IN THE COURT OF CRIMINAL APPEALS FOR TENNESSEE AT KNOXVILLE

STATE OF TENNESSEE	)	
	)	
v.	)	No. E2021-00560-CCA-R3-CD
	)	
JOEL MICHAEL GUY	)	

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE KNOX COUNTY CRIMINAL COURT

REPLY BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITIES

Cases

Other Authorities

Constitutional Provisions

I. INTRODUCTION.

The primary issues in this appeal are driven by two decisions by law enforcement. First, facing a set of slightly odd but hardly anomalous facts, law enforcement made the decision that, instead of gathering additional information or seeking to gain consent from someone with authority, it would enter into a private residence. Second, having discovered a crime scene inside and then retreated outside the residence, law enforcement made the decision to re-enter the residence and, over the course of the following hours and days, seize dozens of items, including transporting items to headquarters for closer inspection -- all without ever seeking legal justification for doing so in the form of a search warrant. Neither decision was constitutionally defensible. The warrant requirement does not disappear merely because a crime scene is horrific. Consequently, the primary items of evidence introduced at trial in this case should have been suppressed.

II. THE TRIAL COURT CORRECTLY RULED THAT THE DEFENDANT HAD STANDING TO OBJECT TO THE ENTRY INTO THE HOUSE.

A. Introduction and State's Position on Standing.

In his brief-in-chief, Mr. Guy argued that the trial court erred in denying his motion to suppress the evidence obtained inside the house on Goldenview Lane, as law enforcement entered the house without a warrant or an exception to the warrant requirement. *See Brief* at 71-96. The State has offered a variety of responses to this argument.

The State devotes its most detailed discussion to its claim that Mr. Guy did not have standing to object to the entry into the house. It thus disagrees with the ruling of the trial court, which found that he did have standing. *See* R.407. The State contends that, while there is "little question" that Mr. Guy initially qualified as an invited overnight guest, his alleged actions inside the house "changed the equation." *See State's Brief* at 29. It argues that, through the alleged homicides, Mr. Guy "extinguished" his standing. *See State's Brief* at 32.

B. The State Never Made This Argument Below.

This loss-of-standing-due-to-criminal activity argument is beset by several flaws. First, it is newly concocted on appeal. Despite the exhaustive pretrial proceedings, in front of two judges, with hundreds of pages of briefing, the State has not pointed to any place in the record where this argument was made below. The State's initial response claimed that the defense motion did not adequately plead standing, but did not suggest that overnight-guest standing could be lost due to violent actions. *See* R.154-156. In its post-hearing briefing, the State argued that Mr. Guy had failed to establish the factors to establish regular (non-overnight-guest) standing, and that he had abandoned his personal property when he left the house. *See* R.258-259. Again, it did not suggest that he had "extinguished" his overnight-guest status in some way through violent actions. Rather, this novel theory has appeared for the first time on appeal. It is too late.

C. The Cases Cited by the State Provide Scant Support.

The second flaw with the State's theory is its utter lack of precedential support. As to this supposed doctrine of loss-of-standing-due-to-criminal-activity, the State has cited only three cases from other jurisdictions. *See State's Brief* at 30-32. And even this three provide weak support at best given their significantly different factual scenarios. In *Granados v. State*, 85 S.W.3d 217, 226 (Tex. Crim. App. 2002), for example, although the defendant had initially been an invited guest, there was evidence that he had been asked repeatedly to leave the property, and had been given ample time to gather his belongings. In this case, though, there was no proof that Mr. Guy had ever been told by either of his parents that he had to leave the premises.

Similarly, in *Commonwealth v. Mallory*, 775 N.E.2d 764, 768 (Mass. App. Ct. 2002), the host learned that the defendant (who had been staying in a room and paying for food) had assaulted his daughter. While the host went to get a weapon to confront the defendant, the defendant "fled out the room's window," leaving the host behind. Again, that factual scenario -- flight by the defendant leaving the armed host behind -- is simply not alleged to have occurred here.

Finally, in *State v. Dorsey*, 762 S.E.2d 584 (W.Va. 2014), the court confronted an unusual situation, where the defendant had initially been an overnight guest but who had maintained his position there for three weeks by threatening his purported host with physical violence and exploiting her drug addiction. The court concluded that, because he was

no longer "welcome," and maintained his position for weeks through "coercion, threats of violence [and] exploitation," he no longer had standing within the house. *Id.* at 25, 594. (The court also found that the host had consented to the search in question.) Again, that unusual situation of prolonged co-residence through coercion is hardly akin to what the State alleges occurred here. Yet beyond these three very-distinguishable cases, the State has not offered any decisions that even arguably articulate the new rule that it wishes this Court to adopt.

D. The State's Position Ignores Settled Law that Standing Does Not Depend on the Legality of a Defendant's Conduct Inside a Residence Where He Has an Expectation of Privacy.

