly fed and watered, or provided with suitable food and drink in circumstances that threaten the life of the animal." Under Minnesota Statute §343.22, subd. 3, animals may also be disposed of, "[u]pon a proper determination by a licenses doctor of veterinary medicine, any animal taken into custody pursuant to this section may be immediately disposed of when the animal is suffering and is beyond cure through reasonable car and treatment."

Defendant is charged with violating Minnesota Statute §343.21, subd. 7, which specifically states, "[n]o person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals." Cruelty in this context means "every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death." Minn. Stat. §343.20, subd. 3. Animal cruelty cases are deemed serious felonies in Hennepin County and are assigned to judges blocked to person offenses.

Other states have uniformly applied the emergency aid exception to nonhuman life when faced with similar facts as those present before this Court. Applying the emergency aid exception to cases in Minnesota is supported by the strong policy interest in protecting animal life. Specifically, Minnesota statutes protect animal life from cruelty and mistreatment. It is therefore reasonable to give law enforcement entities the ability to intervene when they observe animals in need of aid. The emergency aid exception to the warrant requirement is applicable to nonhuman life provided there is justification for a warrantless search or seizure.

II. OFFICERS WERE JUSTFIED IN ENTERING DEFENDANT'S HOME IN RESPONSE TO AN EMERGENCY

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. Amend. IV; Minn. Const. Art. I, §10. Warrantless searches and seizures are "per se unreasonable unless they fall under an established exception" to the warrant requirement. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). One such exception is the emergency aid exception where law enforcement "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *State v. Lemieux*, 726 N.W.2d 783, 787-88 (Minn. 2007) (citation omitted). Officers must have a reasonable belief that the occupant is in need of emergency aid. *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992) (citing, *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978)). The State bears the burden of proving that the emergency aid exception was justified. *State v. Lemieux*, 726 N.W.2d 783, 788 (Minn. 2007).

A search under the emergency aid exception to the warrant requirement is valid if officers had reasonable grounds to enter and their investigation is limited to the scope of the emergency. *Id* at 790. "To determine whether the officer's actions meet an objective standard of

reasonableness the court should ask whether with the facts available to the officer at the moment of the seizure or search, would a person of reasonable caution believe that the action taken was appropriate." *Othoudt* at 223 (citation omitted). An officer's use of the emergency aid exception is also evaluated by the following test: (1) was the officer motivated by a need to render aid or assistance; and (2) would a reasonable person have believed that an emergency exists under the same circumstances. *State v. Auman*, 386 N.W.2d 818, 821 (Minn. Ct. App. 1986).

Minneapolis Animal Control officers were dispatched to Defendant's residence after receiving a call from a concerned veterinary clinic that Defendant was withholding food and water from her cat. Their initial intent was to conduct a welfare check. After their arrival it became clear that the cat was starving and suffering. Defendant admitted withholding food and water in order to hasten the animal's death. She refused to release her cat to Animal Control. Defendant refused free treatment for the animal. In the face of the animal's suffering and the owner's refusal to alleviate it, the actions of Officers Vocke and Schendel were reasonable.

CONCLUSION

Animal life is protected under Minnesota statutes and the policy interests they represent support the application the emergency aid exception to animal life. In this case officers acted reasonably in removing Defendant's cat from her home based on their observations of its condition.

This Court notes that most of its assigned cases involve homicide, gun possession, shootings and sex crimes all involving the citizens of Hennepin County. Having taken an oath to uphold the law, this Court has ruled on the issues before it. Substantial resources have been expended in this litigation involving a seventeen year old cat plagued by cancer. The cat is now

dead. The owner is indigent, elderly and legally blind. This Court questions the benefit to the taxpayers of Hennepin County in further litigation of this matter.