[Cite as *State v. Helmbright,* 2013-Ohio-1143.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, [City of Columbus],	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-1080 (M.C. No. 2011 ERB 070027)
Robert Helmbright,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
State of Ohio, [City of Columbus],	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-1081 (M.C. No. 2011 ERB 070666)
Robert Helmbright,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 26, 2013

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker,* City Prosecutor, *Melanie R. Tobias*, and *Orly Ahroni*, for appellee.

Shaw & Miller, and *Mark J. Miller*, for appellant.

APPEALS from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Defendant-appellant, Robert Helmbright ("defendant"), appeals from two judgments of the Franklin County Municipal Court, finding him guilty of 11 counts of cruelty against companion animals in violation of R.C. 959.131. Because (1) reasonable

grounds existed to support the initial, warrantless search of defendant's property, and (2) the trial court did not err in failing to merge defendant's multiple convictions for sentencing, we affirm.

I. FACTS & PROCEDURAL HISTORY

{¶ 2} On February 4, 2011, plaintiff-appellee, City of Columbus ("City"), filed one complaint against defendant in case No. 2011 ERB 070027, charging defendant with one count of cruelty against a companion animal, a misdemeanor of the second degree. The complaint alleged that, on or about January 31, 2011, defendant negligently tortured an animal under his care through an omission to act and neglect, by failing to provide proper medical treatment to an adult male cat with a severe upper respiratory infection, in violation of R.C. 959.131(C)(1). On March 18, 2011, the City filed ten complaints against defendant in case No. 2011 ERB 070666, charging defendant with ten counts of cruelty against companion animals, misdemeanors of the second degree. The ten complaints alleged that, on or about January 31, 2011, defendant negligently deprived ten different cats under his care with proper medical treatment or necessary sustenance, in violation of R.C. 959.131(C)(1) or (2). The complaints alleged that five cats suffered from upper respiratory infections, four cats were 30 percent underweight, and one cat was 40 percent underweight.

{¶ 3} The facts giving rise to the complaints began on January 27, 2011 when defendant's probation officer, Bryan Wagner, received an anonymous tip reporting several dead animals on defendant's property. Upon receiving the anonymous tip, Probation Officer Wagner reviewed the conditions of defendant's probation, noting that defendant was indeed on probation at the time, and that a condition of defendant's probation authorized Wagner or agents from the Capital Area Humane Society to randomly inspect defendant's property. Another condition of defendant's probation prohibited defendant from "own[ing], keep[ing] or harbor[ing] any pets or animals during his period of probation." (Suppression Hearing Tr. 6.)

{¶ 4} Probation Officer Wagner contacted the Capital Area Humane Society and requested that Capital Area Humane Society agents ("agents") inspect defendant's property. On the afternoon of January 28, 2011, two agents, Shaun Powers and Delores

Shapiro, went to defendant's house. The agents parked their car in the driveway, walked up to defendant's front door, and knocked. Although no one answered the door, the agents heard dogs barking inside defendant's house. The agents walked to the back of the house where they found several dead cat bodies in opaque bags and pet carriers. The agents also saw an underweight cat in a window of the house, and a healthy looking Dalmatian dog in the sunroom of the house.

{¶ 5} On January 31, 2011, Agent Powers sought and received a warrant authorizing him to search defendant's property. The affidavit in support of the warrant detailed the anonymous tip, the six animal bodies the agents discovered in the backyard of defendant's property, the underweight cat in the window, and the dog in the sunroom. (State's exhibit No. 1.) The affidavit also noted that, based on these findings, the owner of the premises was likely in violation of his probation. Agent Powers and two sheriff's deputies executed the search warrant on January 31, 2011. They recovered "40 dead animals along with 26 live animals" from the property. (Sentencing Hearing Tr. 18.)

{¶ 6} Defendant filed motions to suppress in both cases, asserting that the trial court should suppress the evidence obtained from the search of his home as the affidavit in support of the search warrant was insufficient to establish probable cause. Defendant alleged the affidavit was insufficient because it did not contain any personal observations of acts of cruelty toward companion animals, noting that the cats found behind the house could have died from natural causes. The City filed memoranda contra the motions to suppress.