The third, and most fatal, flaw for the State's position is that it is contrary to law. In the State's view, because Mr. Guy allegedly engaged in homicidal acts in the house, he had no standing to object to the discovery of evidence of those homicides. Yet this circular reasoning -- that engaging in crime forfeits constitutional protection against discovery of evidence of crime -- has been rejected by the courts. Fourth Amendment rights have never hinged on whether a defendant's activities in the place to be searched are innocent or criminal. Precisely the opposite. The "guarantee of protection against unreasonable searches and seizures extends to the innocent and guilty alike." *McDonald v. United States*, 335 U.S. 451, 453 (1948). In the words of Professor Lafave: "[T]o deny standing merely because it turns out the defendant had a criminal purpose is in sharp conflict with the rationale underlying the

exclusionary rule." Wayne R. LaFave, 6 *Search & Seizure* § 11.3(b) (6th ed.). Indeed, most "Fourth Amendment issues arise precisely because the defendants were engaged in illegal activity on the premises for which they claim privacy interests." *United States v. Fields*, 113 F.3d 313, 321 (2d Cir. 1997). The Supreme Court itself has rejected the circular argument that standing depends on whether the defendant was guilty or not, noting: "[I]t suffices here to say that this reasoning would impermissibly convict the suspect even before the evidence against him was gathered." *Mincey v. Arizona*, 437 U.S. 385, 391 (1978). Further, in the seminal case of *Minnesota v. Olson*, 495 U.S. 91 (1990), the Court found the defendant had a legitimate expectation of privacy as an overnight guest in a home where he was hiding because he was wanted for armed robbery and murder. 495 U.S. at 94–95. If the State's reasoning here had been adopted by the Supreme Court, it would have denied standing because society does not recognize as reasonable the right to hide from police after perpetrating a robbery. It did not adopt that rationale. This Court should not either.

In sum, the State's effort to shift the focus to Mr. Guy's alleged activity, rather than his expectation of privacy in the home as an overnight guest, is misguided. The State's argument would eviscerate settled constitutional protections, and for that reason its logic has been repeatedly rejected. As one court has explained:

> We may not justify the search after the fact, once we know illegal activity was afoot; the legitimate expectation of privacy does not depend on the nature of the defendant's activities,

> whether innocent or criminal…. If this were the case, then the police could enter private homes without warrants, and if they find drugs, justify the search by citing the rule that society is not prepared to accept as reasonable an expectation of privacy in crack cocaine kept in private homes.

United States v. Pitts, 322 F.3d 449, 458–59 (7th Cir. 2003).

E. The State's Backup Argument, that Mr. Guy Stopped Being an Overnight Guest, Has No Support.

The State alternately argues that Mr. Guy ceased being an overnight guest when he left the house to receive medical treatment. *See State's Brief* at 33-34. The State does not dispute -- nor could it on this record -- that Mr. Guy drove to Louisiana to visit the student medical center for an injury and then drove right back to Knoxville, arriving back roughly thirty hours later. *See* Vol. 6/33, 50 (left Sunday evening around 7:30 p.m.); Vol. 6/68 (arrived back in Knoxville sometime after midnight). The State nonetheless suggests that overnight-guest status ends when a defendant steps outside of a house, even if he intends to return to the house in short order.

As above, none of the out-of-jurisdiction cases cited by the State provide much support for the State's position. In *United States v. Pettiway*, 429 Fed.App'x 132, 135 (3d Cir. 2011), the issue was not whether the defendant had temporarily left the house; rather, the court found no standing where the defendant's girlfriend had ended her relationship with him days before and had asked him to leave the house. When he then returned nonetheless, he was "not even an invited guest, much less an overnight guest." *Id.* In *United States v. Harris*, 884

F.Supp.2d 383 (W.D. Pa. 2012), the Government conceded that the defendant had standing, and thus the court was not required to make any evaluation of the defendant's standing. Finally, in *Alston v. State*, 858 A.2d 1100, 1108 (Md. App. 2004), *rev'd*, 433 Md. 275, 71 A.3d 13 (2013), the defendant had previously been an occasional overnight guest of a woman, but there was no evidence that on the day of the search he had stayed there recently or that he had any intention of spending the night there. (The court noted that he did not have a key to the residence nor had he left any personal effects there.) Rather, he entered the residence while in flight from law enforcement. *Id.* at 267-268. None of these cases set forth a rule that would benefit the State here. There is no exception to the overnight-guest rule for a defendant who steps outside of a house with the intent to return.

F. Mr. Guy Also Had Independent Standing Due to His Long-Term Connections to the House.

Even if one of the State's new overnight-guest exceptions applied, Mr. Guy would still have independent standing (meaning an actual expectation of privacy, recognized by society as reasonable) based on his long-standing connection to the residence.[1]

Mr. Guy testified that he was always present in the Goldenview Lane house at Thanksgiving, and would also ordinarily be at there on other holidays throughout the year. He was welcome in the house. His

