IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Respondent on Review v. **TERESA ANN DICKE**, Defendant-Appellant, Petitioner on Review	Douglas County case number 10CR2251MI A150092 S061770

PETITIONER'S CORRECTED BRIEF ON THE MERITS

Reviewing the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for Multnomah County, Honorable George William Ambrosini, Judge.

Per curiam opinion filed September 25, 2013.

Ortega, Presiding Judge
Sercombe, Judge
Hadlock, Judge

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QUESTIONS PRESENTED

First Question Presented: Does the emergency-aid exception to the warrant requirement extend to animals?

First Proposed Rule of Law: Although animals enjoy some special protections, the constitutional emergency-aid doctrine does not extend to animals.

Second Question Presented: If the emergency aid doctrine extends to animals, under what circumstances does it apply?

Second Proposed Rule of Law: If the constitutional emergency aid doctrine extends to animals, it permits a warrantless intrusion onto land to prevent an animal's death or serious injury, or to provide assistance to an animal that has suffered a serious injury.

NATURE OF THE PROCEEDING AND JUDGMENT AND RELIEF SOUGHT

In this direct criminal appeal, Teresa Ann Dicke appeals her convictions for animal neglect and animal abuse. She was convicted following a jury trial and sentenced to eight months in jail. The Court of Appeals affirmed in a *per curiam* opinion. *State v. Dicke*, 258 Or App 678 (2013).

Ms. Dicke seeks vacation of the judgment of conviction and of the order denying the motion to suppress. She further seeks remand for an order granting her motion to suppress or, in the alternative, for further proceedings.

SUMMARY OF FACTS

The following facts are taken from the Court of Appeals opinion in *State v. Fessenden*, 258 Or App 639 (2013), a companion to this case.

> "[Ms. Dicke and Ms. together owned an 'older' horse that they kept on Dicke's property. In August 2010, Deputy Sheriff Bartholomew responded to a call from Dicke's neighbors, the who had reported that the horse was 'very skinny.'"

258 Or App at 640.

> "Bartholomew has specific expertise in evaluating the weight of horses using the 'Henneke Scoring Method,' which he described as a method for determining whether 'the animal's okay or if it's emaciated or thin,' taking into account the amount of fatty tissue on specific areas of the horse's body. Bartholomew evaluates about 100 to 200 horses, including some older horses, every year.
>
> "In responding to the call, Bartholomew drove up a 'common driveway' that the shared with codefendant Dicke. Bartholomew contacted the who told him that the horse looked bad and had been out loose. Bartholomew went further down the driveway to see if the horse was still loose, but she was not; rather, she was 'in a little fenced in area' about 100 feet from Dicke's residence. Bartholomew could see from his car that the horse's 'backbone was protruding up way more than it should have,' which is a sign of emaciation. The horse was 'swaying a little bit' and her neck looked thin. 'The withers stood way up as well as the backbone,' which Bartholomew explained are 'signs of emaciation.' Bartholomew could see each of the horse's ribs as well as her tail bones; 'you

could see every bone protrusion, and there was no fatty tissue in the shoulder area you could see.' Bartholomew made all of those observations before he touched the horse. He also saw the horse straining to urinate, 'having a hard time.' Such difficulty in urination can be 'an issue of kidney failure.'

"Before touching the horse or going onto Dicke's property, Bartholomew gave the horse a Henneke body score of one out of nine on a scale where one represents emaciation, 'two is very thin, three is thin' up to 'seven, eight and nine' which can represent being 'too fat.' Bartholomew believed that the horse was suffering from a medical emergency:

> "'Yeah, anytime you get a horse this skinny internal organs start shutting down. This literally was the thinnest horse I've seen that was still on its feet. It was, of course, wavering. I was afraid it was going to fall over and not be able to get back up.'

"If a horse that thin falls down, Bartholomew explained, 'a lot of times we can't get them back up and then they end up having to be put down.' He explained further:

"'[T]he uniqueness is a horse, if it goes down because it's too weak, it sometimes can't get back up and then you have problems with breathing and problems with if they roll they can flip their stomachs.

