

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MILES D. THOMAS,	:	CIVIL ACTION - LAW
	:	
Plaintiff	:	NO. 1:CV-09-1557
	:	
v.	:	
	:	(JUDGE JOHN E. JONES, III)
WILLIAM SANDSTROM, AMY	:	
KAUNAS, KEN HUGENDUBLER,	:	
THE HARRISBURG AREA HUMANE	:	
SOCIETY, and JOHN DOE	:	FILED ELECTRONICALLY
(a/k/a Officer Weaver),	:	
	:	
Defendants	:	JURY TRIAL DEMANDED

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**BRIEF OF HUMANE SOCIETY OF HARRISBURG AREA, INC.  
IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

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## I. PROCEDURAL HISTORY

On August 13, 2009, Plaintiff Miles D. Thomas ("Plaintiff") initiated a civil action against Defendants William Sandstrom ("Officer Sandstrom"), Amy Kaunas, Ken Hugendubler, Humane Society of Harrisburg Area, Inc. ("Humane Society")<sup>1</sup> ("Responding Defendants"), and "John Doe (a/k/a Officer Weaver)". On that same day, Plaintiff filed a "Motion For Temporary Restraining Order Pursuant To Federal Rule 65(b)," seeking a temporary restraining order and preliminary injunctive relief. On August 18, 2009, this Honorable Court issued a Memorandum and Order, issuing a temporary restraining order and setting a hearing for September 3, 2009 to consider Plaintiff's motion for a preliminary injunction. The Responding Defendants now file this brief in opposition to Plaintiff's motion for injunctive relief.

## II. STATEMENT OF FACTS

The Humane Society is a Pennsylvania non-profit corporation organization which was organized to assist in the prevention of cruelty to animals. Officer Sandstrom is employed by the Humane Society as a Humane Society Police Officer, and has been appointed properly to that position.

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<sup>1</sup> Defendants Sandstrom, Kaunas, and Hugendubler join in this Brief. The caption incorrectly states the name of the Humane Society. The undersigned counsel does not represent John Doe (a/k/a Officer Weaver.)

On Sunday afternoon, July 26, 2009, Officer Sandstrom responded to a telephone call from Middletown Borough Police Department regarding a dog that had been left alone in a car, which was parked on a public street. Upon arriving at the scene, Officer Sandstrom observed a collie in plain view located in the car's back seat. From the street in which he was standing, Officer Sandstrom could detect a strong odor of feces and urine emanating from the car. The front right seat and the rear floor area were filled with miscellaneous items. The back seat had substantial amounts of feces throughout, including on the seats and the seat backs. The dog had feces matted in his fur and feet. While standing on the public thoroughfare, Officer Sandstrom took photographs of the conditions he observed, including the license plate, views of the front and back seats, and the dog.<sup>2</sup> Some of these photographs will be introduced as evidence.

Officer Sandstrom observed that the dog was panting, and had no water available to drink. It was a warm July afternoon, and the car was not parked in shade. Some of the car windows were partially open; Officer Sandstrom put his hand into the interior of the car, and observed that the

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<sup>2</sup> Officer Sandstrom also took photographs of the dog after taking him to the Humane Society. Some of the photographs taken by Officer Sandstrom will be introduced as evidence; several of these are attached hereto as Exhibit A in order to depict visually the circumstances described herein.

inside of the car was hotter than the outside temperature. Wearing gloves, Officer Sandstrom opened the car and removed the dog. In handling the dog, Officer Sandstrom could feel the dog's ribs, and could feel depressions between the dog's vertebrae. Officer Sandstrom placed the dog in the Humane Society van, which was air-conditioned. Officer Sandstrom then left his business card on the windshield, drove to the nearby police station and informed the police he had taken custody of the dog. Officer Sandstrom then took the dog to the Humane Society's facilities where the dog would receive veterinary care, feeding, watering, grooming, and be sheltered in sanitary conditions.

On Tuesday, July 28, 2009, Officer Sandstrom went to the Countryside Motel, in Grantville, Pennsylvania, where he located Plaintiff. Accompanied by the motel owner, Officer Sandstrom knocked on the door of the room where Plaintiff was staying. Plaintiff came out of his room. Officer Sandstrom identified himself, and explained to Plaintiff that he was subject to prosecution for cruelty to animals. Officer Sandstrom offered Plaintiff the option of surrendering the dog in lieu of prosecution for cruelty to animals. Officer Sandstrom answered Plaintiff's questions regarding the consequences of surrendering the dog. Plaintiff signed the surrender in lieu of prosecution.

Prior to and since the Court's issuance of the Temporary Restraining Order, the Humane Society has continued to keep the dog, whose name is Baron, in its custody and to provide for his care.