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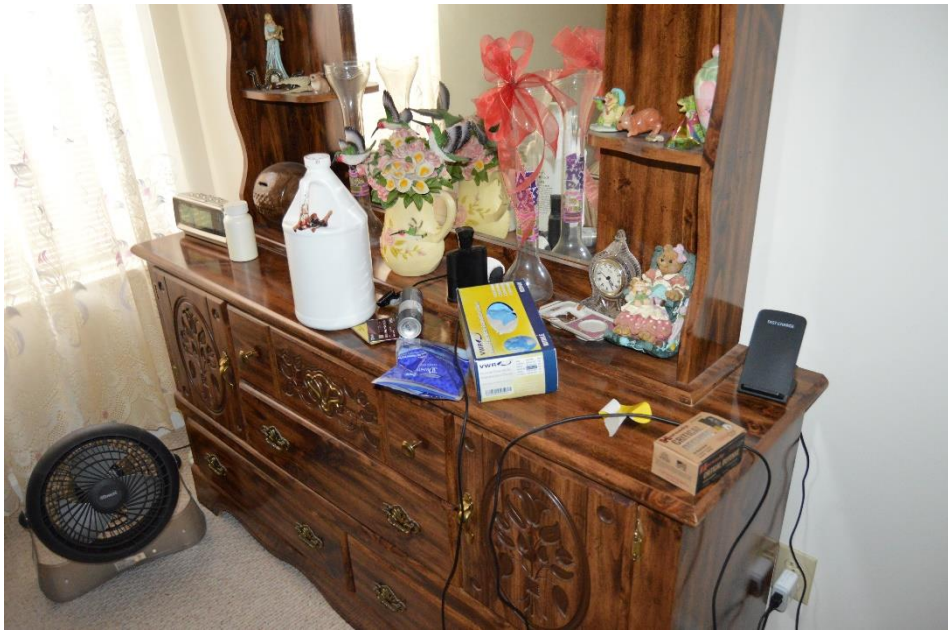
[1] The State acknowledges that independent standing is a different question from overnight-guest standing. *See State's Brief* at 28.

parents, the legal owners, did not place any restriction on where he could go within the house. He testified that he had a subjective expectation of privacy throughout the house. Vol. 6/13-15. He testified that he "considered it my home." Vol. 6/44.

When he visited the Goldenview Lane house, he would stay in his bedroom, one of the upstairs bedrooms. Items that he had had since childhood, and which had been in his childhood room, including furniture and collectible items, were kept in that bedroom. Further, he stored college textbooks and other books in that room. He also kept clothing in that room. Vol. 6/14-15, 18-20. Photographs of his bedroom were entered into evidence at the suppression hearing:

Hearing Collective Exhibit 1, Photograph 002 (showing books in bedroom)



Hearing Collective Exhibit 1, Photograph 004 (showing dresser in bedroom with Mr. Guy's items on shelves)

He had keys to the Goldenview Lane house, which he was given by his mother when the house was purchased in 2007. The keys worked for all the doors. Vol. 6/22-23. He also had an automatic garage door opener, which he had purchased and his father had programmed to work at the Goldenview Lane house. Vol. 6/23. That is, both parents had intentionally made it possible for him to come and go from the house as he pleased. When he was at the house, he brought his dog with him, and used the contained back yard to exercise the dog.

Beyond bare assertion, *see State's Brief* at 28-29, the State has not pointed to any precedent holding that this level of contact does not provide a reasonable expectation of privacy in a home. Rather, the precedent strongly supports the opposite conclusion. *Contrast United*

States v. Dix, 57 F.3d 1071 (6th Cir. 1995) (no expectation of privacy where defendant was casual visitor to sister's apartment, did not keep clothing there, did not receive mail there, and had no key) and *State v. Marcus Traveno Cox, Jr.*, No. M2015-00512-CCA-R3-CD, 2016 WL 1270391, at *6 (Tenn. Crim. App. Mar. 31, 2016) (no standing in mother's house where defendant did not have a key and had been prohibited by mother and brother from entering the house) *with United States v. Heath*, 259 F.3d 522, 533 (6th Cir. 2001) (finding standing where defendant slept on couch frequently; possessed a key; and had a pre-existing "familial tie" with lessee of apartment, citing "indicia of acceptance into the household") and *United States v. Haydel*, 649 F.2d 1152, 1155 (5th Cir. 1981) (parents had given permission to use and a key).

In fact, in its brief the State has not even adverted to the helpful seven-factor test applied by the Tennessee Supreme Court. That test considers the following factors:

> (1) [whether the defendant owns the property seized]; (2) whether the defendant has a possessory interest in the thing seized; (3) whether the defendant has a possessory interest in the place searched; (4) whether he has the right to exclude others from that place; (5) whether he has exhibited a subjective expectation that the place would remain free from governmental invasion; (6) whether he took normal precautions to maintain his privacy; and (7) whether he was legitimately on the premises.

State v. Talley, 307 S.W.3d 723, 731 (Tenn. 2010) (*quoting State v. Turnbill*, 640 S.W.2d 40, 46 (Tenn. Crim. App. 1982)). These factors strongly support Mr. Guy's position. First, he clearly had a possessory

interest in much of the property seized. Indeed, the State was interested in many of the items seized, such as the backpack, receipts, and chemicals, only to the extent that it believed they belonged to him -- otherwise they would have been irrelevant. Second, he had a possessory interest in the place searched because he maintained a bedroom in the Goldenview Lane house. Third, he had a right to exclude others from the premises, as evidenced by the fact he had a key to the house and a garage door opener. *See*, *e.g.*, *Heath*, 259 F.3d at 533 ("He also possessed a key which, by the officers' own testimony, allowed [the defendant] unfettered access to the apartment and the ability to admit and exclude others"). Fourth, given that the place searched was a residence, he had a subjective expectation that it would remain free from governmental invasion. Private residences are at the heart of the Fourth Amendment's protections. Fifth, he took all the normal precautions to maintain his privacy. There was no proof introduced at the hearing that the doors were unlocked, the windows were open, or that the garage was open. Indeed, the proof was all to the contrary. Sixth, as conceded by the State in its briefing below, R.259, Mr. Guy was "legitimately on the premises."

