STATE OF CONNECTICUT *v.* MICHAEL ANGELO DEMARCO
(AC 30152)

Bishop, DiPentima and Beach, Js.*

Argued February 8—officially released October 12, 2010

(Appeal from Superior Court, judicial district of Stamford-Norwalk, Comerford, J.)

Lindy R. Urso, for the appellant (defendant).

Ronald G. Weller, senior assistant state's attorney, with whom, on the brief, were *David I. Cohen*, state's attorney, and *Michele Bredefeld*, deputy assistant state's attorney, for the appellee (state).

Opinion

BISHOP, J. The defendant, Michael Angelo DeMarco, appeals from the judgment of conviction, following his conditional plea of nolo contendere, of two counts of cruelty to animals in violation of General Statutes § 53-247 (a).[1] On appeal, the defendant claims that the trial court improperly denied his motion to suppress evidence obtained by the police pursuant to a warrantless entry into his residence. Specifically, he claims that the court improperly found that the warrantless entry was justified under the emergency doctrine exception to the warrant requirement and that the court based its finding, in part, on erroneous factual findings. We agree and, accordingly, reverse the judgment of the trial court.

The following procedural history is relevant to our review. On January 11, 2008, the defendant filed a motion to suppress all evidence seized from his premises as a result of the warrantless entry by the police on October 21, 2007. In response, the state claimed that the warrantless entry was done pursuant to an emergency and, accordingly, no warrant was required. Following a hearing, the court denied the defendant's motion to suppress on the ground that the warrantless entry by the police was permissible under the emergency doctrine exception to the warrant requirement.

In its memorandum of decision, the court, *Comerford, J.*, set forth the following facts: "Officer Tilford Cobb has been an animal control officer with the Stamford police department for the past ten years. In said capacity, he has had many contacts with the defendant as a result of neighbor complaints relating to the defendant's keeping of animals in his Wendell Place residence.

"On October 11, 2007, Officer Cobb, as a follow-up to prior complaints, left a notice on the defendant's front door and on the windshield of an automobile parked on the premises, directing the defendant to contact the animal shelter. At the time, a neighbor indicated [that] he had not seen the defendant in several days. Further, the defendant did not respond to his cell phone. Prior history indicated that he had generally responded to such notices.

"On Sunday, October 21, 2007, [Cobb], as further follow-up, paid a home visit to the defendant's residence. When approaching the house, he saw the October 11 notice on the floor of the front porch and the second notice left on the car still in place. [Cobb] observed that mail, current and dated, had piled up in an overflowing mailbox, and the same neighbor he had spoken to before once again said that he had not seen the defendant in several days. Dogs were heard barking inside the house. As he approached the front door, a strong, 'horrible odor,' which he described as a 'feces smell,' emanated from the premises. He knocked on

the door, which became ajar, with no response. At the time, he did not have the defendant's cell phone number with him.

"Feeling something was wrong in the house and out of concern for the defendant's welfare and any animals in the house, [Cobb] called headquarters, resulting in a response by Sergeant Thomas Barcello, who, shortly thereafter, arrived with backup officers. Barcello, after initial discussion with [Cobb] confirmed his observations by finding the house to be in disarray, two or three vehicles on the property and overflowing and dated mail together with the previously left notices by animal control. He and his men did a perimeter check of the house and attempted to look through the windows, which were so filthy that visual observation of the interior was not possible. Patrol Officer [Will] Mercado confirmed the observations made by [Cobb] and Barcello. Out of [Cobb's] express concerns and his own findings and after consultation with [Cobb] and his officers, he, too, concluded that the defendant and possibly others, together with the animals in the house, might be in danger and need of assistance. The aforesaid observations, check of the premises and consultations all took place within a very brief period of time. Barcello concluded that a 'welfare check' was necessary. As a result of the putrid smell emanating from the house and fear for the safety of his men, Barcello enlisted the aid of the Stamford fire department, [which] he felt had the proper breathing equipment to enter. Inspection by fire personnel disclosed no humans present but that the dogs in the house were in bad shape. It is uncontroverted that the house was in such deplorable condition at the time of the incident that shortly thereafter it was condemned by the city of Stamford.[2]

"While the defendant argues that telephone contact could have been made prior to entry, the evidence indicated otherwise, given the immediacy of the situation. [Cobb] had specifically indicated that he did not have the defendant's cell phone number with him when he made the check. Although telephone contact was made with the defendant later in the day, the evidence and the reasonable inferences therefrom indicate that this information was not available to Barcello at the time of the perceived emergency. The court specifically credits Barcello's testimony in this regard."

On July 10, 2008, following the denial of his motion to suppress, the defendant entered a plea of nolo contendere to two counts of cruelty to animals in violation of § 53-247 (a), conditioned on his right to appeal from the court's denial of his motion to suppress pursuant to General Statutes § 54-94a.[3] The court accepted the defendant's plea and determined that its denial of the motion to suppress was dispositive of the case.[4] Also on that date, the court, *Comerford*, *J.*, sentenced the defendant to nine months incarceration, execution sus-

pended, and three years probation on each of the two counts, the sentences to run consecutively. This appeal followed.

We begin by setting forth the well established principles that govern the suppression of evidence derived from a warrantless entry into a home. "The fourth amendment to the United States constitution provides: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." (Internal quotation marks omitted.) *State* v. *Geisler*, 222 Conn. 672, 681, 610 A.2d 1225 (1992). The United States Supreme Court has stated that "physical entry of the home is the chief evil against which the wording of the [f]ourth [a]mendment is directed." (Internal quotation marks omitted.) *Payton* v. *New York*, 445 U.S. 573, 585, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). Thus, "[i]t is a basic principle of [f]ourth [a]mendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." (Internal quotation marks omitted.) Id., 586. There are, however, certain recognized exceptions to the federal constitutional requirement that searches and seizures be conducted pursuant to a warrant, one exception being in cases of emergency. See *Mincey* v. *Arizona*, 437 U.S. 385, 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978); *State* v. *Magnano*, 204 Conn. 259, 265, 528 A.2d 760 (1987). When a warrantless search has been conducted inside a home, the state bears the burden of showing that an exception to the warrant requirement exists to justify that entry. *State* v. *Geisler*, supra, 682. If none of the exceptions apply to a warrantless search, "[u]nder the exclusionary rule, [the] evidence must be suppressed [as] it is . . . the fruit of prior police illegality." (Internal quotation marks omitted.) *State* v. *Wilson*, 111 Conn. App. 614, 623, 960 A.2d 1056 (2008), cert. denied, 290 Conn. 917, 966 A.2d 234 (2009). "The requirement that a warrant be obtained before conducting a search reflects the sound policy judgment that, absent exceptional circumstances, the decision to invade the privacy of an individual's personal effects should be made by a neutral magistrate . . . . The point of the [f]ourth [a]mendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." (Internal quotation marks omitted.) *State* v. *Trine*, 37 Conn. App. 561, 567, 657 A.2d 675 (1995), rev'd on other grounds, 236 Conn. 216, 673 A.2d 1098 (1996).

The defendant claims that in denying his motion to suppress the evidence obtained by the police pursuant to their warrantless entry into his home, the court improperly concluded that the emergency doctrine

applied to the circumstances of this case. Specifically, the defendant argues that the court made erroneous factual findings and that the evidence presented did not permit a finding that the police reasonably believed that a warrantless entry was necessary to help someone in immediate need of assistance. We agree with both assertions.

"The emergency exception refers to . . . warrantless entry that evolves outside the context of a criminal investigation and does not involve probable cause as a prerequisite for the making of an arrest or the search for and seizure of evidence." (Internal quotation marks omitted.) *State* v. *Klauss*, 19 Conn. App. 296, 300, 562 A.2d 558 (1989). "[T]he fourth amendment does not bar police officers, when responding to emergencies, from making warrantless entries into premises and warrantless searches when they reasonably believe that a person within is in need of immediate aid. . . . [However], [t]he extent of the search is limited, involving 'a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.' . . . The police may seize any evidence that is in plain view during the course of the search pursuant to the legitimate emergency activities. . . . Such a search is strictly circumscribed by the emergency which serves to justify it . . . and cannot be used to support a general exploratory search." (Citations omitted.) *State* v. *Magnano*, supra, 204 Conn. 266.