{¶ 7} On November 29, 2011, the trial court held a hearing on the motions to suppress. Following the presentation of evidence, defense counsel advanced an argument, "not include[d] in [the written] motion" to suppress. (Suppression Hearing Tr. 49.) Counsel asserted that, while a probation officer may conduct a warrantless search of a probationer's home when the officer has a reasonable suspicion of criminal activity, Probation Officer Wagner and the agents did not possess "reasonable, articulable suspicion of criminal activity to go to [defendant's] back yard in the first place based on an anonymous tip." (Suppression Hearing Tr. 49.) The trial court overruled the oral motion to suppress, noting that "[a]s far as the reasonable, articulable suspicion argument, the

Court disagrees and feels there was reasonable, articulable suspicion." (Suppression Hearing Tr. 52-53.) The court also overruled the written motion to suppress, finding the information in the search warrant affidavit sufficient to support a finding of probable cause.

{¶ 8} On December 6, 2011, defendant entered no contest pleas to all of the charges. The court accepted defendant's no contest pleas, and found defendant guilty on all 11 counts. Defense counsel requested that the court merge the convictions for sentencing, and the trial court denied the request. The court sentenced defendant to a total jail term in both cases of 90 days, noting that defendant had 20 days of jail-time credit. The court suspended the remaining 70 days, placing defendant on community control for 5 years.

II. ASSIGNMENTS OF ERROR

{¶ 9} Defendant appeals, assigning the following errors:

> 1. The issue relating to Appellant's First Assignment of Error is whether the trial court erred in denying the Appellant's motion to suppress because the State lacked reasonable articulable suspicion to search the Appellant's property because the search was based solely on an anonymous, uncorroborated tip.
>
> 2. The trial court erred in denying Appellant's motion to suppress the search of his home, as the search warrant affidavit lacked sufficient information to establish probable cause.
>
> 3. The trial court erred in failing to merge Appellant's ten counts of prohibitions concerning companion animals under Ohio Revised Code §§ 1717.01 and 959.131.

III. MOTION TO SUPPRESS

{¶ 10} Defendant's first assignment of error asserts the trial court erred in denying his oral motion to suppress because the anonymous, uncorroborated tip reporting dead animals on his property was insufficient to establish reasonable, articulable suspicion to support the initial, warrantless search.

{¶ 11} "[A]ppellate review of a trial court's decision regarding a motion to suppress evidence involves mixed questions of law and fact." *State v. Vest*, 4th Dist. No. 00CA2576

(May 29, 2001). Thus, an appellate court's standard of review of the motion to suppress is two-fold. *State v. Reedy*, 10th Dist. No. 05AP-501, 2006-Ohio-1212, ¶ 5, citing *State v. Lloyd*, 126 Ohio App.3d 95, 100-01 (7th Dist.1998). When considering a motion to suppress, the trial court assumes the role of trier of fact, and therefore is in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. As a result, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.* Then, the appellate court must independently determine whether the facts satisfy the applicable legal standard, pursuant to a de novo review and without giving deference to the conclusion of the trial court. *Id.*

{¶ 12} For the reasons that follow, we need not determine whether the anonymous tip was sufficient to create reasonable suspicion to support the warrantless search. No party disputes that defendant was on probation on January 28, 2011 when the agents went to defendant's house, knocked on his front door, and proceeded to search the backyard. Defendant's probation required that he submit to "[r]andom inspections by the Capital Area Humane Society * * * or [his] probation officer." (Suppression Hearing Tr. 7.) *See State v. Benton*, 82 Ohio St.3d 316 (1998), syllabus; but *compare United States v. Knights*, 534 U.S. 112, 120-21 (2001).

{¶ 13} Even absent defendant's consent to the search as a condition of his probation, the search at issue was constitutional. The agents' initial entrance onto defendant's property did not implicate any Fourth Amendment considerations. After the agents lawfully entered onto defendant's property, the agents knocked on defendant's door and heard dogs barking. The barking dogs provided the agents with reasonable grounds on which to conduct a warrantless search of defendant's property.

{¶ 14} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution ensures the right of the people to be secure in their homes against unreasonable searches and seizures, absent a warrant issued upon probable cause. The Fourth Amendment's protection against warrantless home entries extends to the "curtilage" of an individual's home. *United States v. Dunn*, 480 U.S. 294, 300 (1987). The curtilage of a home is the area " '[s]o intimately tied to the home itself

that it should be placed under the home's "umbrella" of Fourth Amendment protection.' " *State v. Payne*, 104 Ohio App.3d 364, 368 (12th Dist.1995), quoting *Dunn* at 301. The central inquiry is "whether the area harbors the 'intimate activity associated with the sanctity of a man's home and the privacies of life.' " *Dunn* at 300, quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984), quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886).