The facts in this case are quite similar to those in *Haydel*, a case that has been repeatedly cited approvingly by this Court and the Supreme Court in discussions of the multi-factor test. *See*, *e.g.*, *State v. Christensen*, 517 S.W.3d 60, 83 (Tenn. 2017). In *Haydel*, the Court found standing where:

> Haydel's parents had given him permission to use their home and had given him a key. His access, therefore, was for all

> practical purposes unencumbered. Although he did not reside regularly at his parents' home, he kept clothing there and had occasionally remained overnight. Moreover, he conducted a significant portion of his gambling activities at the home and owned the records that were seized. Although the district court did not explicitly so hold, it is reasonable to assume that Haydel had the authority to exclude persons other than his parents and their guests from the home. Finally, it is clear from his actions that Haydel exhibited a subjective expectation that the contents of the box stowed under his parents' bed were to remain private.

649 F.2d at 1149. The same conclusion follows here.

Thus, under governing law, Mr. Guy had an independent, legitimate expectation of privacy in the family home regardless of whether he was an overnight guest at the time of the search. The State's argument that he lacked standing must be rejected.

III. THE EXIGENT CIRCUMSTANCES EXCEPTION DOES NOT JUSTIFY THE WARRANTLESS ENTRY. LAW ENFORCEMENT HAD NO COMPELLING REASON TO BELIEVE ANYONE WAS INSIDE IN NEED OF IMMEDIATE AID.

A. Introduction and Narrowing of Issue.

The State further argues that, even if Mr. Guy had standing to object to the entry, the entry by law enforcement was proper under the exigent circumstances exception to the warrant requirement. *See State's Brief* at 34-40. In so arguing, the State has narrowed the scope of the dispute. The State correctly concedes that the trial court's ruling was based, in part, on a legally-incorrect interpretation of the community

caretaking exception. *See State's Brief* at 35 n.4. After the Supreme Court's ruling in *Caniglia v. Strom*, 141 S. Ct. 1596, 1598 (2021), the community caretaking logic which the State pushed heavily in its pleadings and at the evidentiary hearing (and which the officers apparently believed authorized their actions) cannot justify the entry here.

Further, the State wisely agrees that the heavily-disputed information purportedly obtained from the back porch should not be considered as part of the exigent circumstances analysis. *See State's Brief* at 39 n.5. Thus this Court should not rely on the supposed, if implausible, contention that Det. McCord smelled chemicals and the odor of decomposition from the back porch, information that itself was gathered wrongly (if at all).

With these concessions in place, the State is forced to argue that the remaining information known to law enforcement, excluding any information gleaned from the back yard or porch, was sufficient to merit a belief that entry was necessary to assist someone in need of immediate aid. The evidence falls far short of that high standard. Once the observations on the back porch are excluded, there is not much else left.

B. The Officer's Actions in Loitering in the Front Yard and Peering through the Glass on the Door Exceeded Any Implicit License to Approach and Knock.

The State seeks to make much of relatively minor facts, such as that the officers saw groceries on the floor when they looked through the window on the front door. However, as was argued by Mr. Guy in his