### III. STATEMENT OF QUESTION INVOLVED

**Is Plaintiff entitled to injunctive relief, where the public interest demands that Baron not be returned to Plaintiff's ownership, custody, or control due to the unsafe and unsanitary conditions in which he had kept Baron, and where Plaintiff has failed to show a likelihood of success on the merits of the underlying claims?**

**Suggested Answer: No.**

### IV. ARGUMENT

In order to obtain preliminary injunctive relief, Plaintiff must demonstrate: (i) a reasonable probability of eventual success in the litigation; (ii) the likelihood of immediate and irreparable harm which cannot be compensated by damages; (iii) that an injunction would serve the public interest; and (iv) that a greater injury may result from denial of the injunction than from its being granted. Instant Air Freight Co. v. C. F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989). In this case, Plaintiff cannot prove any of the necessary elements to obtain a preliminary injunction.

Plaintiff is not likely to succeed on the merits of his underlying claims. Pursuant to Pennsylvania statute and case law, Officer Sandstrom and the Humane Society rescued Baron from the cruel conditions in which he was living. Because he was authorized by law to take possession of Baron, Officer Sandstrom did not violate Plaintiff's Fourth Amendment rights.



Further, under the facts of this case, Plaintiff must be afforded only post-deprivation process, which he has already exercised by instituting an action for conversion. Lastly, because Officer Sandstrom properly took possession of Baron, Plaintiff's conversion claim must fail.

Furthermore, Plaintiff cannot show he will suffer irreparable harm if Baron is not placed in his custody. The Humane Society will care for Baron or place him in a foster home where he will be properly cared for, until the resolution of this case. As such, Plaintiff cannot show he will suffer any irreparable harm if Baron is not immediately returned.

Most importantly, as codified in the law criminalizing cruelty to animals, Baron's proper care is a matter of public interest. Plaintiff's neglect of Baron's proper care and his mistreatment of Baron constitute cruelty to animals. The only reason Plaintiff was not prosecuted for this instance of cruelty to animals is because he surrendered Baron. Since taking custody of Baron, the Humane Society has learned of prior instances of Plaintiff's mistreatment of Baron. The Humane Society will be prepared to offer evidence thereof. Placing Baron in Plaintiff's ownership, care and/or control would be directly contrary to the public's interest in preventing cruelty to animals.

**A. Plaintiff Has Failed To Show A Likelihood Of Success On The Merits Of The Underlying Case.**

Plaintiff contends that the Humane Society improperly took possession of Baron, and that he is entitled to Baron's immediate return. Complaint, ¶¶ 43-44. To the contrary, the Humane Society's actions were not only proper, but necessary for the welfare of Baron. Further, the Humane Society has not violated either Plaintiff's federal Constitutional rights, nor his rights under the Pennsylvania Constitution. As such, Plaintiff cannot show a likelihood of success on the merits of the underlying claims, and his request for injunctive relief should be denied.

**1. Officer Sandstrom properly took possession of Baron under Pennsylvania law.**

Pennsylvania law empowers an individual appointed as a Humane Society Police Officer to enforce Pennsylvania animal cruelty laws. 22 Pa.C.S.A. § 3708(a); 18 Pa.C.S.A. § 5511(c); Allen v. Pa. Soc. for the Prevention of Cruelty to Animals, 488 F. Supp.2d 450, 456, fn 2 (M.D. Pa. 2007). Under the Humane Society Police Officers law, 22 Pa.C.S.A. § 3701 *et seq.*, duly appointed officers like Officer Sandstrom have the "power and authority to exercise the powers conferred under 18 Pa.C.S. § 5511 (relating to cruelty to animals) in enforcement of animal cruelty laws" within the county whose court of common pleas issued the appointment.

The referenced animal cruelty statute explicitly gives Humane Society Police Officers the power to initiate criminal proceedings:

**Power to initiate criminal proceedings.--**An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of the Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of any society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request any court of competent jurisdiction to enjoin any violation of this section.

18 Pa.C.S.A. § 5511(i).

Under the animal cruelty statute, the neglect of an animal constitutes criminal conduct :

A person commits an offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry.

18 Pa.C.S.A. § 5511(c) (emphasis added).

The statute also prohibits transporting an animal in a vehicle in a cruel or inhumane manner. 18 Pa.C.S.A. § 5511(e). Such conduct not

only constitutes a criminal offense, but warrants the authorities to "take charge" of both the animal and the vehicle:

A person commits a summary offense if he carries, or causes, or allows to be carried in or upon any cart, or other vehicle whatsoever, any animal in a cruel or inhumane manner. The person taking him into custody may take charge of the animal and of any such vehicle and its contents, and deposit the same in some safe place of custody, and any necessary expenses which may be incurred for taking charge of and keeping the same.

18 Pa.C.S.A. § 5511(e).

In addition to fines and imprisonment, the penalty for any violation of the animal cruelty statute includes forfeiture of the animal in question to "any society or association for the prevention of cruelty to animals" incorporated under the laws of the Commonwealth. 18 Pa.C.S.A. § 5511(m).

In the instant action, Officer Sandstrom observed a dog confined in a vehicle which was smeared in feces. Further, Baron himself was smeared in feces. He smelled of both feces and urine. It was a warm day; it was warmer in the car where Baron was left unattended; Baron was panting; Baron did not have access to water. Under these circumstances, it is clear that Officer Sandstrom witnessed the violation of 18 Pa.C.S.A. § 5511(c)

and (e), and, pursuant to the above-referenced law, rescued Baron and took him to a safe place where Baron could receive proper care.

Under similarly unsanitary conditions, the Superior Court of Pennsylvania held that a defendant violated 18 Pa.C.S.A. § 5511(c). Com. V. Tomey, 884 A.2d 291, 294-96 (Pa. Super. 2005). In Tomey, dogs were forced to reside in a house containing dog feces and urine. The court held that, under these conditions, the defendant failed to provide his dogs with clean and sanitary shelter, and thus violated the statute. Id. at 294-95. The court noted that "even without the veterinarian's testimony that the dogs were at risk for disease, infection, and parasites, we believe the danger to be so obvious that no reasonable person could have overlooked it." Id. at 295.

Here, as in Tomey, no reasonable person could view the conditions and not acknowledge that Baron was in serious danger. Officer Sandstrom's rescue of Baron from the vehicle was in clear accordance with and Pennsylvania statutes and case law.

**2. The Humane Society did not violate Plaintiff's Fourth Amendment rights.**

Plaintiff contends that Officer Sandstrom's actions constituted an illegal seizure in violation of his Fourth Amendment rights under the United States Constitution and a violation of 42 U.S.C. § 1983. To state a Section

1983 claim, a plaintiff must allege a deprivation of a right guaranteed by the Constitution or the laws of the United States by a defendant acting under color of law. Tunstall v. Office of Judicial Support of Court of Common Pleas, 820 F.2d 631, 633 (3d. Cir. 1987); Snead v. Soc. for the Prevention of Cruelty to Animals of Pa., 929 A.2d 1169, 1180 (Pa. Super. 2007). In the instant case, Plaintiff is alleging his Fourth Amendment rights were violated when Officer Sandstrom, acting under color of state law, seized Baron. The Fourth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, provides for "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." Pennsylvania courts have found that a pet owner has a possessory interest in his pets, and thus is protected by the Fourth Amendment when a pet is taken or killed. See Brown v. Muhlenberg Twp., 269 F.3d 205, 210 (3d. Cir. 2001). However, a violation of the Fourth Amendment has not occurred unless the seizure is "unreasonable." Id.

Ordinarily, a seizure without a warrant is considered *per se* unreasonable. Id., citing U.S. v. Place, 462 U.S. 696, 701 (1983). However, "[w]here the governmental interest justifying a seizure is sufficiently compelling and the nature and extent of the intrusion occasioned by the

seizure is not disproportionate to that interest, the seizure may be reasonable even though effected without a warrant. " Id. Thus, "when the state claims a right to make a warrantless seizure, [the court] 'must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'" Id.

A warrantless search of an automobile is justified when there "exists probable cause to search and exigent circumstances necessitating a search." Com. v. Copeland, 955 A.2d 396, 400 (Pa. Super. 2008). Probable cause exists where "the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it." Id. Exigent circumstances arise "where the need for prompt police action is imperative, either because evidence is likely to be destroyed ... or because there exists a threat of physical harm to police officers or other innocent individuals." Id. Further, "[w]hen evaluating whether there are exigent circumstances which justify a warrantless search, 'a court must balance the individual's right to be free from unreasonable intrusions against the interest of society in quickly and adequately investigating crime and

preventing the destruction of evidence." Id. The Pennsylvania Superior

Court has stated that:

We have allowed warrantless seizures where police do not have advance knowledge that a particular vehicle carrying evidence of crime would be parked in a particular locale, ... the exigencies of the mobility of the vehicle and of there having been inadequate time and opportunity to obtain a warrant rendered the search [without a warrant] proper.

Id.

In the current case, Officer Sandstrom had probable cause to search Plaintiff's vehicle, as he could plainly see that Plaintiff was violating 18 Pa.C.S.A. § 5511 by maintaining and transporting Baron in unsanitary conditions. Further, prompt action was required, as Plaintiff could have removed both his vehicle and Baron at any time to a location where Officer Sandstrom would not be able to retrieve the dog so as to give Baron proper care. Given the circumstances, Officer Sandstrom's seizure of Baron was not unreasonable, and thus not a violation of Plaintiff's Fourth Amendment rights.