{¶ 15} Because police have no greater rights on another's property than any other visitor has, "it has been held that the only areas of the curtilage where officers may go are those impliedly open to the public. This area includes walkways, driveways, or access routes leading to the residence." *State v. Birdsall*, 6th Dist. No. WM-09-016, 2010-Ohio-2382, ¶ 13, citing *State v. Dyreson*, 104 Wash.App. 703 (Wash.App.2001); *State v. Pacheco*, 101 S.W.3d 913, 918 (Mo.App.2003); *State v. Johnson*, 171 N.J. 192 (N.J.2002). *See also State v. Swonger*, 10th Dist. No. 09AP-1166, 2010-Ohio-4995, ¶ 15 (noting that the "porch of a residence has been held to be a public place for purposes of Fourth Amendment analysis"); *State v. Tallent*, 6th Dist. No. L-10-1112, 2011-Ohio-1142, ¶ 14 (finding that "[u]nless a property owner has made express orders to the contrary regarding possible trespass * * * anyone [may] openly and peaceably walk up to the front door of a man's 'castle' with the honest intent to ask questions, whether the questioner be a pollster, salesman, or police officer"); *State v. Cook*, 5th Dist. No. 2010-CA-40, 2011-Ohio-1776, ¶ 67 (finding the officers "were permitted to go [to] the location, drive into the driveway and walk up to the front door for the purpose of talking to the occupants"). Thus, "police officer on legitimate business may go where any 'reasonably respectful citizen' may go." *Birdsall* at ¶ 13, citing *Dyreson*.

{¶ 16} When Agents Powers and Shapiro went to defendant's house on the afternoon of January 28, 2011, they drove their vehicle into "the driveway, put the vehicle in park, approached the front door, [and] knocked on the front door." (Suppression Hearing Tr. 16.) In doing so, the agents acted much as any reasonably respectful citizen might, by entering onto those areas of the curtilage which are impliedly open to the public. Accordingly, the anonymous tip is irrelevant to the agents' initial entrance onto defendant's property. *See Birdsall* at ¶ 16 (finding that by "entering appellant's property

and knocking on the garage door [the officer] was acting much like any 'reasonably respectful citizen' would[,]" rendering the "information [the officer] received from an uncorroborated anonymous tip * * * irrelevant").

{¶ 17} After the agents knocked on defendant's front door they heard "numerous dogs barking inside the house." (Suppression Hearing Tr. 17.) The dogs were a clear violation of defendant's probation, which required that he "not own, keep or harbor any pets or animals during the period of his probation." (Suppression Hearing Tr. 6.) As such, the agents were entitled to conduct a warrantless search of defendant's property.

{¶ 18} In order for a search or seizure to be reasonable under the Fourth Amendment, it must be based upon probable cause and executed pursuant to a warrant, unless an exception to the warrant requirement is applicable. *State v. Moore,* 90 Ohio St.3d 47, 49 (2000). "Because the Fourth Amendment's ultimate touchstone is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Brigham City, Utah v. Stuart*, 547 U.S. 398 (2006), syllabus.

{¶ 19} Exceptions to the warrant requirement exist "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.' " *Griffin v. Washington*, 483 U.S. 868, 873 (1987), quoting *New Jersey v. T.L.O.,* 469 U.S. 325, 351 (1985) (Blackmun, J., concurring in judgment). "A State's operation of a probation system, * * * presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." *Id.* at 873-74. Because probation is a criminal sanction imposed after a verdict, finding, or guilty plea, "probationers * * * do not enjoy 'the absolute liberty to which every citizen is entitled, but only * * * conditional liberty properly dependent on observance of special [probation] restrictions.' " *Id.* at 874, quoting *Morrissey v. Brewer,* 408 U.S. 471, 480 (1972). Thus, a search of a probationer's residence is " 'reasonable' within the meaning of the Fourth Amendment because it was conducted pursuant to a valid regulation governing probationers." *Id.* at 880.

{¶ 20} Ohio has enacted a valid regulation governing probationers. R.C. 2951.02(A) provides:

> During the period of a misdemeanor offender's community control sanction * * *, authorized probation officers who are

> engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the offender, [or] the place of residence of the offender * * * if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the misdemeanor offender's community control.