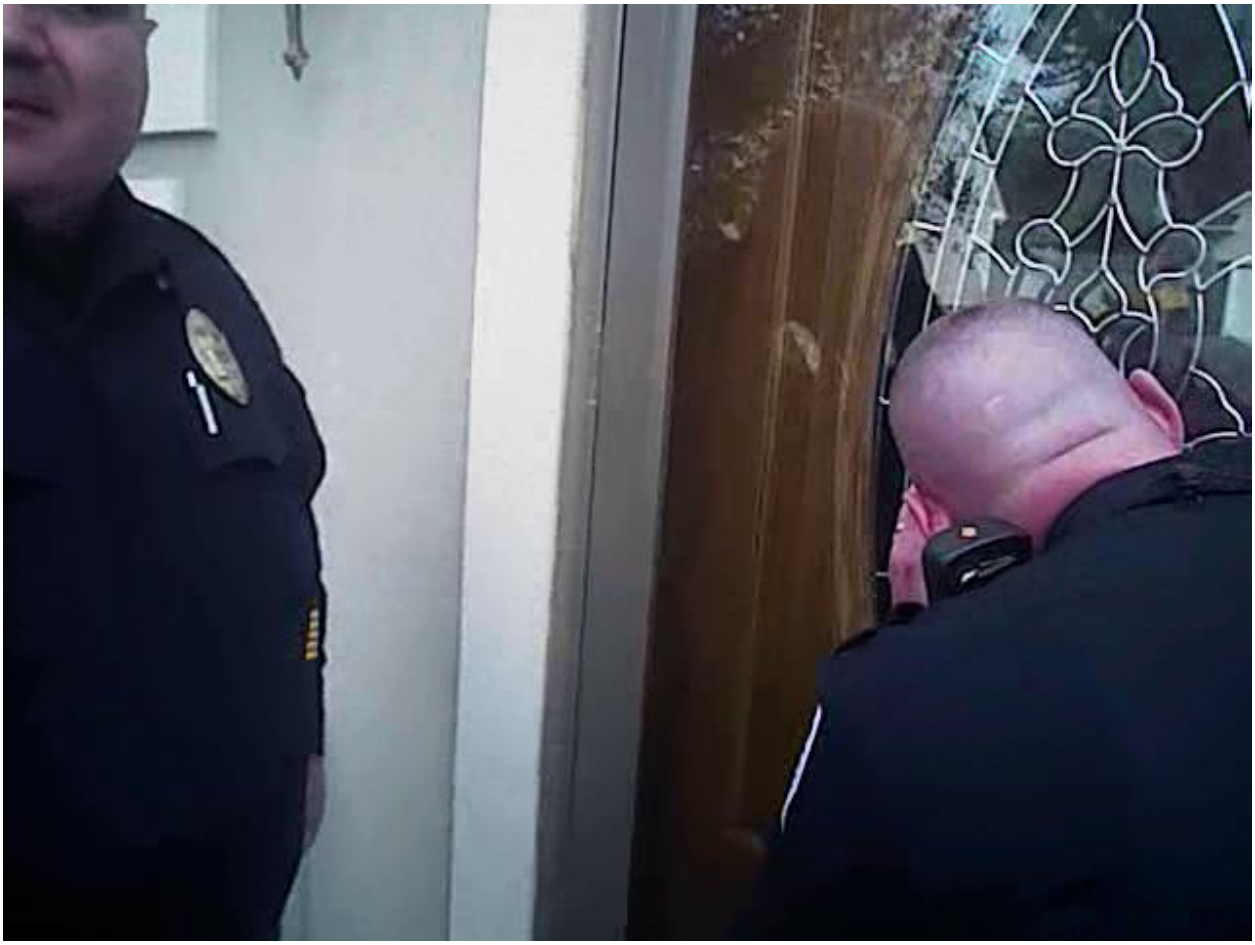
brief-in-chief, the State could not rely on any observations made through the front-door window in support of its claim of exigent circumstances, as those observations themselves were unlawful. *See Brief* at 73-77. The State disputes this claim. *See State's Brief* at 36.

The parties are largely in agreement as to the legal analysis: whether the officers' conduct was justified by the implicit license set by social norms for a stranger to approach a front door to knock or ring a doorbell. *See State's Brief* at 36. As the Supreme Court described it:

> This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.

Florida v. Jardines, 569 U.S. 1, 8 (2013).

The State, however, elides the actual actions taken by law enforcement, as established by the record regarding what happened when officers went to the house the second time that day. Officers knocked again on the door, receiving no answer. Vol. 7/154. They then interviewed some of the neighbors. They then stood around in the yard discussing the matter. The first reference to anything seen through the front door appears to occur after officers have already gone into the back yard. *See Hearing Exhibit 30, Graves Video A* at 4:08. The record also shows exactly how officers saw the groceries: one officer leaned down slightly, put his hand to the door, and peered inside through a portion of the stained glass part of the front door. *See Exhibit 29, Ballard Video C* at 0:24.



Hearing Exhibit 29, *Ballard Video C* at 0:24.

The parties disagree, however, as to whether this conduct falls within the implicit license defined by social norms relating to front-door approaches. (The State, somewhat surprisingly, disputes the characterization that the officer was "peering" into the house, *State's Brief* at 37, although "peering" seems precisely the accurate word for his actions.) Here, law enforcement did not merely approach the front door, knock, and "wait briefly" for an answer, *Jardines*, 569 U.S at 8, before departing. Rather, officers approached, knocked, discussed, lingered,

wandered around, returned, discussed some more, went unlawfully into the back yard, and peered through a stained glass window. That is nothing like the implied license employed by "Girl Scouts and trick-or-treaters." *Jardines*, 569 U.S. at 9. It is the position of the appellant that any homeowner would be alarmed if strangers were wandering around their front yard, repeatedly approaching the front door and going into the back yard, and using their hands to look through largely-opaque glass. Law enforcement actions thus went beyond the implicit license extended to the public, and their observations cannot be justified by that doctrine. To look at it another way, at this point officers were not expecting the Guys to answer the door and merely waiting a short period of time for them to do so; instead, they were investigating to find out why the Guys were not there. The implicit license does not cover that situation. As the State has offered no other justification, the observations made through the front door cannot be used to support a finding of exigent circumstances.

C. The State Did Not Present any Proof that, While Standing Outside, Officers Saw "Perishable Groceries" In the Foyer.

In any event, the State has greatly overstated the suspiciousness of any observations made through the stained-glass door. The State refers repeatedly to the "large load of perishable groceries strewn about the floor," and the "perishables … strewn about the foyer floor." *See State's Brief* at 37, 39, 40. The State thus suggests that it was suspicious because grocery items that would normally be put away quickly were lying on the

floor, perhaps indicating that the homeowners were interrupted before they were able to put away those groceries that would ordinarily be stored immediately. *See State's Brief* at 40.