"[T]he emergency doctrine does not give the state an unrestricted invitation to enter the home. [G]iven the rationale for this very limited exception, the state actors making the search must have reason to believe that life or limb is in *immediate jeopardy* and that the intrusion is reasonably necessary to alleviate the threat." (Emphasis added; internal quotation marks omitted.) *State* v. *Geisler*, supra, 222 Conn. 691. "The state bears the burden of demonstrating that a warrantless entry falls within the emergency exception. . . . An objective test is employed to determine the reasonableness of a police officer's belief that an emergency situation necessitates a warrantless intrusion into the home. . . . [The police] must have valid reasons for the belief that an emergency exception exists, a belief that must be grounded in empirical facts rather than subjective feelings . . . . The test is not whether the officers actually believed that an emergency existed, but whether a reasonable officer would have believed that such an emergency existed. . . . The reasonableness of a police officer's determination that an emergency exists is evaluated on the basis of facts known at the time of entry." (Citations omitted; internal quotation marks omitted.) *State* v. *Colon*, 272 Conn. 106, 142–43, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005).

"[T]he emergency doctrine is rooted in the commu-

nity caretaking function of the police rather than its criminal investigatory function. We acknowledge that the community caretaking function of the police is a necessary one in our society. [I]t must be recognized that the emergency doctrine serves an exceedingly useful purpose. Without it, the police would be helpless to save life and property, and could lose valuable time especially during the initial phase of a criminal investigation. . . . Constitutional guarantees of privacy and sanctions against their transgression do not exist in a vacuum but must yield to paramount concerns for human life and the legitimate need of society to protect and preserve life . . . .'' (Internal quotation marks omitted.) Id., 143.

''[I]n reviewing a trial court's ruling on the emergency doctrine, subordinate factual findings will not be disturbed unless clearly erroneous and the trial court's legal conclusion regarding the applicability of the emergency doctrine in light of these facts will be reviewed de novo. . . . Conclusions drawn from [the] underlying facts must be legal and logical. . . . We must determine, therefore, whether, on the basis of the facts found by the trial court, the court properly concluded that it was objectively reasonable for the police to believe that an emergency situation existed when they entered the [dwelling] . . . .'' (Internal quotation marks omitted.) *State* v. *Fausel*, 295 Conn. 785, 793, 993 A.2d 455 (2010). Additionally, ''[b]ecause the issue of the warrantless entry into a person's home involves his or her constitutional rights, a reviewing court must examine the record thoroughly to determine whether the subordinate facts justify the trial court's conclusion that the officers' belief that an emergency existed was reasonable.'' *State* v. *Geisler*, supra, 222 Conn. 693, citing *State* v. *Howard*, 221 Conn. 447, 454, 604 A.2d 1294 (1992) (''[b]ecause the issue . . . involves the constitutional rights of an accused, we are obliged to examine the record scrupulously to determine whether the facts found are adequately supported by the evidence and whether the court's ultimate inference . . . was reasonable'').

We first review the defendant's claim that the court's factual finding, that Barcello did not have the defendant's cell phone number available to him at the time he made the decision to enter the defendant's residence, was clearly erroneous. Following a thorough review of the record, we conclude that the court's factual finding, to the extent that it implies that the defendant's cell phone number was not available to Barcello, was clearly erroneous. We recognize that the court was correct in finding that Barcello did not physically possess the defendant's cell phone number prior to entering the defendant's home. We do not, however, find support for a conclusion, implicit in this finding, that he did not have the number available to him. Cobb testified that animal control possessed the defendant's cell phone number and that they attempted to contact him at that

number "in the next couple days" after leaving the notices but did not receive a return call.[5] He also testified that he did not bring the number with him on the day of the warrantless entry but that the number was at the animal control office and that there were other animal control employees in the office on the date in question. The only reasonable inference from this testimony is that Cobb could have readily obtained the defendant's cell phone number by calling the animal control office. Our Supreme Court has said, albeit in a different context, that when "testing the amount of evidence that supports probable cause, it is not the personal knowledge of the arresting officer, but the collective knowledge of the law enforcement organization at the time of the arrest that must be considered." *State* v. *Batts*, 281 Conn. 682, 698, 916 A.2d 788, cert. denied, 552 U.S. 1047, 128 S. Ct. 667, 169 L. Ed. 2d 524 (2007). We find this principle to be applicable equally to the circumstances presented in this case. Cobb knew about the number, the animal control department was in possession of the number and, accordingly, we conclude that the finding by the court that Barcello did not have the defendant's cell phone number available to him while he was at the defendant's residence and before he decided to order the warrantless entry was clearly erroneous.