See also R.C. 2967.131(C) (authorizing warrantless searches of individuals under the supervision of the adult parole authority if "field officers have reasonable grounds to believe that the individual or felon * * * is not abiding by the law, or otherwise is not complying with the terms and conditions of the individual's or felon's conditional pardon, parole, transitional control, other form of authorized release, or post-release control"). Thus, a warrantless search, pursuant to R.C. 2951.02(A), complies with the Fourth Amendment if the officer who conducts the search possesses "reasonable grounds" to believe that the probationer has failed to comply with the terms of their probation. *See State v. Smith*, 5th Dist. No. 2011CA00140, 2011-Ohio-6872, ¶ 11. *See also Knights* at 121 (finding that "[w]hen an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable").

{¶ 21} The reasonable grounds standard does not mandate the level of certainty required to establish probable cause. "Rather, the Fourth Amendment's reasonableness requirement for warrantless searches of" parolees or probationers "is satisfied if the information provided to the searching officer 'indicates * * * only the likelihood * * * of facts justifying the search.' " *Helton v. Ohio Adult Parole Auth.*, 10th Dist. No. 00AP-1108 (June 26, 2001), quoting *State v. Howell*, 4th Dist. No. 97CA824 (Nov. 17, 1998). Ohio's reasonable grounds standard mirrors the federal reasonable suspicion standard, which requires officers to possess " ' "articulable reasons" and "a particularized and objective basis for suspecting the particular person," ' " based on a totality of the circumstances. *State v. Jackson*, 5th Dist. No. 2012-CA-20, 2012-Ohio-5548, ¶ 41, quoting *United States v. Payne*, 181 F.3d 781, 788 (6th Cir.1999), citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981).

{¶ 22} When the dogs began to bark after the agents knocked on defendant's front door, the agents had reasonable grounds to believe that defendant was not complying with his probation, and the agents were authorized to conduct a warrantless search of defendant's property. Accordingly, the trial court did not err in overruling defendant's oral motion to suppress. Moreover, because the barking dogs provided the agents with reasonable grounds on which to conduct the search, we need not determine whether the anonymous tip was also sufficient to provide the authorities with reasonable grounds on which to authorize the search.

{¶ 23} Defense counsel conceded at oral argument that, if this court found reasonable grounds to support the initial warrantless search, we need not address defendant's second assignment of error regarding the sufficiency of the search warrant affidavit. As our analysis above indicates, because the agents had reasonable grounds to believe defendant was violating his probation, R.C. 2951.02(A) permitted the agents to conduct a warrantless search of defendant's home. Accordingly, our disposition of defendant's first assignment of error renders defendant's second assignment of error moot.

{¶ 24} Based on the foregoing, defendant's first assignment of error is overruled, rendering defendant's second assignment of error moot.

IV. THIRD ASSIGNMENT OF ERROR—MERGER

{¶ 25} Defendant's third assignment of error asserts the trial court erred in failing to merge the ten counts for cruelty against a companion animal in case No. 2011 ERB 070666. Defendant moved for merger at the sentencing hearing asserting that, because "the alleged conduct occurred on January 31st, 2011, * * * it's all part of the same course of conduct with the same animals." (Sentencing Hearing Tr. 19-20.) The court concluded the charges were not subject to merger, as there were "clearly 11 animals that were affected under these statutes." (Sentencing Hearing Tr. 25.)

{¶ 26} R.C. 2941.25(A) provides that, where a defendant's same conduct "can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." Where, however, "the defendant's conduct constitutes two or more offenses

of dissimilar import" or "results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them." R.C. 2941.25(B). R.C. 2941.25 is a legislative attempt "to codify the judicial doctrine of merger, i.e., the principle that 'a major crime often includes as inherent therein the component elements of other crimes and that these component elements, in legal effect, are merged in the major crime.' " *State v. Brown,* 119 Ohio St.3d 447, 2008-Ohio-4569, ¶ 42, quoting *State v. Botta*, 27 Ohio St.2d 196, 201 (1971).