The suspiciousness of this fact should not be exaggerated. People delay putting away groceries for a variety of reasons. But even more importantly, the State's argument goes beyond what was proven at the hearing. At the evidentiary hearing, Det. McCord testified that officers saw "groceries laying right there" at the threshold of the front door. Vol. 7/107. He also testified that, once they entered the house through garage, they encountered these items in the foyer. He explained the items they saw then as being "beer … perishable goods, chicken, bacon, some ice cream. Things normally people would immediately put up when they got home." Vol. 7/112. He repeated that there was "bacon" in one of the bags, and that it was "not the precooked stuff. It's uncooked." Vol. 7/114. Officer Graves, for his part, testified that he looked through the window and saw "grocery items scattered about the foyer floor." Vol. 8/263.

Once this testimony is viewed carefully, it is apparent that the State did not present, despite ample opportunity to do so at the hearing, any evidence that officers realized, *while they were outside*, that the groceries on the floor included perishable items. To be sure, they apparently saw "groceries." And, as it turned out, those grocery bags did include perishable items. But there was no testimony that officers realized that the groceries included perishable items *until* they were inside the house. Indeed, Det. McCord identified his alarm about the

perishable groceries as arising once he was already inside the house and clearing the rooms:

> [W]hen you walk into a house and you're clearing a house and there's groceries right by the front door, it's alarming. Most people, when they're sitting here, would -- would put their groceries up when they get home. There might be the items that you sometimes don't. You leave out the paper towels or whatever to put up, but bacon and whatnot you typically put up, don't leave it by the front door.

Vol. 7/113. Confirming this fact, the officer captured on body camera video discussing the groceries says merely that he has seen: "Beer cases in bags lying here in the foyer…. Cases of beer." *Hearing Exhibit 30*, Graves Video A at 4:08. The State thus never proved that any officer saw bacon, or ice cream, or anything else "perishable," prior to the group entry into the house.

Nor is this hole in the State's position covered by other evidence. Indeed, the other evidence supports the conclusion that officers would not have seen any perishable items until they entered the house. A photograph taken from inside shows the condition of the bags of groceries near the door:

Hearing Exhibit 11

Although it was possible, once officers were inside the house, to tell that some items were perishable, officers standing outside (as confirmed by the statements on the body camera) would not have seen anything more specific than the Michelob Lights (and maybe the paper towels), items that hardly qualify as perishable. It is not particularly noteworthy that someone might leave items of that nature in the foyer, to be put away at a later time. Det. McCord even indicated that himself. Vol. 7/113 ("You leave out the paper towels or whatever to put up").

In sum, even if these observations through the stained-glass door are to be taken into account, they contribute little to the exigent circumstances analysis -- the fact that paper towels and beer have not

been put away sheds almost no light on the question of whether someone in the house was in dire need of emergency aid.

D. The Relevant Evidence Did Not Establish Reason to Conclude that Anyone Inside was in Need of Emergency Aid.

Mr. Guy has argued that, even considered cumulatively, the information known to law enforcement prior to entering into the backyard and the garage did not come close to establishing any urgent need to enter into the house. *Brief* at 93-95. The State disagrees. It provides a summary of its position as to exigent circumstances:

> Altogether, the odd circumstances, and lack of innocuous explanation for them, gave law enforcement an "objectively reasonable basis for believing" that the Guys needed aid. *Michigan v. Fisher*, 558 U.S. 45, 47 (2009). The officers encountered a house with an altered locking mechanism. Multiple attempts to contact the occupants by others that morning had failed. The occupants had, without explanation, failed to appear at planned functions for that morning. Perishable groceries were not put away, or even put in the kitchen, but were scattered on the foyer floor.

See State's Brief at 40. This articulation of the evidence by the State only exposes its weakness.

Some parts of this analysis are simply irrelevant or mistaken. As noted above, there was no evidence that law enforcement had observed that "perishable" groceries were in the foyer, and the observations through the door were themselves unlawful. In pointing to the fact there was an "altered locking mechanism" -- meaning a deadbolt on the front door where the realtor had believed there should be a realtor's lockbox --

the State does not even attempt to explain how this could be considered an indication that someone inside was in need of immediate aid. Replacement of a lockbox with a deadbolt, even if unexpected, is hardly a recognized sign of a violent attack or injured victim within.

The State is thus left with little more than the fact that one co-worker could not reach the Guys by cell-phone that day, that Ms. Guy was missing a luncheon, that two cars were present, and that the Guys did not come to their door to answer the doorbell. These do not amount to much. If "an abrupt and unexplained abandonment of plans," *see State's Brief* at 39, has ever been considered by a court as establishing an exigent circumstance, that case has not been cited by the State.

Nor would such a case be legally correct. As discussed in the defendant's brief-in-chief, the hallmark of the emergency aid exception is its urgency. The emergency aid or imminent harm exception is applied only when there are "indicia of an urgent, ongoing emergency, in which officers have received emergency reports of an ongoing disturbance, arrived to find a chaotic scene, and observed violent behavior, or at least evidence of violent behavior." *United States v. Timmann*, 741 F.3d 1170, 1179 (11th Cir. 2013). None of that is present here. This exception does not apply when someone misses work or does not answer their phone.

The State's half-hearted exigent circumstances analysis -- the State calls it "a concern" based on some "odd circumstances," *State's Brief* at 39, 40 -- does not engage with the level of urgency necessary before this

exception comes into play. As one court has explained, the emergency-aid exception:

> may sound broad in name, [but] it is subject to important limitations and thus is quite narrow in application. For example, the requirement that the circumstances present a true "emergency" is strictly construed—that is, an emergency must be "enveloped by a sufficient level of urgency."… Indeed, standing alone, even a "possible homicide" does not present an "emergency situation" demanding "immediate [warrantless] action."