The court based its finding that Barcello did not have the defendant's cell phone number available to him, in part, on the belief that Barcello did not have time to get the cell phone number due to "the immediacy of the situation." This finding was also clearly erroneous and is contradicted by the uncontested police testimony relating to the length of time that was spent at the residence before any authorities entered the dwelling. In short, the evidence presented to the court at the suppression hearing does not support the court's conclusion that the immediacy of the situation prevented the police from making any attempt to contact the defendant. In short, the evidence belies the suggestion that the police were confronted with a situation in which they perceived a need to rush into a home in order to respond to a real or perceived emergency. To the contrary, the record reveals that considerable time passed between Cobb's initial arrival at the scene and the warrantless entry by the fire department. Cobb testified that he had been at the defendant's home for several minutes when he decided that something might be wrong inside the defendant's home and called the police dispatch number. Notably, Cobb did not call the emergency number. The dispatcher told Cobb that he would contact the sergeant who was on duty and, within one-half hour, Barcello arrived at the defendant's residence. After Barcello spoke with Cobb, he went to the front door, walked around the exterior of the premises and attempted to look in the windows.

At some point during Barcello's initial examination

of the premises, Officer Mercado arrived, after being dispatched to assist Barcello. Mercado testified that he checked the front and back of the house and attempted to look in the windows. Mercado also testified that he spoke with Barcello and that they decided to call the fire department. Barcello, whose testimony the court specifically credited, testified that between fifteen and twenty minutes elapsed before the fire department arrived. When they did arrive, firefighters put on their breathing apparatus and entered the dwelling. Given this timeline, it is plain from the record and requires no independent fact-finding from this court that from the initial arrival on the scene until firefighters entered the house, nearly one hour elapsed before the police ultimately conducted a warrantless entry into the defendant's home. Contrary to the court's conclusion, our scrupulous review of the record reveals that the police had ample time for Barcello to have obtained the defendant's cell phone number and to have attempted to contact him before entering his home. Accordingly, we conclude that the court's finding that the immediacy of the situation prevented Barcello from attempting to contact the defendant prior to entering the home without a warrant, was clearly erroneous.

The defendant next claims that the evidence presented at the suppression hearing did not support the court's conclusion that the warrantless entry was justified under the emergency doctrine. Specifically, he claims that the evidence did not permit the court's finding that an objectively reasonable police officer would have believed that an emergency existed, such that a warrantless entry was necessary to help someone in immediate jeopardy of losing life or limb.[6] We agree.

Based solely on the facts found by the court, as corrected, we conclude that the court improperly determined that the warrantless entry by the police was permissible under the emergency exception to the warrant requirement. Although the court's memorandum of decision sets forth facts that might very well have established probable cause for a search warrant, the circumstances properly found by the court, as supported by the evidence, do not justify the warrantless entry by the police into the defendant's residence. The court found that Cobb had previously had contacts with the defendant as a result of numerous complaints from his neighbors relating to his keeping of dogs, a notice from animal control that was left by Cobb was on the floor on the front porch when Cobb returned ten days later, there was mail overflowing from the mailbox, the defendant's neighbor had not seen him in a few days, the house smelled terribly, there were dogs barking and there were multiple vehicles parked on the premises.[7] None of these facts, either individually or cumulatively, suggests that the defendant or the dogs were in *immediate* danger or that an objectively reasonable police officer would believe that a dangerous situation existed,

such that it necessitated an emergency entry.

The facts found by the court in this case are significantly dissimiliar from those present in any of the recent cases in which our Supreme Court has found warrantless searches to be justified under the emergency doctrine. In *State* v. *Colon*, supra, 272 Conn. 141–42, a warrantless search was found to be justified where the police entry stemmed from an investigation into a suspicious death of a young child. In *Colon*, the mother of the deceased child implicated the child's father in her death and the police subsequently learned that the defendant had taken the deceased's three year old sister away from her home and to her mother's apartment. Upon arriving at the apartment, the police heard someone running through the apartment and heard a child crying, and after they did not receive an answer when they knocked on the door, they entered the apartment. Our Supreme Court found that it was reasonable for the police to believe that the child may have been in physical danger.