{¶ 27} In *State v. Johnson,* 128 Ohio St.3d 153, 2010-Ohio-6314, the Supreme Court of Ohio reviewed and revised the analysis courts employ to determine whether offenses are allied offenses of similar import under R.C. 2941.25. *See Id.* at ¶ 40 (summarizing the allied offenses jurisprudence prior to *Johnson*). The court held that, when determining whether two offenses "are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered." *Id.* at syllabus. *Johnson* thus overruled *State v. Rance,* 85 Ohio St.3d 632 (1999) to the extent *Rance* instructed courts to compare the statutory elements of the two offenses in the abstract. *Johnson* at ¶ 44. Under *Johnson,* "the court need not perform any hypothetical or abstract comparison of the offenses at issue in order to conclude that the offenses are subject to merger." *Id.* at ¶ 47. Rather, the court simply must ask whether the defendant committed the offenses by the same conduct. *Id.*

{¶ 28} Accordingly, in analyzing defendant's conduct, we ask "whether it is possible to commit one offense *and* commit the other with the same conduct, not whether it is possible to commit one *without* committing the other." (Emphasis sic.) *Id.* at ¶ 48, citing *State v. Blankenship*, 38 Ohio St.3d 116, 119 (1988) (Whiteside, J., concurring). If the offenses are of similar import because the defendant committed them through the same conduct, the court then must ask whether the offenses were committed separately or with a separate animus. *Id.* at ¶ 49-51. "[A] reviewing court should review the trial court's R.C. 2941.25 determination de novo." *State v. Williams*, _____ Ohio St.3d _____, 2012-Ohio-5699, ¶ 1.

{¶ 29} Defendant contends that because the complaints to which he pled no contest each stated that he "committed all of the acts in question at the same time on January 31, 201[1]," the temporal restriction in the complaints "suggest[s] that each of the offenses was the result of the same conduct." (Appellant's brief, at 10.) We note that each complaint alleges that defendant negligently tortured the listed companion animal "*on or about* the 31st day of January, 2011." (Emphasis added.) *See* Complaints. Thus, the complaints assert that defendant's conduct occurred around the time of January 31, 2011, and not solely on that date.

{¶ 30} The complaints charge defendant with negligently failing to provide care or sustenance to the specific animal listed in each complaint. *See* R.C. 959.131(C)(1) and (2); R.C. 1717.01(B). Defendant asserts that he "did not fail to provide care to one animal and then fail to provide care to another animal," rather, it was the "same course of conduct * * * which led to the deprivation of all the animals at the same time." (Appellant's brief, at 10.) The City responds, noting that "[i]n the context of cruelty to animal cases, courts have held that each animal constitutes a separate victim, and thus, there is a separate animus as to each offense." (Appellee's brief, at 32.) We agree with the City.

{¶ 31} The City cites *State v. Chamberlain*, 12th Dist. No. CA99-01-003 (Jan. 31, 2000), *State v. Lapping*, 75 Ohio App.3d 354, 364 (11th Dist.1991), and *State v. Myers*, 9th Dist. No. 3078-M (Apr. 4, 2001) in support of its contention that a separate animus existed for each animal affected by defendant's conduct. In *Chamberlain*, the defendant, an operator of a kennel, "was charged with eleven counts of cruelty to animals in violation of R.C. 959.13. Each count concerned [the defendant's] actions or omissions toward a separate dog." *Id.* The court concluded the defendant's conduct constituted "multiple offenses of dissimilar import" because her "reckless conduct toward each animal provide[d] a separate animus for each crime." *Id.* Although the defendant "engaged in a single extenuated course of recklessness, each dog [was] a different victim." *Id. See also Myers* (finding because there were multiple "different animals which were victims of the Defendant's actions, there exists sufficient separate animus to sustain convictions on" each count); *State v. Jones*, 18 Ohio St.3d 116 (1985) (finding the defendant could be sentenced for two counts of aggravated vehicular homicide, although both counts arose

from one accident where two individuals died, because the charges were of "dissimilar import—the 'import' under R.C. 2903.06 being each person killed"); *Lapping* (relying on *Jones* to conclude that that the defendant's 28 convictions for cruelty to animals should not merge). *Compare State v. Bybee*, 134 Ohio App.3d 395, 401 (1st Dist.1995) (finding the defendant's six convictions for cruelty to animals were allied offenses of similar import because the "offenses were part of the same continuing pattern of neglect," but not considering whether a separate animus existed for each animal).