United States v. Curry, 965 F.3d 313, 322 (4th Cir. 2020); *United States v. Martinez*, 643 F.3d 1292, 1299–300 (10th Cir. 2011) ("The sanctity of the home is too important to be violated by the mere possibility that someone inside is in need of aid—such a 'possibility' is ever-present.").

. The two leading Supreme Court cases applying the emergency aid exception give a marked contrast to the instant situation. In *Fisher*, as officers responding to a disturbance call approached a house, they saw a pickup with significant damage to the front end that corresponded to damage to a fence. The house had three freshly broken windows. There was blood in the truck and on a door to the house. The back door was locked, and the front door barricaded. The officers saw a man with a bloody cut to his hand standing in the living room, screaming and throwing things. They could not determine if he was throwing the objects at someone else. The Court found those circumstances supported a warrantless entry based on the emergency aid doctrine. 558 U.S. at 48. Similarly, in *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006), police officers responded to call about a loud party at a residence in the middle

of the night. On approaching the house, the officers saw four adults attempting to restrain a juvenile, who then broke free and punched one of the adults. The adult was spitting up blood, and the physical confrontation showed no signs of ending. The Court found the emergency aid doctrine supported officers' warrantless entry of the house both to assist the injured adult and to prevent further injuries. 547 U.S. at 406. These cases are not merely quantitatively different than the instant case, containing slightly more of the same kind of suspicious information. They involve, rather, qualitatively different situations.

As this Court has helpfully explained:

> It is worth noting that all cases where a court has found that an exigent circumstance existed appear to share two common factors. First, in all of the cases in which courts found exigency, officers observed events obviously occurring within the residence or building. For example, cries for help, screams, loud noises, or an observation of a struggle or fight within the structure by looking through a window. Second, courts have found exigent circumstances exist when officers observed events or evidence leading directly to a structure. For example, a blood trail leading to a closed door.

State v. Justin Gibson, No. M2012-02363-CCA-R3CD, 2013 WL 5701650, at *9 (Tenn. Crim. App. Oct. 18, 2013). None of these kinds of dramatically alarming circumstances were present here. The information here fell far short of establishing any exception to the warrant requirement. Suppression was required.

IV. THE STATE MISUNDERSTANDS THE CONTINUATION DOCTRINE.

In his brief-in-chief, Mr. Guy challenged numerous items that were seized from the house, arguing that even if law enforcement had initially entered lawfully in response to exigent circumstances, a warrant was required for other officers to later enter and seize pieces of evidence, including the knife, the receipt in the bathroom, and the backpack and notebook in Mr. Guy's bedroom. *Brief* at 96-108. The State responds by contending that all this evidence was in "plain view" and thus lawfully seized by subsequently-arriving officers. *State's Brief* at 41-47.

In presenting this argument, the State relies on the "continuation doctrine" set out in *State v. Hutchison*, 482 S.W.3d 893 (Tenn. 2016). Yet it fundamentally misunderstands that doctrine. Under it, if one law enforcement officer encounters a piece of evidence in plain view, while that officer is in a place where he is entitled to be, it is permissible for a later officer to enter and seize that evidence. That second entry does not violate any intact expectation of privacy, as the item in question has already been viewed, even though it has not yet been physically seized.

In the State's version, though, the only question is whether the first officer was legally in the residence at any point. If so, the State suggests, a later officer can go into other portions of the residence and seize any incriminating items in plain view of that second officer. The State asserts:

> Defendant focuses on the word "encountered" as used in *Hutchinson* to suggest that any item of evidence that is

> subject to the continuation doctrine must be actually seen and noted by the officer on initial entry. (Def. Br. 100-02.) This suggestion is counter to the core tenet behind the continuation doctrine, that the later entry is nothing more than a continuation of the earlier lawful entry. That is, the later arriving officers are in a place they are lawfully entitled to be when they enter the home.

State's Brief at 43-44. This argument is wrong.

This position is contrary to *Mincey*, 437 U.S. at 394, as it would serve to establish a "murder scene exception" to the warrant requirement -- so long as one officer discovered a murder in a residence, other officers could enter into the residence at any time to look for additional evidence. Similarly, it is directly contrary to Tennessee precedent. The State criticizes Mr. Guy for "focus[ing]" on the word "encountered," yet such focus is necessary as it is part of the legal test as established by the Tennessee Supreme Court. The State cannot simply delete words from the legal test. In any event, those words were intentionally chosen by the Court. In *Hutchison*, the Court explained the rationale for the doctrine:

> [W]hen a law enforcement officer enters private premises in response to a call for help, and during the course of responding to the emergency observes but does not take into custody evidence in plain view, a subsequent entry shortly thereafter, by detectives whose duty it is to process evidence, constitutes a mere continuation of the original entry.