In *State* v. *Ortiz*, 95 Conn. App. 69, 72, 895 A.2d 834, cert. denied, 280 Conn. 903, 907 A.2d 94 (2006), the police responded to a breaking and entering alarm that originated from inside an apartment in a multiple dwelling apartment building. The police knocked on the door, but got no response. Id., 73. They then used a key provided by the alarm monitoring company to enter the apartment. Id., 72. Upon entering, they noticed that the bathroom door was locked from the inside. Id. Due to their concern that somebody who had broken in was hiding in the bathroom, or that the resident of the apartment was injured, they used a screwdriver to enter the bathroom, where they found drug paraphernalia. Id., 72–73. Most recently, in *State* v. *Fausel*, supra, 295 Conn. 785, an emergency situation was found to have existed where a criminal suspect with "a history of drug and weapons offenses, engaged in dangerous, reckless and evasive driving on a major interstate highway to avoid arrest," and then "chose to hide in a house that the police officers quickly deduced was not his own, but rather the residence of three other individuals, none of whom had any apparent connection to [the suspect]." Id., 797. "None of these residents answered the police officers' shouts into the house," and, after the suspect exited the home, he failed to provide any information about the residents. Id. The court found that it was reasonable for the police to conclude that the suspect had "selected a house at random to break into and hide, thereby committing a burglary and possibly endangering the residents in the process." Id., 798.

Conversely, this case does not present any of the likely indicia of an emergency situation.[8] The police did not respond to the defendant's home as a result of an alarm, there was no evidence that a violent criminal offender might be hiding in the house, no evidence of

a break-in and no signs of a struggle or blood or any other indication of a potentially dangerous situation. The justification supporting the emergency exception to the warrant requirement is that there are situations in which the police have to react to save a life, and they simply do not have the time to get a warrant before acting. See *State* v. *Krause*, 163 Conn. 76, 81, 301 A.2d 234 (1972) ("[s]ome element of emergency must exist which would render a search ineffective if delayed by the time necessary to get a warrant"). Based on the facts found by the court, we find no support for the court's conclusion that the police were faced with an immediate need to respond, such that they did not have the time to get a warrant.

Indeed, the measured behavior of the police while at the defendant's residence is stark evidence of their awareness that they were not in the midst of an emergency situation. As discussed previously, in reference to the court's erroneous factual finding that the immediacy of the situation prevented the police from obtaining the defendant's cell phone number, the record clearly demonstrates that the authorities were at the defendant's home for nearly one hour prior to entering the dwelling. To reiterate, Cobb arrived and examined the scene for several minutes before calling the nonemergency dispatch number to have someone sent to the location. Within one-half hour, Barcello arrived. He was briefed by Cobb and examined the premises. Backup police officers also arrived and examined the premises, attempting to see into the windows. Barcello next decided to call the fire department, whose members did not arrive for another fifteen or twenty minutes. This series of steps belies any claim of emergency or imminent danger and the attendant implication that the police did not have adequate time to attempt to contact the defendant or seek a warrant before their warrantless entry of his home. Plainly, it does not evince a situation in which the police acted in a "haste to render whatever assistance was necessary . . . ."[9] (Citation omitted; internal quotation marks omitted.) *State* v. *Fausel*, supra, 295 Conn. 800, citing *State* v. *Ortiz*, supra, 95 Conn. App. 83.[10]

While we conclude that the subordinate facts found by the court do not support its finding that an objectively reasonable police officer would have believed that an emergency existed in this case, our own scrupulous review of the record provides additional support for our determination. We are cognizant that upon review, the court's factual findings "will not be disturbed unless [they are] clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings

is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence . . . ." (Internal quotation marks omitted.) *State* v. *Boyd*, 295 Conn. 707, 717, 992 A.2d 1071 (2010).

The court's memorandum of decision properly sets forth many of the facts that were available to the police at the time that they were deciding to make a warrantless entry into the defendant's home. We need not repeat those facts in detail, but they include the terrible odor, the overflowing mailbox and so forth. The court, however, only sets forth the facts that tend to support the conclusion that an emergency situation existed. There was, however, additional uncontroverted and unchallenged evidence presented at the suppression hearing that the court wholly disregarded in its findings. The court noted that Cobb was familiar with the defendant due to prior complaints from the defendant's neighbors regarding "his keeping of animals . . . ." The court did not acknowledge that the animal control officers, Cobb and his supervisor, Lori Hollywood, both testified without challenge that over a period of years, the defendant's neighbors had often complained of the "horrible smell coming from the house," as well as dogs barking and roaming. They also testified that they were well aware of the defendant's failure to take proper care of his many dogs. The court noted that when Cobb arrived at the residence, he knocked on the door, causing it to become ajar. The court made no mention, however, of Cobb's testimony that when the door became ajar, it enabled him to see inside the residence and to see that there were feces on the floor inside. He also testified that he saw a dog come running toward the door, so he quickly shut the door in order to keep the dog from getting outside. On the basis of this additional, uncontroverted evidence, there was not a reasonable basis for the court to have determined that the situation the police confronted was unusual for this residence and cause for an immediate emergency entry.

Further, as to the court's finding that there were two or three vehicles on the property, the court failed to note that Hollywood testified, without challenge, that she had been to the defendant's home three or four times, that she knew that he lived alone, that he owned three motor vehicles and a boat and that the property was generally in a state of disrepair. Because the record reveals uncontroverted evidence that there were always multiple cars on the premises, there was no evidentiary basis for the court's determination that the presence of the defendant's vehicle on the premises was, in any way, unusual or significant to its emergency determination.[11]

In reaching its decision, the court also noted in its finding that animal control had not heard from the defendant since Cobb left the notices ten days prior to

the warrantless search. The court did not, however, note the uncontested evidence that the defendant presented telephone records showing that he had been in contact with someone from animal control on October 12, 2007, one day after the notice had been left.[12] In regard to the court's findings that the defendant's neighbor had not seen him in several days and that the defendant had not retrieved his mail for several days, there was no evidence presented to suggest that the defendant typically saw his neighbors or that he tended to his mail. In short, given the clear evidence of the defendant's past dealings with the animal control officers, the record does not support the court's conclusion that the circumstances they observed gave them a reasonable basis to believe that an individual was in the home in need of emergency assistance at the time of their warrantless entry.

Taking all of the circumstances into account, unencumbered by the court's erroneous findings, we conclude that the court's ultimate conclusion that it was objectively reasonable for the police to believe that an emergency existed, thus, justifying a warrantless entry into the defendant's home, was not supported by substantial evidence. We do not believe that a well-trained police officer reasonably would have believed that a warrantless entry was necessary to assist a person inside the dwelling who was in need of immediate aid. Rather, the circumstances presented to the police would have given them time to apply for a warrant should they have reasonably believed that probable cause existed to search the premises for evidence of the crime of cruelty to animals, given the condition of the home, as seen from the outside, coupled with the fact that dogs were at large within the residence. Entering a person's home under the guise of an emergency when none exists, and there is no objectively reasonable basis for believing that an emergency exists, is not permitted under the fourth amendment to the United States constitution.

The judgment is reversed and the case is remanded with direction to grant the defendant's motion to suppress and for further proceedings according to law.

In this opinion DiPENTIMA, J., concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

[1] The defendant was originally charged with twenty-one counts of animal cruelty, which correlated to the twenty-one beagles that were found living inside the defendant's residence.

[2] We note that while it may be factually interesting that the defendant's residence was later condemned by the city, this finding is not pertinent to whether the warrantless search of the defendant's house was justified under the emergency doctrine. Our Supreme Court has previously noted in citing a quotation attributed to William Pitt, Earl of Chatham, "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!" (Internal quotation marks omitted.) *State* v. *Geisler*, 222 Conn. 672, 687, 610 A.2d 1225 (1992).

[3] General Statutes § 54-94a provides in relevant part: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress or motion to dismiss, the defendant after the imposition of sentence may file an appeal . . . provided a trial court has determined that a ruling on such motion to suppress or motion to dismiss would be dispositive of the case. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. . . ."

[4] Although the defendant's nolo contendere plea form does not indicate as such, the transcript of the sentencing hearing makes clear that the court did determine that the ruling on the defendant's motion to suppress was dispositive of the case, as required by § 54-94a.

[5] It is important to note that the Stamford animal control officers, including Cobb, were considered police officers within the Stamford police department and had the power to make arrests.

