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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

STATE OF FLORIDA,

Appellant/Cross-Appellee,

v. CASE NO. 5D17-2423

TRAVIS A. ARCHER,

Appellee/Cross-Appellant.

_____________________________________/

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

The Defendant was charged by information with felony cruelty to animals. (R. 151). He filed a motion to suppress all evidence obtained from his home, claiming that the officers had no right to enter. (R. 157-82).

An evidentiary hearing was held on this motion. (R. 7-121). The trial court entered a written order granting the motion in part. (R. 897-904). The State timely appealed, and the Defendant cross-appealed. (R. 906, 912).

This Court has jurisdiction pursuant to Rule 9.140(c)((1)(B) of the Florida Rules of Appellate Procedure.

STATEMENT OF FACTS

Officer Brandon Bines of the Ponce Inlet Police Department testified that he had been a police officer for approximately 10 years. (R. 14-15). He was on duty, in uniform, on the evening of the crime, working with Corporal Rodriguez. (R. 17). He was wearing a body camera that night, and the video from that camera was placed into evidence. (R. 17-19).

At approximately 12:18 in the morning, a call came in to the Police Department regarding an animal complaint. Someone had called 911 to report that he had heard the sounds of a dog being beaten, including yelping noises, and he had a confrontation with the person that was possibly beating the dog. (R. 20-22). In light of the confrontation, Officer Bines decided to accompany Corporal Rodriguez on the call. (R. 22).

When they arrived at the address they had been given, it turned out to be a wooded area with no house on the property. (R. 23). The officers got out of their cars and canvassed the area. (R. 23). Within a couple minutes they found the house that the 911 caller had described, and they saw a man in the back of the house pacing behind the fence. (R. 23-26). Bines could hear the person cussing, and he heard the sound of flesh being hit. (R. 27-28). This sound was consistent with what they had been told over dispatch. (R. 70). The person appeared to be mad, and Bines could not determine what was being hit – whether it was an animal or a person. (R. 28-29, 54).

Bines determined that it would not be safe to go over the fence to see what was happening, as the suspect could have had weapons. Bines instead proceeded to the front door of the house, after seeing the suspect move from the fenced area to the back of the house. (R. 29-30). The front door had oval shaped glass, so Bines was able to see inside the house, where there was a pile of damaged property or something on the ground. (R. 30). Bines saw the suspect walk into the residence, so he knocked on the door. (R. 31).

Bines identified the Defendant as the person who came to the door. (R. 31). Bines could smell an odor of alcohol coming from the Defendant. (R. 32). Bines had not encountered the Defendant before that night, and he did not know if anyone else was in the house. (R. 31-32).

Bines told the Defendant that they were there to check on the well-being of a dog. (R. 33). The Defendant confirmed that there was an altercation between himself and the dog and pointed out injuries to his hands. (R. 33). Bines asked if he needed medical attention. (R. 33).

Bines was concerned that the Defendant had injuries and had confirmed the altercation, but Bines did not see a dog anywhere in the vicinity and he did not hear any yelping or barking. (R. 33). Having dogs himself, including K-9 police dogs, he knew that a dog is going to bark or come to the door if someone knocks. (R. 34).

Once the Defendant confirmed that he had hit the dog, Bines made the decision that he needed to go in the house to check on its well-being, as it could have been severely injured. (R. 34-35). At the very least, the Defendant had committed a misdemeanor, based on the sounds Bines heard coming from the rear of the residence. (R. 35). Bines did not intend to search the house when he went in, nor did he intend to arrest the Defendant. (R. 38-39).

Bines did not seek a warrant before entering the house because it was not feasible. (R. 35-36). To get a search warrant in Ponce Inlet, an officer needs to write up the warrant, then present it to the supervising lieutenant, who contacts the on-call assistant state attorney for review. (R. 17). The warrant is then presented to a judge to sign before it can be executed. (R. 17). At that time of night, it would have taken several hours to get a warrant to enter the house, and this was not a reasonable option. (R. 36).

Bines entered the house and followed the Defendant to the back of the residence; he did not search the house or enter any other rooms. (R. 36). He eventually located the dog pinned up in the corner of the fence in the backyard. (R. 37). This was consistent with where he had heard the noises when he had been outside. (R. 37).