"' * * * * *

"' * * * Their stomachs get flipped over their intestines on the inside and so it constricts it off, and the only way to fix that is by surgery, and a horse in that kind of condition wouldn't be able to survive a surgery.'"

258 Or App at 640-42 (ellipses in original). "Bartholomew then reached over the fence and touched the horse for the first time, again

performing the steps to develop a Henneke body score. After that physical evaluation, Bartholomew again gave the horse a score of one, which is "the lowest score [that he had] ever given a horse that was still on its feet."

Bartholomew believed that the horse "was suffering," that its emaciation constituted a serious physical injury, and that the horse "was in immediate danger." 258 Or App at 642. Deputy Bartholomew arranged for the horse to be transported to a veterinarian for care. *Id.*

Deputy Bartholomew testified that he had seized the horse without first applying for a warrant because he

> "'was afraid [the horse] was going to go down' and that taking the time to get a warrant 'would have presented a danger to [the horse's] life.' Based on his personal experience, Bartholomew testified that the process of preparing a search warrant and affidavit for submission to a judge—including drafting the documents and having them reviewed by detectives, a supervisor, and someone at the District Attorney's Office—can take any-where from four to eight hours. Although Bartholomew has never used a telephone warrant, he testified that he still would have to 'go through all the steps' over the telephone, and believes that the process would still take a few hours. He did not apply for a warrant in this case because he 'didn't think [the horse] had the time for [him] to go do it.'"

258 Or App at 644.

At trial, the state offered evidence from Dr. Giri, who examined the horse after it was seized, and Darla Clark, who cared for the horse after its seizure and observed it eat normally and return to health after being fed.

Dr. Giri testified that she met Ms. Dicke in 2009, at which point the horse was elderly and thin, and its teeth were wearing out. She advised Ms. Dicke about the horse's nutritional needs, and that the horse should be fed additional calories to gain more weight. Tr. 465 *et seq.*

Dr. Giri testified that, at the time of the seizure, the horse was "extremely emaciated" and unrecognizable in comparison with how she looked the previous year. Tr. 472. The horse had a "relatively normal" gait and was not wobbly or disoriented. Tr. 476. The horse was "mentally bright," tr. 472, and her medical exam was mostly normal, tr. 483. As a result of the horse's loss of body mass, she was at more risk of urinary-tract or kidney infections. Tr. 475-76. Dr. Giri testified that the horse "was in need of a different feeding regimen but not in a need for immediate intervention." Tr. 478. She testified that this horse scored as point-five on the nine-point Henneke score, and that the only other horses she had seen that scored below that had been unable to stand and had been euthanized. Tr. 479-480.

Dr. Giri estimated that the weight loss would have taken three months to a year. Tr. 492-493. Asked her opinion whether the horse would survive the next thirty days after the Deputy Bartholomew seized her, Dr. Giri said that she had estimated a one-in-ten chance that the horse would survive. Tr. 496. The horse was euthanized a year later because of digestive problems. Tr. 499-500.

Darla Clark testified that she was the "founder and director of the nonprofit Equestrian Rescue and Rehab Center called Strawberry Mountain Mustangs." Tr. 521. She had grown up in a ranching family, had been around

horses for thirty years, and had bred, raised, and trained horses. Tr. 522. She took care of the horse after it was seized. Tr. 523 *et seq.* Ms. Clark testified that the horse was "the most emaciated horse [she]'d ever seen, tr. 526, and it was like "watching a skeleton walk with skin over it," tr. 530. She testified that the horse's coat was "dying" and "you could touch her and the hair would just fall off her body," tr. 529, her mane and tail were matted with burrs and twigs, tr. 530, and her feet were neglected and hadn't been trimmed, tr. 529. Her minimum needs were not being met. Tr. 532. Ms. Clark explained that a starving horse needs to be fed the right food in small amounts, and she explained how she fed the horse. Tr. 533.

SUMMARY OF ARGUMENT

Police entered into Ms. Dicke's private property in order to investigate and provide assistance to a starving horse. Doing so was an unreasonable invasion of the Ms. Dicke's privacy, and the evidence obtained as a result should have been excluded.