[6] Neither this court nor the Supreme Court has directly addressed a claim that the emergency doctrine extends to situations in which animals are perceived by the police to be in immediate danger. The state takes the position that the doctrine does apply in regard to animals and offers support from numerous other jurisdictions that have found that the doctrine applies to animals in immediate danger. We need not answer the question in this case, however, because the court did not find that the police acted on the belief that the dogs were in peril; nor did the court base its decision on any threat to the well-being of the dogs. The police did not testify to having a belief that the animals were in immediate peril. There was, of course, testimony that the dogs were barking, that Cobb saw feces on the floor inside and that there was a terrible odor; however, and contrary to the dissent's recitation, there was no evidence that the barking was distressed or otherwise out of the ordinary.

[7] The court also found that Cobb believed that "something was wrong in the house and out of concern for the defendant's welfare and any animals in the house, [Cobb] called headquarters," and that based on the circumstances, Barcello determined that a welfare check was necessary. These factual findings do not contribute to our analysis because the subjective belief of the police is entirely irrelevant. See *Brigham City* v. *Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006) ("subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the [f]ourth [a]mendment" [internal quotation marks omitted]).

[8] "It is well established that there are an infinite variety of situations in which entry for the purpose of rendering aid is reasonable. Included are those in which entry is made . . . to seek possible victims of violence in premises apparently burglarized recently . . . ." (Internal quotation marks omitted.) *State* v. *Fausel*, supra, 295 Conn. 798.

[9] The dissent disputes the majority's contention that the behavior of the police, and the long period of time that passed between the arrival of the police at the defendant's residence and their entry into the dwelling, did not evince any sense of immediacy. The dissent attempts to compare the facts of this case to those in *Fausel*, in which, the dissent explains, the police did not immediately enter the residence to apprehend the suspect but only did so after taking certain investigative steps, such as looking at the names on the mailbox and calling in through the front door. Thus, the dissent claims that "some" time must have passed before the police entered the dwelling.

We believe that this analysis misses the mark. In *Fausel*, the objectively reasonable belief by the police that someone inside the residence may have been in immediate need of assistance only arose *after* the suspect had voluntarily exited the building. The record reveals that after the suspect came outside, he failed to provide any information about the individuals who lived in the building, thus causing the police, at that juncture, to become concerned that the defendant may not have been hiding out with a friend, but, rather, that he may have chosen the house at random and that the occupants could have been harmed. *State* v. *Fausel*, supra, 295 Conn. 797–98. Immediately thereafter, the police entered the dwelling to conduct a search. Id., 799. Thus, we conclude that the time factor in *Fausel* provides no support for the dissent's contention that a wait of nearly one hour between arriving at the defendant's home and the warrantless entry into the home is consistent with the requirement of immediacy that is at the core of the emergency entry doctrine.

[10] In discussing the type of situations in which the police are justified in conducting a warrantless search, our Supreme Court has noted that "the question is whether the officers would have been derelict in their duty had they acted otherwise. This means, of course, that it is of no moment that it turns out there was in fact no emergency." (Internal quotation marks omitted.) *State* v. *Fausel*, supra, 295 Conn. 800. We can perceive that waiting nearly one hour to assist a person in immediate jeopardy of losing life or limb could be viewed as derelict. Indeed, the measured response of the police in this instance belies the notion of emergency.

[11] The state relies on *State* v. *Ryder*, 114 Conn. App. 528, 539, 969 A.2d 818, cert. granted, 292 Conn. 919, 974 A.2d 723 (2009), for the proposition that the presence of a car in the driveway reasonably suggests to police that someone is home. The facts of that case, however, are distinguishable from those in this case. In *Ryder*, the police, responding to a report of a missing teenager, noted that there was a BMW convertible with its top down parked in the driveway of an upscale home that had its gated entrance closed, the garage door open, a couch sticking out of the garage onto the driveway and clothing "suitable for a teenager" visible inside a set of doors to the home. Id., 531. Those facts stand in marked contrast from those present in the case at hand, in which the uncontroverted evidence established that the police were aware on the day of their warrantless entry that the defendant's home was consistently in a state of disrepair and always had multiple cars parked on the premises, both in the driveway and on the front lawn.

[12] The call to the defendant was made by Katrina Wargo, the kennel maintenance person employed by animal control, for the purpose of setting up a time to meet in regard to her desire to adopt one of the defendant's puppies.