At first it looked to Bines like the dog was bound and gagged. (R. 37). When he got closer, he realized that the dog's tongue was hanging out of his mouth, bloodied. (R. 37). Bines saw the dog take a deep breath; he did not take another. (R. 37-38).

The dog was clearly dead, leading Bines to conclude that a crime had been committed. (R. 61, 63). Bines arrested the Defendant for aggravated animal cruelty. (R. 39). He read the Defendant his Miranda rights and then asked him questions. (R. 61).

Based on this testimony at the hearing, as well as the video from Bines' body camera, the trial court made the following findings of fact:

> 1. The Court heard only the testimony of Ponce Inlet Police Department ("PIPD") Officer Brandon Bines at the hearing. The Court accepted the majority of the testimony of Officer Bines as credible and consistent with the weight of the evidence except for his testimony regarding hearing the Defendant say "sit" or "get down" after he arrived at 76 Aurora Avenue and prior to making contact with the Defendant. This testimony was inconsistent with Officer Bines' testimony at his deposition on May 25, 2017, which the Court finds to be a more accurate statement of Officer Bines' observations at the scene.
>
> 2. On April 8, 2017, at 12:18 a.m., PIPD received a 911 call regarding possible animal abuse. Corporal Rodriguez was dispatched to the scene at 12:23 a.m. The dispatcher advised that a neighbor called 911 to report hearing what sounded like an individual beating a dog and the dog yelping. In addition, the dispatcher advised the officers that the reporting neighbor had been involved in a dispute with the alleged suspect. Officer Bines heard the call go out over the radio and also responded to the scene with Corporal Rodriguez due to the report of a dispute between the neighbors.
>
> 3. The officers were dispatched to 72 Aurora Avenue and arrived there a few minutes later. 72 Aurora Avenue was a vacant wooded lot. After exiting his vehicle, Officer Bines determined that the correct address of the incident was 76 Aurora Avenue. After arriving at 76 Aurora Avenue, Officer Bines stood outside the residence to listen and observe prior to attempting to make contact with the resident.

4. While outside, Officer Bines observed a man "pacing" in the backyard behind a tall, wooden privacy fence. He heard what he described as the sound of "flesh being struck" and heard a man angrily state "fuck." Both the striking sound and the cursing are audible on the bodycam footage, although it's not clear if they would have been audible to the viewer if the volume had not been enhanced. Officer Bines had no idea what was actually being struck. Officer Bines did not hear any noises made by a dog. Officer Bines saw the individual enter the rear of the house, so he and Corporal Rodriguez approached the front door to make contact.

5. A screened vestibule surrounds the front door of 76 Aurora Avenue. Officer Bines knocked loudly on the screen door. Defendant, who was barefoot and shirtless, opened the front door and met the officers at the screen door. Officer Bines testified that Archer smelled of alcohol.

6. Officer Bines asked the Defendant what was going on and explained that PIPD had received a complaint "out here in reference to a dog." The Defendant responded, "Yeah, my dog bit me, and I hit him a couple times. And, I got [sic] him out back right now. And my neighbor was yelling. And that's it."

7. Officer Bines asked the Defendant where the dog bit him, and the Defendant responded "on my hands right here" while showing his hands to Officer Bines through the screen door. The Defendant then offered, "I can show you the mess he made in the house. I tried to discipline him, and he bit me. So I hit him."

8. Officer Bines asked the Defendant if he required medical attention for his hands, and the Defendant declined. Officer Bines then asked the Defendant, "Do you mind if we just come in and take a look around real quick?" The Defendant responded, "No." It became apparent, however, when Officer Bines reached for the door handle that the Defendant had intended to refuse the request to search his home. The Defendant waved his hands at the officers and told them "No, no, you guys don't need to be in the house." The Defendant made reference to a search warrant and invited the officers to observe the mess in the home that the dog had created by looking through the glass in the center of the door from their current location outside the screen door.

9. Officer Bines then stated:

> We need to come in and make sure that, first of all, the dog's not dead in there. Okay. So we do have probable cause to come in. So we can either go two routes. Okay. One, you can let us in voluntarily. Okay. Or Two, we can go another route, which would not probably end up being good for you. We're here for a call for service. Okay. Somebody was obviously concerned about the dog's well-being, okay, and that's what we're here to investigate.

10. The Court finds that, at this time and prior to entering the residence, the officers had reasonable grounds to believe that the Defendant's dog may have been in immediate need of medical care. The officers had no time to obtain a search warrant.

11. In addition, the Court finds that, at this time and prior to entering the residence, the officers had no intent to arrest the Defendant or to search the Defendant's home or yard. There was nothing but good intentions on the part of the PIPD officers to ensure that the Defendant's dog was safe.

12. Further, the Court finds that, at this time and prior to entering the residence, the officers had reasonable grounds to connect the dog's feared medical emergency with the Defendant's home.

13. At that point, the Defendant waved the officers in and opened the screen door for the officers. The officers entered and followed the Defendant through the front door into the home, through the back screen enclosure, and into the back yard. While walking the Defendant assured the officers that the dog was "in the corner" and fine and healthy and pointed out the mess the dog made in the home.

14. The Defendant pointed out the dog in the corner of the backyard to the officers. Officer Bines testified that he observed the dog taking its final breath, but it is not clear at what point in the video this occurred. Officer Bines saw the dog's body and asked the Defendant, "seriously?" The Defendant stated, "He bit me." Officer Bines told the Defendant that the dog looks like he was on his deathbed, which the Defendant denied. Officer

> Bines then instructed the Defendant to turn around, handcuffed the Defendant, and read the Defendant his Miranda rights.
>
> 15. In response to questioning, the Defendant made a number of incriminating statements after being read his rights.
>
> 16. After removing the Defendant from the home and securing him in the police car, the officers reentered the Defendant's home and yard and took pictures of the crime scene. Officer Bines' bodycam continued to record all of this activity. At some later point, police secured the dog's body.

(R. 897-99).

The trial court noted that its findings in paragraphs 3-9, above, were corroborated by Officer Bines' bodycam footage. (R. 897 n.1). The findings in paragraphs 13-16, above, were also deemed "corroborated by the bodycam," (R. 897 n.1), but in fact are based largely on that footage, as the actual testimony at the evidentiary hearing did not discuss what took place after the dog's body was discovered and the Defendant arrested.

After finding that the officers legally entered the house based on exigent circumstances, the court went on to conclude that the officers could not continue their search once the exigency was over. (R. 900-03). Accordingly, the court denied the Defendant's motion and found that the officers acted appropriately in entering the residence and investigating the emergency, but suppressed the canine remains and the bodycam footage and photographs taken when the police reentered the home after arresting the Defendant and moving him to the patrol car. (R. 904).

SUMMARY OF ARGUMENT

The trial court erred in suppressing the evidence found in plain view after the officers entered the Defendant’s house and backyard due to the exigent circumstances. Items in plain view are properly seized where, as here, the seizing officer was in a position where he had a legitimate right to be, the incriminating character of the evidence was immediately apparent, and the seizing officer had a lawful right of access to the object. That the exigency was over at the time of the actual seizure of the evidence does not justify suppression. The plain view doctrine applies to evidence discovered during the exigency even where the exigency is over when the evidence is gathered. The plain view doctrine clearly applied to the evidence suppressed in this case, including the dog’s body and the photographs and video memorializing the officers’ plain view observations.

ARGUMENT

THE TRIAL COURT ERRED IN PARTIALLY GRANTING THE DEFENDANT'S MOTION TO SUPPRESS.

A motion to suppress involves mixed questions of law and fact. See, e.g., Seibert v. State, 923 So. 2d 460, 468 (Fla.), cert. denied, 549 U.S. 893 (2006); Dewberry v. State, 905 So. 2d 963, 965 (Fla. 5th DCA 2005). In reviewing the trial court's ruling on such a motion, an appellate court must determine whether competent, substantial evidence supports the lower court's factual findings, but the trial court's application of the law to the facts is reviewed de novo. As the Florida Supreme Court has explained:

> The deference that appellate courts afford findings of fact based on competent, substantial evidence is an important principle of appellate review. In many instances, the trial court is in a superior position "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor, and credibility of the witnesses." When sitting as the trier of fact, the trial judge has the "superior vantage point to see and hear the witnesses and judge their credibility." Appellate courts do not have this same opportunity.
>
> *Despite this deference to a trial court's findings of fact, the appellate court's obligation to independently review mixed questions of fact and law of constitutional magnitude is also an extremely important appellate principle.* This obligation stems from the appellate court's responsibilities to ensure that the law is applied uniformly in decisions based on similar facts.

Connor v. State, 803 So. 2d 598, 607-608 (Fla. 2001) (emphasis added) (quotations and citations omitted), cert. denied, 535 U.S. 1103 (2002). Applying that standard here, that portion of the

order granting the Defendant's motion to suppress should be reversed.

The State does not dispute the trial court's factual findings, which are supported by the testimony at the hearing as well as the footage from Officer Bines' bodycam. However, the lower court's conclusions regarding the recovery of evidence after the Defendant's arrest are legally erroneous and should be reversed. Specifically, the court erred in suppressing the photographs taken at the scene after the officers re-entered the home, as well as the related bodycam footage and the canine remains. (R. 904).

As the trial court explained in detail, the officers entered the Defendant's residence and followed him into the backyard based on the exigent circumstances they discovered at the scene. (R. 900-03). Accordingly, all evidence in plain view of the officers during this time was properly seized and should be admissible at trial.

The Florida Supreme Court has explained that pursuant to the plain view doctrine, "items in plain view may be seized when (1) the seizing officer is in a position where he has a legitimate right to be, (2) the incriminating character of the evidence is immediately apparent, and (3) the seizing officer has a lawful right of access to the object." Pagan v. State, 830 So. 2d 792, 808 (Fla. 2002), cert. denied, 539 U.S. 919 (2003). See also Illinois v. Andreas, 463 U.S. 765, 771 (1983) (plain view exception "authorizes seizure of illegal or evidentiary items visible to a

police officer whose access to the object has some prior Fourth Amendment justification and who has probable cause to suspect that the item is connected with criminal activity.”)

Here, the trial court expressly and properly concluded that the officers had a legitimate right to be in the Defendant’s house and backyard as a result of the exigent circumstances, satisfying the first requirement. (R. 900-03).

To satisfy the second requirement, the police must have probable cause to associate the item with criminal activity. See Jones v. State, 648 So. 2d 669, 678 (Fla. 1994) (“This ‘immediately apparent’ requirement is another way of saying that at the time police view the object to be seized, they must have probable cause to believe that the object is contraband or evidence of a crime.”), cert. denied, 515 U.S. 1147 (1995).

Here, when the officers found the dog and witnessed its death, they had a lawful right to seize the body. The incriminating character of the body was clearly and immediately apparent, as it evidenced the Defendant’s cruelty to this animal in beating it to death. See § 828.12(2), Fla. Stat. The officers further had a lawful right of access to the beaten body at their feet in the backyard, where the Defendant had led them to investigate the emergency.

In support of its finding to the contrary, the trial court relied on this Court’s opinion in Davis v. State, 834 So. 2d 322 (Fla. 5th DCA 2003) and the Florida Supreme Court’s decision in

Rolling v. State, 695 So. 2d 278 (Fla.), cert. denied, 522 U.S. 984 (1997). (R. 904). Both of those cases actually support the validity of the search and seizure in the case at bar.

In Rolling, police searched the defendant's tent and a tote bag in plain sight in that tent as a result of exigent circumstances – their fear that an armed criminal was roaming the woods in that area. 695 So. 2d at 292-94. Noting that a search based on an exigency must be limited in scope to its purpose and that an officer may not continue to search once the exigency no longer exists, the Court nonetheless affirmed the validity of the search in that case, as the officer looked in the tent to search for a person and looked in the tote bag to see if there was a gun inside. Id. Like the search in the instant case, the search in Rolling was related to the exigency and the items found while the exigency was ongoing.

Similarly, in Davis, police entered the defendant's home as a result of exigent circumstances – a neighbor reported a possible burglary and the police arrived to find the front door forced open and no response to their announced presence. 834 So. 2d at 325. This Court reiterated Rolling's requirement that a search based on exigency must be limited in scope to its purpose and may not continue once it is determined that no exigency exists. Id. at 327. Again, however, this Court affirmed the validity of the search where contraband was found in plain view before the exigency was resolved – in that case, where the officers observed white

powder in plain view as they sought to secure the house, and the incriminating nature of that powder was immediately apparent. Id. at 328.

In short, then, the decisions cited by the trial court do not support its decision but instead require reversal here. In all of these cases, including this one, the plain view doctrine clearly applied.

From the reasoning in the trial court's order, it appears that the court focused too stringently on language in the above decisions emphasizing that the key to a search based on exigent circumstances is the fact that there is no time to secure a warrant. This language applies to the **initial entry** into the constitutionally protected area (a home, a tent, etc.). That is, such entry is justified based on exigent circumstances because those circumstances themselves are time sensitive enough to make securing a warrant impractical. Here, the court properly concluded that the circumstances themselves required the officers to enter the Defendant's home immediately, rather than taking the time to secure a warrant. (R. 900-03).

Once inside, however, the officers had the right to seize any criminal evidence under the plain view doctrine discussed above. Of course the officers could have secured the house and obtained a warrant for such items – just as the officers could have done in Rolling and Davis or any other plain view case. However, such a

warrant was not constitutionally required, as the plain view doctrine allowed the seizure without a warrant.

When determining the validity of a warrantless seizure, the question is not whether the police could have possibly done something differently. Instead, the question is whether their actions were objectively reasonable and justified by an exception to the warrant requirement.

In this case, if the officers had decided to search the rest of the house, not just those areas in plain view during the course of resolving the exigency, or if they had decided to seize items whose criminality was not immediately apparent, a warrant would have been required. See, e.g., Jones, 648 So. 2d at 677-78 (officers could not seize defendant's clothing where contents of bag were not apparent until officer began searching it and where incriminating nature of clothing was not detected until clothes were later analyzed by a soil specialist). That, however, was not the case here.

The trial court erred in failing to properly apply the plain view doctrine, and its order suppressing the canine remains should be reversed. See, e.g., Turner v. State, 645 So. 2d 444, 447 (Fla. 1994) (once officers were legally inside motel room based on exigent circumstances, they could lawfully seize evidence in plain view); Johnson v. State, 386 So. 2d 302, 304 (Fla. 5th DCA 1980) (search that ended with officers discovering dead body was reasonable based on exigent circumstances).

Further, the trial court also erred in suppressing the photographs and bodycam footage taken at the scene when the officers went back inside the house after securing the Defendant in the patrol car. (R. 904). Just like the dog's body, the officers' observations regarding the other evidence in the backyard and the house were constitutionally permissible under the plain view doctrine. The officers had a lawful right to be in those places and make those observations, and the incriminating character of that evidence was immediately apparent.

While the trial court concluded that once the officers left the house they could not reenter without a warrant, this is not the law, in Florida or elsewhere.

As this Court explained in Davis, there is nothing improper about leaving a house and then going back inside, or even inviting other officers inside who were not there originally. 834 So. 2d at 328 (finding proper "continuation of the police presence" where officers called for property crimes investigator to conduct investigation and this investigator "arrived a reasonable time after the initial entry of the home"). A second entry of the home, by the same or different officers, is fully justified even after the exigency has ceased, as long as the second entry is part of one continuous episode that was initially justified by exigent circumstances:

> We know of no decision and no logical basis for holding that a lawful entry is limited to a single officer, nor any rule that prohibits one officer, legitimately on the

> premises, from being joined by a sufficient number of his fellow officers, or his superior officers, to take charge and to perform the police functions which are then immediately justified and required.

Wooten v. State, 398 So. 2d 963, 967 (Fla. 1st DCA), rev. dismissed, 407 So. 2d 1107 (Fla. 1981).

Here, the officers secured the Defendant in the patrol car and then went back into the house to pick up the dog’s body and take pictures of those areas they had already been through. (R. 899). The trial court’s conclusion that crossing the threshold of the doorway somehow precluded the officers’ reentry into the house is not supported by Florida law and makes no sense. The officers could not be expected to pick up the dog’s body and memorialize everything they saw inside the house while also attending to the Defendant. The officers’ decision to reenter the house did not constitute a second search requiring some independent justification, but was instead a proper “continuation of the police presence.”

Accordingly, the dog’s body and the additional pictures and video of the residence and back yard should not have been suppressed, as these items were constitutionally seized under this Court’s reasoning in Davis, as well as numerous other cases in Florida. See, e.g., Young v. State, 207 So. 3d 267, 269–70 (Fla. 2d DCA 2016) (warrantless seizure of contraband found in plain view by firefighters conducting an administrative sweep of residence properly admitted even though firefighter summoned police officer

to further examine the paraphernalia before it was actually seized; search constituted one continuous episode); State v. Craycraft, 704 So. 2d 593, 593 (Fla. 4th DCA 1997) (warrantless seizure of evidence after the expiration of the exigency was proper where officers lawfully entered a home without a warrant, observed marijuana and paraphernalia while inside, and left one officer on scene while second set of narcotics officers were dispatched to search the residence; "[b]ecause the road patrol officers could have legally seized the evidence at that time, the narcotics officers did not need a warrant to continue to exercise the police function which the road patrol officers had begun"); Allen v. State, 638 So. 2d 577, 578–80 (Fla. 1st DCA 1994) (officers properly entered house to process crime scene after exigency was over where time-frame was reasonable and officers did not go beyond the accumulation and collection of plain view evidence), rev. denied, 649 So.2d 232 (Fla. 1994).

The State notes that these Florida cases are well supported by similar case law across the country. See, e.g., People v. Superior Court, 139 Cal. Rptr. 3d 298, 306–12 (Ct. App. 2012) ("California decisions uphold an officer's reentry to seize evidence observed in plain view during a lawful entry but not seized initially because the officer was performing a duty that took priority over the seizure of evidence"); Wengert v. State, 771 A.2d 389, 399 (Md. 2001) ("when law enforcement officers enter a residence [lawfully] and ... come upon evidence in 'plain view,' but do not immediately

take it into custody, a subsequent entry shortly thereafter by officers who arrive to assist in the evidence processing and seizure constitutes a mere continuation of the initial entry and does not require a warrant”); Jones v. Commonwealth, 512 S.E.2d 165, 169 (Va. Ct. App. 1999) (upholding warrantless entry of officer who confirmed existence of gun and narcotics earlier observed in plain view by fireman during walkthrough of apartment after putting out fire; “A warrant is not required in these circumstances because the defendant no longer has a reasonable expectation of privacy for that area of the apartment where one official validly on the premises has made the lawful discovery, and another is merely preserving the incriminating evidence.”); Wofford v. State 952 S.W.2d 646, 653 (Ark. 1997) (“where the police enter a private residence in accordance with the emergency exception but are unable to preserve the evidence that they observe in plain view while rendering assistance, a second entry by other officers without a warrant is lawful, even though the emergency has passed, if the search that follows is restricted in nature and scope to securing the evidence observed in plain view by the officers who entered pursuant to the emergency exception”); State v. Jolley, 321 S.E.2d 883, 886-888 (N.C. 1984) (upholding warrantless entry by detective who photographed and seized evidence in plain view after officer who initially entered in response to possible shooting roped off the area and secured the scene), cert. denied, 470 U.S. 1051 (1985).

Finally, the fact that the officers took pictures at the scene does not change the analysis. These photographs simply memorialized and documented the officers' admissible observations of the scene, and there was no basis to exclude them. See, e.g., Allen, 638 So. 2d at 578 (pictures of house properly admitted as part of plain view search); Commonwealth v. Buckman, 957 N.E.2d 1089, 1103 (Mass. 2011) (finding photographs and videotape "were constitutionally permissible memorializations of what the officers properly saw in plain view"), cert. denied, 567 U.S. 920 (2012); Harris v. Ford, 369 Fed. Appx. 881, 888 (10th Cir.2010) (upholding warrantless reentry of officer to photograph and seize contraband he had moments before observed in plain view during lawful entry in search for injured persons); Clark v. United States, 593 A.2d 186, 196-199 (D.C. 1991) (upholding warrantless entry of police evidence technician to observe, photograph, and seize incriminating evidence observed in plain view by officer during his initial entry 30 minutes earlier; to hold that even though first officer had the right to seize the items, his colleague acted unlawfully in doing so "would improvidently exalt form over substance").

The trial court properly concluded that the officers entered the Defendant's home and backyard under exigent circumstances, but erred in finding that evidence observed in plain view during the course of that entry could not be admitted at trial. That portion of the trial court's order must be reversed.

CONCLUSION

Based on the arguments and authorities presented herein, Appellant/Cross-Appellee respectfully requests this honorable Court reverse that portion of the trial court's order granting in part the Defendant's motion to suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Initial Brief has been furnished to Aaron D. Delgado, 227 Seabreeze Boulevard, Daytona Beach, Florida 32118, by email to adelgado@communitylawfirm.com, this 30th day of November, 2017.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ Kristen L. Davenport
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Counsel for Appellant/
Cross-Appellee