In reaching a contrary conclusion, the trial court and the Court of Appeals both held that the emergency-aid exception justified the entry onto the defendant's property. That is not correct. The emergency-aid doctrine is a narrow exception to the search-warrant requirement. It justifies a police search or seizure in an emergency to prevent imminent injury. When this court and the United States Supreme Court have considered the question in the past, it has always been about preventing immanent *human* injury. Preventing human injury is a one of the government's most important tasks, and it justifies government conduct that would be intrusive or unlawful if it

were directed toward less important goals, such as protecting animal welfare. Even assuming that the emergency-aid doctrine ever applies to protecting an animal, this case does not present a true emergency. The horse was starving, a process that had taken at least three months. Another few hours to get a warrant would not have made a difference. Whether the emergency-aid exception to the warrant requirement ever extends to animals is a question for another day, in a case presenting a true emergency.

ARGUMENT

The issue in this case is whether the emergency-aid exception[1] to the search warrant requirement permits an entry onto private property to protect an animal. It does not. Dispensing with the warrant requirement is

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[1] Although the doctrine sometimes has other labels, it is always referred to in this brief as the "emergency-aid exception," which is an exception to the search-warrant requirement permitting police to enter private property to prevent harm without regard to seizing evidence or investigating crime. As discussed below, the doctrine usually applies to prevent injury to human beings. It is to be distinguished from a related exception to the search warrant requirement, referred to sometimes, and in this brief, as the "exigent-circumstances exception;" police may search or seize without a warrant if they have probable cause to believe a crime has been committed and evidence will be destroyed or lost if they do not act quickly.

The exigent-circumstances exception was argued in the trial court. Although it was briefed in the Court of Appeals, but was no part of that court's decision or the petition for review in this court. In the event that this court concludes that the exigent-circumstances exception is relevant to this case, petitioner urges a remand to the Court of Appeals for a decision in the first instance. It is not apparent to counsel, for instance, whether the state could carry their burden to show that evidence of the horse's health was likely to be lost in the few hours necessary to get a warrant, or that the police did not create the exigency on which they relied.

permissible only in narrow circumstances, such as the prevention of injury to a human being. Providing aid to a starving animal is not such a circumstance.

I. The emergency-aid exception is a narrow, rarely-applicable exception to the search warrant requirement.

Officer Bartholomew violated both Article I, section 9 of the Oregon Constitution and the Fourth Amendment to the United States Constitution when he entered Ms. Dicke's yard without a warrant and seized the horse. There was no true emergency - even if a risk to an animal could ever support an emergency-aid entry, it did not in this case.

This court adopted an emergency-aid doctrine under the Oregon constitution in *State v. Davis,* 295 Or 227 (1983), and applied it thereafter in *State v. Bridewell*, 306 Or 231 (1988) and *State v. Baker*, 350 Or 641 (2011). As adopted by this court, the emergency-aid exception to the search warrant requirement permits a warrantless entry onto land to provide assistance to a human being in an emergency. Ms. Dicke has no objection to the doctrine as applied in those cases, because it strikes a reasonable balance between the significant public interest in protecting human health and welfare and the equally significant private interest in avoiding government intrusion.

In *Davis*, a man had told police that his girlfriend might be being raped in a motel room by a man he had seen carrying a gun. When the police knocked on the door, the woman opened the door and walked out without appearing frightened or disheveled. The police entered the defendant's room and discovered drugs and a gun. In ruling that the evidence discovered should be suppressed, this court observed that the emergency-aid exception

might have applied until the woman left the room. But, because the emergency dissipated before the entry, the exception did not apply and the police entry had been unlawful. *Davis*, 295 Or at 239 *et seq.*

Bridewell, 306 Or 231, was similar. The court held that the defendant's unexplained absence in a rural area and mildly suspicious circumstances did not support an emergency-aid entry into the defendant's house. 306 Or at 236 *et seq.*

In *Baker*, the court observed that, in prior cases, it had recognized exceptions to the Article I, section 9 warrant requirement "to protect the safety of officers or others." *Baker*, 350 Or at 649 (citations omitted.) The court held: "A similar kind of societal interest - **the need to immediately render aid to a person or to prevent the immediate threat of serious personal injury or harm** - is present here. We thus agree that, under certain circumstances, the need to render emergency aid or prevent serious injury or harm is an appropriate justification for an immediate warrantless entry under Article I, section 9." *Id.* (emphasis added).