482 S.W.3d at 919. Thus, the doctrine applies only when the first officer "observes but does not take into custody evidence in plain view," and a subsequent officer then seizes that evidence. That is, the evidence in question must be "encountered" by the initial officer, or else the doctrine

simply has no relevance. The State's attempt to rewrite *Hutchison* to eliminate this requirement should be rejected.[2] If the first officers did not observe the backpack, the knife, and the receipt -- and the State introduced no evidence at the hearing that they do so -- then the State cannot rely on the continuation doctrine to justify their seizure by later-arriving officers.[3] This later-seized evidence should have been suppressed.

V. THE STATE HAS NOT ESTABLISHED THAT ANY POLICY JUSTIFIED AN INVENTORY SEARCH THAT INVOLVED READING INDIVIDUAL PAGES OF A NOTEBOOK.

After seizing the backpack, law enforcement apparently took it to the City County Building for further examination. There, it was opened, a notebook was removed, and the pages of the notebook were viewed (and

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[2] The State criticizes Mr. Guy for "his incorrect assertion that the State needed to prove that the item was viewed by an officer on initial entry rather than by an officer who was lawfully in the home during the continuation of the initial entry." *See State's Brief* at 45. That is indeed exactly what is required by the Tennessee Supreme Court.

[3] As to the backpack, the State asserts that, at one point in the body camera video, the backpack was visible for a few seconds. *See State's Brief* at 43. Yet the question is not whether a camera saw a piece of evidence, but whether an officer did so. An officer might well be looking somewhere other than where his body camera is pointed. If indeed the Officer Graves saw the backpack, it would have been trivially easy for the State to establish that fact by asking him about it at the hearing. Yet it did not do so, even though he testified. Particularly here, the State's burden of establishing exceptions to the warrant requirement cannot be met by assumption or speculation.

subsequently photocopied). This evidence formed the backbone of the State's case, relied on throughout the case for evidence of Mr. Guy's supposed motives and premeditation. As argued above, law enforcement should never have entered the house. Further, even if the initial officers properly entered the house, the seizure of the backpack by subsequent officers was not justified. But even if those arguments are both rejected, law enforcement had no legal justification for reading the notebook.

Mr. Guy argued in his brief-in-chief that the examination of the notebook was offered in the absence of any proof that it was discovered pursuant to a standard inventory search (the State's proffered justification). *Brief* at 108-113. The State disagrees. It points to two passages of the transcript as establishing the inventory search exception:

> At the suppression hearing, Detective McCord testified that the backpack was collected by an officer from the forensics division and was inventoried at the City County Building as part of the forensics divisions responsibilities. (VII, 175, 179.) He further testified that it was "typical procedure" for seized items to be inventoried in this manner. (VII, 134-35.) In other words, McCord testified that the established routine of the relevant law enforcement agency was for the forensics division to inventory seized evidence after it had been taken to the City County Building. The trial court accredited McCord's testimony and determined that the search of the backpack and notebook were within the scope of this inventory. (III, 357-58.)

State's Brief at 49.

This testimony identified by the State is far too slight to establish the legal prerequisites for an inventory search. Det. McCord said, for

example, that the backpack was "collected and inventoried … by other forensic officers," and that this was "typical procedure." Vol. 7/135-136. He repeated later that he "believe[d]" that a "forensic tech did an inventory," and that "They did an inventory of the backpack." Vol. 7/175. He also agreed that the backpack was not examined at the scene, but that "as part of the forensic division's responsibility," it was "inventoried at the City County Building." Vol. 7/179. That was the sum total of the testimony regarding an inventory search policy. It was not enough

There were two crucial questions necessary for establishing a permissible inventory search of the notebook. First, was it consistent with Knox County Sheriff's Department's inventory policy for a forensic technician to open a backpack to make a list of the items within that backpack? Second, in making an inventory of items in a backpack, including a notebook, was it consistent with policy to examine individual pages of the notebook -- *i.e.*, not merely to document the presence of a notebook but to open it and read its contents? Perhaps Det. McCord's testimony could be read to provide an affirmative answer on the first question, although the State still failed to provide any specifics of the actual policy. But even so, the State introduced no evidence whatsoever -- by Det. McCord, by written policy, by the forensic technician -- that it would be consistent with inventory search policy to open a notebook and read its contents. Det. McCord never even claimed that policy authorized such a step, and no such policy was introduced. Absent any such information, the State did not carry its burden of proof of establishing

that the perusal of the notebook's contents fell under the inventory search exception to the warrant requirement.

To look at it another way, the trial court approved the search on the grounds that it was "reasonable for the officers to look at the books inside the backpack to determine the ownership of the property and if there was valuable property inside the books and notebooks." R.358. Yet there was no testimony or other evidence that: (a) the Sheriff's Department had any policy authorizing the examination of books to determine ownership and/or the presence of valuables; or (b) that a forensic technician discovered the incriminating pages of the notebook while actually determining ownership and/or the presence of valuables. It is not enough for the trial court to find that some hypothesized policy would have been reasonable; rather, the State must establish that the policy actually existed and was followed. The record is silent on those points, which the State had the burden of establishing. This narrow exception was thus not established, and suppression was required.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

I, Jonathan Harwell, hereby certify that the foregoing brief complies with the requirements of Tenn. Supreme Court Rule 46 governing e-filing. It has been prepared in 14-point Century Schoolbook font and contains a total of 7,106 words in the main text (excluding tables and certificates). A motion for leave to file an overlong brief is being filed herewith.

JONATHAN HARWELL