### 3. Plaintiff was not denied procedural due process.

Plaintiff also contends that he was deprived of due process when Officer Sandstrom removed Baron from the vehicle. Complaint, ¶ 1, p. 4. Under the Fourteenth Amendment to the United States Constitution, an individual cannot be deprived of his property without due process of law. Brown, 269 F.3d at 213. Such process must normally occur prior to the deprivation of property. Id. However, when the complained of conduct is "random and unauthorized" (so that state authorities cannot predict when such unsanctioned deprivations will occur), then the "very nature of the deprivation ma[kes] predeprivation process impossible." Id. In such situations, "postdeprivation process is all that is due." Id. Further, when an individual's dog is seized, the ability to bring a conversion claim in court constitutes post-deprivation process. Id. at 214.

In the instant case, Plaintiff's actions were random (parking at that time and place) and unauthorized (violating 18 Pa.C.S.A. § 5511(c) and (e)). Thus, Officer Sandstrom properly rescued Baron without any notice to Plaintiff. The post-deprivation process to which Plaintiff is entitled is to bring a conversion claim against Officer Sandstrom, which he has. Thus,

Plaintiff has been given sufficient post-deprivation process and is not entitled to injunctive relief for violation of his procedural due process rights.

**4. Plaintiff is not entitled to injunctive relief on his claim for conversion.**

A conversion occurs when an individual deprives "another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification." Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451, 197 A.2d 721, 726 (Pa. 1964). As discussed above, Officer Sandstrom took possession of Baron due to Plaintiff's violations of 18 Pa.C.S.A. § 5511(c) and (e). Further, the Humane Society retained and cared for Baron due to these same violations. As such, even without Plaintiff's surrender of Baron in lieu of prosecution for cruelty to animals, the Humane Society had lawful justification for taking possession of Baron, and Plaintiff cannot state a valid claim for conversion. Thus, Plaintiff is not entitled to injunctive relief based on his conversion claim.

**5. Remaining claims alleged in Plaintiff's Complaint.**

The remaining causes of action alleged in Plaintiff's Complaint (list them) are all based upon the same conduct which Plaintiff has incorrectly characterized as wrongful and baseless. Furthermore, they all constitute

actions for monetary damages, and thus do not form the proper basis for a claim for injunctive relief.

**B. Plaintiff Has Failed To Show Immediate And Irreparable Harm.**

Plaintiff further asserts that he will suffer immediate and irreparable harm if Baron is not immediately returned. Complaint, ¶ 44. The Third Circuit Court of Appeals has defined irreparable harm as "potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the only way of protecting the plaintiff from harm." Instant Air Freight Co., 882 F.2d at 801. The Humane Society does not intend to place Baron for permanent adoption until this matter is finally resolved. As such, Plaintiff has not suffered irreparable harm.

**C. Plaintiff Has Failed To Show That Injunctive Relief Would Be In The Public Interest.**

The public has an interest in preventing cruelty to animals, and this interest has been codified in various Pennsylvania statutes. The Humane Society and its officers are charged with enforcing Pennsylvania's animal cruelty laws, See 22 Pa.C.S.A. § 3708(a); 18 Pa.C.S.A. § 5511; thus, it is the Humane Society's duty under Pennsylvania law to protect Baron, and all animals, from being kept in unsafe and unsanitary and cruel conditions.

This case does not concern merely the deprivation of inanimate property; it is about the proper care of a living creature. The Pennsylvania legislature has recognized this, and enacted various laws to protect animals like Baron. In this motion for injunctive relief, which concerns Baron's custody and care pending a trial, the central inquiry is whether it is in the public interest (protecting Baron from cruelty), to be placed back in the ownership, custody, and/or care of Plaintiff, who kept Baron in unsafe and unsanitary and cruel conditions, clearly in violation of § 5511(c) and (e). Until this matter is fully adjudicated, it is in the public interest for Baron to be protected from being mistreated again.

**D. Plaintiff Has Failed To Show That Greater Injury May Result From Denial Of The Injunction Than From Its Being Granted.**

Plaintiff has failed to show that greater injury will result from the denial of injunctive relief than from its being granted. The Humane Society will care for or place him in a suitable foster home until the final disposition of this matter. Further, by placing Baron back in Plaintiff's care, custody, or control, Baron runs the risk of being exposed to further unsafe and unsanitary conditions. Greater harm will result if injunctive relief is granted and Baron is returned to the same person who mistreated him. Therefore,

greater injury will not result from the denial of Plaintiff's motion for injunctive relief.

**V. CONCLUSION**

For the reasons set forth above, the Humane Society requests that the injunctive relief requested by Plaintiff be denied.

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Dated: September 1, 2009

**CERTIFICATION PURSUANT TO LOCAL RULE 7.8(b)**

I hereby certify that this brief is 3,581 words in length, excluding tables, certifications, and the certificate of service, as per the word count feature of the word-processing system used to prepare the brief.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was served electronically upon the following individual:

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