

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

State of Delaware, : Cr.A. No. 08-09-0135 and 0136
 : Case No. 0808027888
 vs. :
 :
 :
 Terah K. Smith (Moore), :
 :
 :
 Defendant. :
 :

AND

State of Delaware, : Cr.A. No. 08-08-2658 and 2659
 : Case No. 0808028029
 :
 :
 Vs. :
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 :
 Carla M. Ridgway, :
 :
 :
 Defendant. :
 :

Decision upon Defendants' Motion to Suppress

Date of Hearing: December 22, 2008

Date of Decision: December 30, 2008

Defendants' Motion to Suppress is denied.

Kenneth Haltom, Esquire, Department of Justice, 102 West Water Street, Dover, Delaware 19901, attorney for the State.

James M. Stiller, Jr., Esquire, Schwartz & Schwartz, 1140 South State Street, Dover, Delaware 19901, attorney for Defendant, Terah K. Smith (Moore).

Adam M. Perza, Esquire, Hudson, Jones, Jayword & Fisher, LLC, 225 South State Street, Dover, Delaware, attorney for Defendant, Carla M. Ridgway.

Trader, J.

After a hearing on Defendants' Motion to Suppress, I hold that a tip from a concerned citizen provided probable cause for the animal control officer to enter the defendants' leased property under 7 *Del. C.* § 1703(b). Once the animal control officer was on the defendants' property, there was probable cause to seize the defendants' pit bull because the animal was in distress and had no food or water. Accordingly, the Defendants' Motion to Suppress is denied.

The relevant facts are as follows: On August 26, 2008, a citizen jogging on a path at Delaware Technical College ("Del. Tech.") observed a pit bull chained in the Defendants' backyard that was apparently in distress as it appeared malnourished, shaking, and without food or water. The citizen reported this to the Dover Police Department who notified the animal control officer, Mark Moore. Officer Moore went to the Defendants' house to investigate the complaint.

The Officer testified at the suppression hearing that he knocked on the Defendants' door but no one answered. He then proceeded around the house to the backyard where he observed a young male pit bull chained in the yard. When Officer Moore approached the dog he saw that the dog was extremely thin with its ribs showing, and its ear had punctures from fly strikes. The water bowl for the dog was flipped over and too far away for the dog to be able to reach it. After observing the dog, the Officer again tried to knock on the Defendants' doors but no one answered. The Officer determined that the dog was in distress and seized the dog, leaving a citation at the house for the owners.

The defendants contend that they did not give Officer Moore permission to enter the leased premises. The State, on the other hand, contends that the animal control

officer had a written letter from the landlord giving Officer Moore permission to enter the defendants' property at any time. On this issue, the defendants' contention is correct.

The defendants did not give Officer Moore permission to enter their property and the fact that Officer Moore had consent from the landlord to enter the property, does not give the officer consent to enter the leased premises.

The defendants, Terah Smith (Moore) and Carla M. Ridgway, lease the property where the animal was seized from the landlord. The United State Supreme Court in *Chapman v. United States*, 365 U.S. 610, 617 (1961) held that a landlord does not have the authority to allow a warrantless search of the tenants' premises. In *United States v. Matlock*, 415 U.S. 164, 171 (1974) the Supreme Court expanded this holding stating that only if the consenting third party has joint and equal possession or control of the property can the non-consenting party be bound by the third party's consent. In the case before me, the landlord does not live on the property and the tenants were in exclusive possession of the property. Therefore, the consent of the landlord does not bind the tenants.

The Defendants also contend that the animal control officer had no probable cause to enter their property and the seizure of the dog was a violation of their Fourth Amendment protection from an illegal search and seizure. I disagree. The animal control officer had probable cause to enter the defendants' property pursuant to 7 *Del. C.* §1703(b) and based on the tip of the concerned citizen.

7 *Del. C.* § 1703(b) states:

Any dog warden having probable cause to believe a violation of §1704 of this title has or is taking place may enter upon the premises of the owner or custodian of any dog subject to such violation for purposes of investigating the violation, provided the investigation can be conducted without having to enter a dwelling

house or other structure in connection therewith. A dog warden may enter into a dwelling house or other structure only with the permission of the owner, occupant thereof or with a duly issued search warrant.

In this case, no structure was entered and the yard was not fenced, nor was the dog housed in any type of enclosure. The tip received by the Dover Police Department was from a citizen jogging on a path approximately 20 feet from the Defendants' backyard. Tips from citizens are presumed to be reliable because citizens have no reason to fabricate criminal activity, and are presumed to have no interest in the matter. *State of Delaware v. Sisson*, 883 A.2d 868, 880 (Del. Super. Ct. 2005). Therefore, the animal control officer had probable cause to enter the property to investigate the alleged animal in distress. The officer did not enter any dwelling or structure and therefore acted within the authority granted by 7 *Del. C.* § 1703(b). Furthermore, the failure to have water available to the dog was a violation of 7 *Del. C.* § 1704(e)(4).

Once on the property of the defendants, the animal control officer had probable cause to believe that the defendants committed the offense of animal cruelty because the dog was thin, the water bowl was empty and could not be reached by the dog. Therefore, the seizure of the animal by the animal control officer was valid.

On the basis of these findings of facts and conclusions of law, the Defendants' Motion to Suppress is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge