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November 22, 2014 (/full-blog/darrensmith)

A Horse! A Horse! My Fourth Amendment Right for a Horse! (/full-blog/darrensmith)

Equine (/full-blog?category=Equine), Impact! (/full-blog?category=Impact%21)

By: Darren Smith, Staff Member

In the recent case of *State v. Fessenden*, the Supreme Court of Oregon held that a police officer did not violate a person's Fourth Amendment right to be free from unreasonable search and seizure when the officer entered private property, without a warrant, in order to seize an emaciated horse and take it to a veterinarian for treatment.^[i] In upholding the two defendants' convictions for animal abuse and animal neglect, the court concluded that the officer acted lawfully because he had probable cause to believe the crime of animal neglect was occurring and he reasonably believed immediate action was necessary to prevent further harm to the horse.^[ii] Acting on a call from the two defendants' neighbor, the officer had observed the horse on the defendant's property from the driveway, noticing that "the horse's backbone protruded, her withers stood up, her neck was thin, all of her ribs were visible, she had no visible fatty tissue in her shoulders, and she was 'swaying a little bit.'"^[iii] Observance of the horse's condition, partnered with the belief that acquisition of a warrant to enter the defendants' property would take between four to eight hours, led the officer to exercise no hesitation in entering the property.^[iv]

The question left for the court to decide was which of Oregon's two recognized exceptions to the protection against warrantless search and seizure—"emergency aid" or "exigent circumstances"—allowed for the officer to enter private property without a warrant to provide aid to the horse.^[v] The Supreme Court of Oregon had previously articulated the emergency aid exception as requiring that officers "have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to [] render immediate aid to persons...who are imminently threatened with suffering[] serious physical injury."^[vi] Likewise, the exigent circumstances



(<http://www.examiner.com/article/animal-control-investigate-severely-emaciated-horse-abandoned-on-los-angeles-street>)

exception has been laid out in Oregon as “a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect’s escape or the destruction of evidence.”^[vii] The key difference between the two is that the exigent circumstances exception requires probable cause along with the exigency while the emergency aid exception only requires a reasonable belief that entry is necessary to deliver aid to a person who is in imminent danger.^[viii]

The trial court and the court of appeals found that both exceptions applied to the present facts.^[ix] In concluding that the emergency aid exception applied, the lower courts effectively placed horses in the class of “persons” who merit warrantless aid by a police officer.^[x] The Oregon Supreme Court, in contrast, only touched upon the exigent circumstances exception, reasoning that Oregon case law clearly demonstrates that the obstruction of ongoing crime (in this case, animal abuse) is a justification for the exigent circumstances exception and that the officer in this case had probable cause.^[xi] The court deemed it unnecessary to address whether the emergency aid exception applied and left the question for a different day.^[xii] While this case demonstrates that the abuse of horses provides a Fourth Amendment exception in the form exigent circumstance in Oregon, the question is still to be decided whether that state’s highest court will recognize horses as “persons” under the emergency aid exception.

[i] See *State v. Fessenden*, 333 P.3d 278, 279 (Or. 2014).

[ii] *Id.*

[iii] *Id.* at 280.

[iv] *Id.*

[v] *Id.* at 280-81.

[vi] *Id.* at 281 (citing *State v. Baker*, 260 P.3d 476, 649 (Or. 2011) (internal citation omitted).

[vii] *Id.* at 282 (citing *State v. Stevens*, 806 P.2d 92 (Or. 1991).

[viii] *Id.*

[ix] *Id.* at 281.

[x] *Id.*

[xi] *Id.* at 285-88.

[xii] *Id.* at 287.

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Criminal cases are cases in which the State is the main complainant. Yes, it's a good compliment that the amendment right for a horse. Because we all have an equal right of law so the horse can be added in criminal defense.

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