{¶ 32} "Where a defendant's conduct injures multiple victims, the defendant may be convicted and sentenced for each offense involving a separate victim." *State v. Angus*, 10th Dist. No. 05AP-1054, 2006-Ohio-4455, ¶ 34. In *Angus*, this court concluded that a defendant's two convictions under R.C. 959.131(C)(2), for negligently depriving his two dogs of necessary sustenance, should not merge because the defendant "committed crimes that involved two separate victims." *Id.* at ¶ 35. As such, "[s]entencing on each offense [was] authorized by R.C. 2941.25(B)." *Id.*

{¶ 33} Defendant contends that *Chamberlain*, *Lapping*, and *Myers* "are no longer applicable," as they were all decided before the Supreme Court's decision in *Johnson*. (Reply brief, at 7.) In *Johnson*, the Supreme Court revised the allied offenses analysis by removing the first step of the analysis, which had required trial courts to compare the elements of the charged offenses in the abstract. The *Johnson* decision did not affect the second step of the analysis, which has always required courts to consider whether the offenses were committed separately or with a separate animus. *See Williams* at ¶ 22 (noting that "*Johnson* concern[ed only] the first *Blankenship* factor," and did not affect the second factor, requiring courts to determine whether the acts occurred separately or with a separate animus); *State v. Edwards*, 6th Dist. No. WD-11-078, 2013-Ohio-519, ¶ 14 (noting that a case decided prior to *Johnson* was still good law where "its analysis rested on the proposition that allied offenses do not merge when they are committed with a separate animus," a proposition "reaffirmed by the court in *Johnson*"). Accordingly, the above cases, finding that a separate animus attaches to each animal harmed by a defendant's conduct under R.C. 959.131, were not implicitly overruled by the *Johnson* decision.

{¶ 34} In case No. 2011 ERB 070666, defendant's omittance and neglect resulted in ten different injuries to ten different cats. Even if defendant committed the offenses at issue through the same conduct, a separate animus existed for each animal defendant harmed by his conduct. As such, the trial court properly refused to merge defendant's convictions under R.C. 2941.25. *Compare Johnson* at ¶ 15, quoting 1973 Legislative Service Commission comments to 1972 Am.Sub.H.B. No. 511 (explaining that " 'a thief who * * * steals different property from three separate victims in the space, say, of 5 minutes, can be charged with and convicted of all three thefts' " because " 'the same offense is committed three different times, and in the second instance the same offense is committed against three different victims, i.e. with a different animus as to each offense' "); *State v. Crisp*, 4th Dist. No. 10CA3404, 2012-Ohio-1730, ¶ 36 (finding that "[i]n situations where a defendant has knowledge that more than one victim could be harmed, courts have concluded there is a separate animus for each victim at risk").

{¶ 35} Lastly, defendant contends that "the trial court should not have compared this case to a case involving human victims," because "in the eyes of the law, companion animals are considered personal property." (Appellant's brief, at 10.) *See* R.C. 955.03 (finding that dogs "shall be considered as personal property and have all the rights and privileges and be subject to like restraints as other livestock"). In denying defendant's motion for merger, the trial court analogized the present case to a case involving charges for assault and domestic violence ("DV"). The court explained that, where a defendant is charged with assault and DV against three different victims, "you can only sentence on one assault, one assault, one assault, or one DV, one DV, and one DV. You have a victim in each; they don't merge." (Sentencing Hearing Tr. 25.) The court then held that, as each complaint concerned a different animal harmed by defendant's conduct, the charges should not merge.

{¶ 36} The trial court did not err in its analogy. While companion animals may be considered personal property, R.C. 959.131(C) creates a chargeable offense against any person who negligently commits an act of cruelty against a companion animal. Accordingly, a companion animal is the victim of a defendant's conduct under R.C. 959.131, much as a person may be the victim of a defendant's conduct under R.C. 2903.13

(assault) or R.C. 2919.25 (DV). *Compare State v. Snuffer*, 8th Dist. No. 96480, 2011-Ohio-6430, ¶ 4, quoting *State v. Phillips*, 75 Ohio App.3d 785, 790 (2d Dist.1991), citing *State v. Jones*, 18 Ohio St.3d 116, 118 (1985) (noting that " '[w]hen an offense is defined in terms of conduct towards another, then there is a dissimilar import for each person affected by the conduct' ").

{¶ 37} Based on the foregoing, defendant's third assignment of error is overruled.

{¶ 38} Having overruled defendant's first and third assignments of error, and rendering defendant's second assignment of error moot, we affirm the judgments of the Franklin County Municipal Court.

Judgments affirmed.

BROWN and SADLER, JJ., concur.