In *Baker*, an anonymous woman called 911 to report a domestic dispute. According to the caller, the putative victim of the domestic disturbance had used a prearranged code word to ask for police assistance. When police arrived at the residence, they could hear yelling coming from inside. *Baker*, 350 Or at 643-644. A police officer went to the back of the house. He saw two people in a verbal argument through a window, and continued to the back door. From the back door, he could see the two occupants, one of whom yelled "Cops" and began to pick buds from a

marijuana plant. The police officer opened the back door to investigate the possible assault. Although there was no evidence of an assault, there were several more marijuana plants.

This court held that the police officer's entry had been justified and set out a test: "an emergency aid exception to the Article I, section 9 warrant requirement is justified when police officers have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm." *Baker*, 350 Or at 649.

There is a similar emergency-aid exception to the Fourth Amendment's warrant requirement where there is a "need to assist persons who are seriously injured or threatened with such injury." *Brigham City, Utah v. Stuart*, 547 US 398 (2006). Although the doctrine was not expressly adopted until *Stuart* was decided, it had its origin in *Johnson v. United States*, 333 US 10, 14-15 (1947): "There are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with." Shortly thereafter, the court suggested in *dicta* that such a circumstance might exist "where the officers, passing by on the street, hear a shot and a cry for help and demand entrance in the name of the law." *McDonald v. United States*, 335 US 451, 454 (1948).

Subsequent cases emphasized the balance between privacy on the one hand and emergency circumstances on the other. *See, e.g., Mincey v. Arizona*,

437 US 385, 393–394 (1978): "the exigencies of the situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable."

The United States Supreme Court has never held, or even suggested, that the emergency aid doctrine extends to animals. Rather, as with this court's cases, cases applying the doctrine emphasize the protection of **human** life.

In *Stuart*, 547 US 398, the court expressly recognized the emergency-aid doctrine as an exception to the Fourth Amendment's warrant requirement. Police officers responded to a call regarding a loud party. When they arrived, they heard shouting inside. Looking through a screen door and windows, they saw a fight between four adults and a juvenile. The officers saw the juvenile punch one man in the jaw, causing him to spit blood. While the other adults forcefully pushed the juvenile, the officers entered the house to break up the fight. The *Stuart* court held that "the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning," and so their warrantless entry was justified. 547 US at 406.

The court later applied the doctrine in *Michigan v. Fisher*, 558 US 45 (2009). Police responded to a complaint where the resident was "going crazy."

> "Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground

> outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house. (It is disputed whether they noticed this immediately upon reaching the house, but undisputed that they noticed it before the allegedly unconstitutional entry.) Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things."

558 US 45-46. In ruling that the officer's entry was reasonable, the court emphasized the risk to human safety: "It would be objectively reasonable to believe that Fisher"s projectiles might have a **human** target (perhaps a spouse or a child), or that Fisher would hurt himself in the course of his rage. 558 US at 48 (emphasis added.)

In applying the rule, other federal courts recognize the importance of protecting human life or safety. *See, e.g., United States v. Najar,* 451 F3d 710, 717–18 (10th Cir 2006) (emergency circumstances justify a warrantless entry into a home if "(1) the officers have an objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others, and (2) the manner and scope of the search is reasonable.") *See also, e.g., Root v. Gauper*, 438 F2d 361, 364 (8th Cir 1971) ("police officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.")

As then-Judge Warren Burger explained, police officers must be empowered to act quickly when human life is at stake:

> "[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of 'dead bodies,' the police may find the 'bodies' to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response."

Wayne v. United States, 318 F2d 205, 212 (DC Cir 1963) *cited with approval in Mincey v. Arizona*, 437 US 385, 392-93 (1978).

The Court of Appeals reached a contrary conclusion by considering opinions from state intermediate appellate courts.

