



## Search Warrants In Animal Protection Cases

The California Court of Appeal, in a recent important decision (*People v. Keith Chung*), has joined a few other jurisdictions in applying to the protection of animals an important exception to the requirement of a search warrant.

In general, both the federal Bill of Rights and comparable constitutional provisions in the states require that before a search (or seizure) can be made by government officials, a search warrant must be obtained from a judicial officer. It takes "probable cause" that a crime has been, or is being, committed to support the issuance of a warrant.

As with most legal doctrines, there are exceptions. For example, if a weapon reasonably believed to have been used in a bank robbery is seen lying on the sidewalk--that is, "in plain view"--the police don't need a warrant to seize it.

Another exception, relevant to the *Chung* case, is the "exigency" exception, which the court explained this way:

The exigent circumstances exception to the Fourth Amendment has been defined to include an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. . . . The action must be prompted by the motive of preserving life or property and [must] reasonably appear to the actor to be necessary for that purpose. \* \* \* There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers. An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify [the] action. The officer's subjective motivation is irrelevant. \* \* \* The touchstone of all Fourth Amendment determinations is reasonableness. (Citations and inner quotation marks deleted.)

Thus, the question for the California Court of Appeal in the *Chung* case was whether there were "exigent circumstances" presented to the responding police officers.

What were those circumstances? According to the court's summary,

Chung's neighbor, Jennifer Lee, testified she called the police in the

early morning hours of July 13, 2007, and reported hearing the high pitched crying of a dog in pain in the unit above hers. Lee told the officers who responded to her call that she had heard similar sounds in the past, but this time it sounded more serious. The officers went to Chung's door but he said he did not own any dogs. While the officers spoke to Chung, one of them heard the faint sound of a dog whimpering inside Chung's condominium. Believing there was an animal in distress, the officers entered without a warrant after Chung refused the officers permission to enter.

The officers found an injured dog on the patio and a dead dog in the freezer section of the refrigerator. Both dogs had suffered head trauma. The live dog on the patio was euthanized by a veterinarian later that morning.

Given these facts, the Court of Appeal ruled that the requisite exigent circumstances were present, that the officers had a right to enter without first securing a warrant, and that Chung's conviction for cruelty to animals was valid.

According to the court, criminalizing the abuse of animals had deep historical roots (as the Supreme Court of the United States recently recognized in [\*United States v. Stevens\*](#)), and California has the constitutional power to punish conduct such as Chung's.

As to the exigent circumstances, the Court of Appeal invoked the 1999 California precedent of *Broden v. Marin Humane Society*. In that case,

[O]fficers conducted a warrantless entry into business premises, a pet shop, based on exigent circumstances. The officers entered the premises following reports of stench and flies at the store and found animals in distress.

*Broden* concluded [that] the exigent circumstances exception permits officers to make a warrantless entry when there are reasonable grounds to believe there are animals in need of immediate aid.

*Broden* recognized: "There is no question that law enforcement officers may make a warrantless entry of a building when there are reasonable grounds for believing that persons inside are in need of immediate aid. . . . Section 597.1 [of the California statutes] clearly contemplates that animals shall receive a similar solicitude."

In addition, the Court of Appeal's conclusion was supported by four cases from other jurisdictions. According to the court,

*People v. Thornton* an Illinois case, is directly on point. There, a police officer responded to a report of a dog barking for several days inside an apartment. The apartment manager informed the officer she previously had entered the apartment using a key after being unable to contact the resident and found a thin dog shaking and continuously whimpering and yelping in a small cage. The tenant who lived above the apartment told the officer the dog had been yelping continuously for two or three days. The officer entered the apartment to check on the well-being of the dog and found it in conditions matching those described by the manager.

*Thornton* found the totality of the circumstances known to the officers at the time of the entry into the apartment was sufficient to permit the officers reasonably to believe that an emergency requiring their immediate assistance was at hand. *Thornton* concluded the officers reasonably could have believed the dog was not merely "uncomfortable," but was in need of immediate assistance to avoid serious injury or, possibly, death.

*Thornton* noted other jurisdictions also had applied the exigency exception to prevent harm to animals, citing *Suss v. American Society for Prevention of Cruelty to Animals* . . . [cat trapped between walls of two buildings]; *Tuck v. United States* . . . [rabbits in unventilated display window of a pet store suffering from extreme heat], and *State v. Bauer*, [distressed horses in barn].

Thus, the net result of the *Chung* decision is a strong plus for animal protection.

As the court said in its conclusion, "[e]xigent circumstances properly may be found when an officer reasonably believes immediate warrantless entry into a residence is required to aid a live animal in distress. Where an officer reasonably believes an animal on the property is in immediate need of aid due to injury or mistreatment, the exigent circumstances exception to the warrant requirement of the Fourth Amendment may be invoked to permit warrantless entry to aid the animal."

ISAR anticipates that this issue will arise in other states, which will reach the same conclusion. Serious apparent danger to animals will suffice for a warrantless entry.

Keith Chung has the right to seek review in the Supreme Court of California. If he does, ISAR will be there to oppose him.