

FILED: September 25, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

TERESA ANN DICKE,
Defendant-Appellant.

Douglas County Circuit Court
10CR2251MI

A150092

George William Ambrosini, Judge.

Argued and submitted on June 18, 2013.

Erin Galli argued the cause for appellant. With her on the brief was Chilton & Galli, LLC.

Pamela J. Walsh, Assistant Attorney General, argued the cause for respondent. With her on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Affirmed.

1 PER CURIAM

2 Defendant was charged with first-degree animal neglect, ORS 167.330, and
3 first-degree animal abuse, ORS 167.320, in association with having allowed her horse to
4 become so severely emaciated that it was at imminent risk of dying. Before trial,
5 defendant moved to suppress evidence that was obtained through a warrantless seizure of
6 the horse. The trial court denied that motion and defendant was convicted of the charged
7 crimes. On appeal, defendant argues that the trial court erred by denying her suppression
8 motion; according to defendant, the warrantless seizure of her horse violated both Article
9 I, section 9, of the Oregon Constitution and the Fourth Amendment to the United States
10 Constitution.

11 We reject defendant's state constitutional argument for the same reasons
12 that we rejected a similar argument raised by her codefendant, Fessenden. *See State v.*
13 *Fessenden*, ___ Or App ___, ___ P3d ___ (Sept 25, 2013).

14 Defendant's federal constitutional argument fares no better. Warrantless
15 searches and seizures pass Fourth Amendment muster when conducted "to assist persons
16 who are seriously injured or threatened with such injury." *Brigham City v. Stuart*, 547
17 US 398, 404, 126 S Ct 1943, 164 L Ed 2d 650 (2006). Other courts have held that,
18 although the United States Supreme Court has described that exception to the warrant
19 requirement in terms of protecting people, the exception reasonably extends to the
20 protection of animals under certain circumstances. *See, e.g., Davis v. State*, 907 NE2d
21 1043, 1050 (Ind Ct App 2009) ("[C]ircumstances of animal cruelty may create exigent

1 circumstances to permit a warrantless search of the curtilage."); *Morgan v. State*, 289 Ga
2 App 209, 212, 656 SE2d 857, 860 (2008) (an exigency exception to the warrant
3 requirement exists "where a police officer reasonably believes that an animal on the
4 property is in need of immediate aid due to injury or mistreatment"); *Brinkley v. County*
5 *of Flagler*, 769 So2d 468, 472 (Fla Dist Ct App 2000) (the apparent distress of a large
6 number of dogs made it reasonable to conclude "that an urgent and immediate need for
7 protective action was warranted," which justified a warrantless entry onto property). We
8 agree.

9 In *Fessenden*, we held that, under Article I, section 9,

10 "a warrantless search or seizure is justified when law enforcement officers
11 have an objectively reasonable belief, based on articulable facts, that the
12 search or seizure is necessary to render immediate aid or assistance to
13 animals that have suffered, or which are imminently threatened with
14 suffering, serious physical injury or cruel death, unless that injury or death
15 is being inflicted lawfully."

16 ___ Or App at ___ (slip op at 13). We conclude that the same circumstances justify a
17 warrantless search or seizure under the Fourth Amendment; we also conclude that such
18 circumstances existed in this case. *See id.* at ___ (describing facts that led to the
19 warrantless seizure of the horse) (slip op at 1-7). Accordingly, the trial court did not err
20 when it denied defendant's motion to suppress.

21 Affirmed.