> "Warrantless searches and seizures pass Fourth Amendment muster when conducted 'to assist persons who are seriously injured or threatened with such injury.' *Brigham City v. Stuart*, 547 US 398, 404 (2006). Other courts have held that, although the United States Supreme Court has described that exception to the warrant requirement in terms of protecting people, the exception reasonably extends to the protection of

> animals under certain circumstances. *See, e.g., Davis v. State*, 907 NE2d 1043, 1050 (Ind Ct App 2009) ('[C]ircumstances of animal cruelty may create exigent circumstances to permit a warrantless search of the curtilage.); *Morgan v. State*, 289 Ga App 209 (2008) (an exigency exception to the warrant requirement exists 'where a police officer reasonably believes that an animal on the property is in need of immediate aid due to injury or mistreatment'); *Brinkley v. County of Flagler*, 769 So 2d 468 (Fla Dist Ct App 2000) (the apparent distress of a large number of dogs made it reasonable to conclude 'that an urgent and immediate need for protective action was warranted,' which justified a warrantless entry onto property). We agree."

Those decisions are wrong, and this court should not look to other state courts in interpreting the Fourth Amendment more restrictively than the federal courts have done.

The "ultimate touchstone of the Fourth Amendment is "reasonableness." *Stuart*, 547 US at 403. That reasonableness analysis turns on the importance of the government or social interest in comparison with the private interest invaded. *See Johnson*, 333 US 14-15: "There are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with." *See also United States v. Banks*, 540 US 31 (2003) (whether exigent circumstances justify police action depends on a reasonableness inquiry based on the totality of the circumstances).

In balancing privacy and public interest, privacy is more likely to give way for potential human injury, because avoiding injury is so important. As

then-Judge Burger explained in *Wayne,* "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." 115 US App DC at 241. Few courts have considered society's interest in protecting animals in applying the emergency-aid doctrine. Many courts, however, emphasize the importance of human life and safety in explaining and applying the doctrine.

Some such cases date from before the United States Supreme Court adopted the emergency-aid doctrine. *See, e.g., Davis v. Maryland*, 236 Md 389, 396 (1964): "The preservation of human life has been considered paramount to the constitutional demand of a search warrant as a condition precedent to the invasion of the privacy of a dwelling house."

Some are recent decisions from other states in this circuit. *E.g., State v. Gibson*, 267 P3d 645, 658 (Alaska 2012) (quoting *Stevens v. Alaska*, 443 P2d 600, 605 (1968) (Rabinowitz, J., concurring):

> "The preservation of human life is paramount to the right of privacy protected by search and seizure laws and constitutional guaranties; it is an overriding justification for what otherwise may be an illegal entry. It follows that a search warrant is not required to legalize an entry by police for the purpose of bringing emergency aid to an injured person."

267 P3d at 658

Similarly, in *Salt Lake City v. Davidson*, 994 P2d 1283 (2000), the court wrote:

> "The emergency aid doctrine, sometimes referred to as the medical emergency doctrine, is a variant of the exigent

circumstances doctrine. See Tracy A. Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects under Medical Emergency Exception to Warrant Requirement,* 11 ALR 5th 52, § 2[a] (1993). Bateman describes the emergency aid doctrine as follows:

> 'The medical emergency exception will support a warrantless search of a person or personal effects when [a] person is found in an unconscious or semiconscious condition and the purpose of the search is to discover evidence of identification and other information that might enhance the prospect of administering appropriate medical assistance, and the rationale is that the need to protect life or avoid serious injury to another is paramount to the rights of privacy...'

"Id. Several courts have also applied the emergency aid doctrine when a person is missing and feared to be injured or dead. Whether an emergency exists is fact intensive and the state has the burden 'to prove that the exigencies of the situation make the course imperative.'"

994 P2d at 1286 (citations omitted.)

A few courts, in discussing the doctrine, refer to the protection of "property." *E.g.,* in explaining Washington's "save life" exception, the court in *Washington v. Smith*, 177 Wash 2d 533, 541 (2013) observed:

> "Washington courts have held on many occasions that law enforcement may make a warrantless search of a residence if (1) it has a reasonable belief that assistance is immediately required to protect life or property, (2) the search is not primarily

> motivated by an intent to arrest and seize evidence, and (3) there is probable cause to associate the emergency with the place to be searched."

In spite of the reference to "property," *Smith* related to injury, and the scope of Washington"s "save-life" exception, as it relates to property, does not appear to have been developed by the courts.

II. If the emergency-aid exception applies to animals, it only ever applies to animals suffering from serious injury or an imminent threat of serious injury or death.

Even if the emergency-aid exception applies, the facts of this case are a far cry from the sort of emergency justifying a warrantless entry. Entering into fenced land to care for a horse is closer to what is often called 'community caretaking,' which refers to the police role to take care of a community and assist its members, as distinct from the police role to investigate crime. Those two doctrines can easily overlap. *See* Megan Pauline Marinos, *Breaking and Entering or Community Caretaking? A Solution to the Overbroad Expansion of the Inventory Search*, 22 Geo Mason U Civ Rts L J 249, 261-62 (2012) (discussing the blurring distinction between the two doctrines.)

The emergency-aid doctrine is an exception to the Oregon and federal constitutional warrant requirements. But community-caretaking is not. *See State v. Bridewell*, 306 Or 231, 239 (1988) (declining to adopt a generic 'community-caretaking' exception to Article I, section 9). *See also* Michael R. Dimino, Sr., Police Paternalism*: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness,* 66 Wash & Lee L Rev 1485 (2009)

(discussing community caretaking under federal law, listing cases.) The *Bridewell* court also required that the state identify specific statutory authority before it could rely on that exception, and the state has not done so here. The federal rule is similar; although community caretaking may permit a search or inventory, it requires standardized procedures that do not appear to exist here. *See Colorado v. Bertine,* 479 US 367, 381 (1987).

And comparing the emergency-aid doctrine with the community-caretaking doctrine demonstrates the error in this case. Although the horse's condition was not an emergency, it warranted the concern of a caretaker. Dr. Giri testified that the horse "was in need of a different feeding regimen but not in a need for immediate intervention." Tr. 478. Dr. Giri estimated that the weight loss would have taken three months to a year. Tr. 492-493. Ms. Dicke does not dispute the value of feeding a starving horse, but a starving horse is not an "emergency." The few hours required to obtain a warrant would not have prevented Deputy Bartholomew from providing aid, and therefore there was no emergency that justified dispensing with the warrant requirement of Article I, sec 9 and the Fourth Amendment.

III. Without the evidence obtained following the unlawful seizure of the horse, the jury would not have convicted Ms. Dicke.

The state's case relied heavily on the testimony of Dr. Giri, to whom Deputy Bartholomey took the horse, and Darla Clark, who cared for the horse after its seizure and testified about its recovery.

In opening, the prosecutor discussed the testimony of Dr. Giri and of Ms. Clark. Tr. 318 *et seq.* Dr. Giri testified about the condition of the horse

and about her earlier contact with Ms. Dicke, at which she advised Ms. Dicke about the horse's underfed condition and possible problems eating. Ms. Clark testified about how the horse recovered after being fed an adequate diet. The prosecutor repeatedly referred to both during closing argument. Tr. 894 *et seq*. Without that evidence, the jury might not have convicted Ms. Dicke. Because the error was harmful, this court should reverse.

Conclusion

A starving horse is an object of sympathy and concern. It is not an "emergency" like a risk to human health. This court should resist the expansion of the emergency-aid doctrine and hold that the doctrine does not permit warrantless searches and seizures to feed animals.

Respectfully submitted,

/s/ Rankin Johnson IV
Rankin Johnson IV, OSB No. 96490

CERTIFICATE OF SERVICE

I certify that I filed the enclosed corrected brief with the State Court Administrator by e-filing it on February 20, 2014. I served it on opposing counsel, Attorney General Ellen Rosenblum and Solicitor General Anna Joyce, by e-filing it on February 20, 2014. Because the Oregon Attorney General's Office is registered as an e-filer, e-filing also constitutes service. See ORAP 16.45. Opposing counsel's address is:

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

I certify that (1) this petition complies with the word-count limitation in ORAP 5.05(2)(b) and ORAP 9.17(2)(c) and (2) the word count of this petition (as described in ORAP 5.05(2)(a)) is 5022 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Respectfully submitted,

/s/ Rankin Johnson IV
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