

Critical Caselaw: Judicial Recognition of Animal Sentience

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Overview

- Three cases, one common theme: animal sentience
 - Sentience: the ability to perceive or feel (from the Latin *sensus*)
- All three are Oregon appellate cases
 - *State v. Nix*, 355 Or. 777, 334 P.3d 437 (2014)
 - *State v. Fessenden*, 355 Or. 759, 333 P.3d 278 (2014)
 - *State v. Newcomb*, 359 Or. 756, 375 P.3d 434 (2016)



State v. Nix

- Dozens of starving animals—mostly horses and goats—and several decaying carcasses
- Charges: 23 counts of first-degree animal neglect, 70 counts of second-degree animal neglect
 - Each count pertained to a different animal
- Jury verdict: Guilty of 20 counts of second-degree neglect
- Issue at sentencing: how many convictions?



Merger in a minute

- General rule: when a defendant is found guilty of committing multiple crimes during a single criminal episode, they “merge” into one conviction unless an exception applies.
- Exception relevant here: Or. Rev. Stat. § 161.067(2)
 - When the same conduct or criminal episode,
 - Though violating only one statutory provision,
 - Involves two or more victims,
 - There are as many separately punishable offenses as there are victims.



Issue: are animals “victims” of animal neglect for purposes of merger?

Trial court:

- Only humans or the general public can be “victims”—animals cannot
- Merged 20 guilty verdicts into a single conviction for second-degree neglect, and imposed sentence

State of Oregon appealed, arguing:

- Nothing says animals *can't* be victims
- Case law: you look to the underlying crime to see who suffered the harm
- Animals are who suffer when a person commits animal neglect
- So animals are the victims of animal neglect.



Oregon Court of Appeals reversed, but...

- Oregon Court of Appeals reversed the trial court; defendant successfully petitioned for Supreme Court review
- Defense argument: the ordinary meaning of “victim” is a person
 - Animals are property, not people
 - No statute says animals can be victims
 - So the victim of animal neglect is either the owner or the public



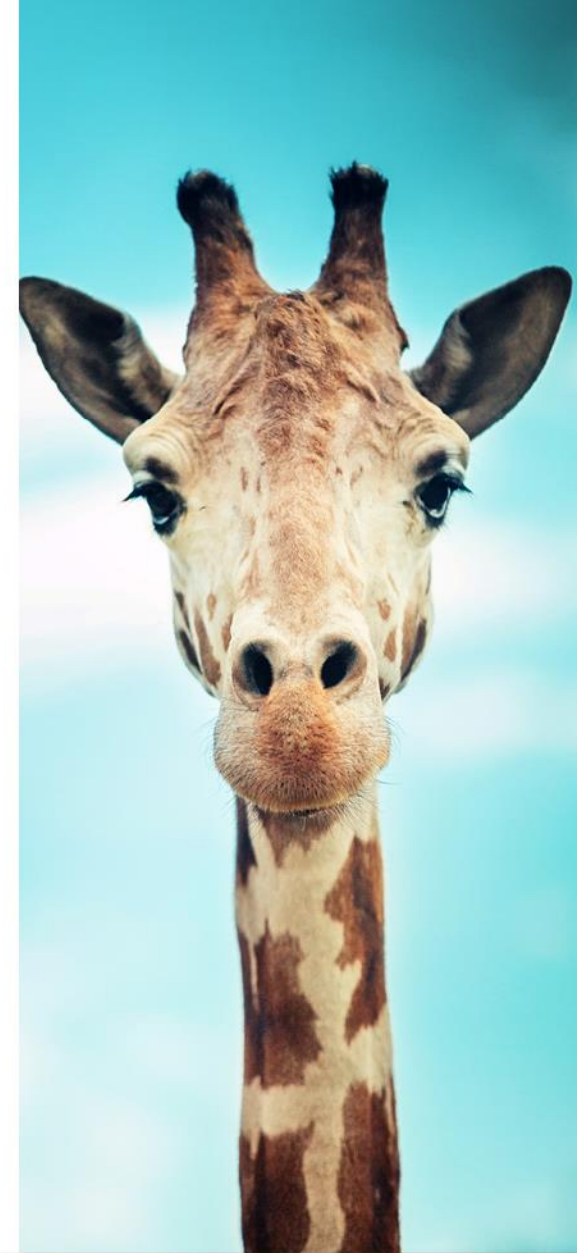
Oregon Supreme Court

Animals are indeed the victims of animal neglect for purposes of merger.

Step 1: What did the legislature intend “victim” to mean for the merger statute?

Because no statute defined “victim” for merger purposes, looked to ordinary meaning

- Dictionary definitions refer to living beings, both human and animal
- Court cited several examples of animals being referred to as “victims,” especially in cruelty context, dating back to the 1800s
- Nothing else in the merger statute indicates the legislature intended for “victim” to mean something other than its ordinary meaning (and no relevant legislative history)



Nix, continued

Step 2: Who did the legislature intend to protect when it created the crime of animal neglect?

Look to text, context, and legislative history

- Who suffers the harm at the heart of the offense?
- The animal neglect statute clearly focuses on animals' health and well-being
 - Focus is on the treatment of individual animals, not their owners or the public generally
- Statutory context – other crimes against animals: crimes are structured to correspond to the extent of the animal's suffering: the more the animal suffers, the higher the degree of the offense
 - “In any reasonable sense of the word, the ‘victim’ of those offenses is the individual animal that suffers the neglect, injury, cruelty, torture, or death.”



Still *Nix*

Legislative history shows intent of Oregon's cruelty laws **was to prevent animal suffering**

Not a crime at common law

First cruelty law protected animals only as property of their owners (and only when commercially valuable)

Some states enacted cruelty laws to protect public morality

Others, including Oregon, focused on treatment of the animals *for their own sake*

- since first enacted, expanded to cover more cruel conduct and provide greater protection



Nix (last one)

“[W]e emphasize that our decision is not one of policy about whether animals are deserving of such treatment under the law. That is a matter for the legislature. Our decision is based on precedent and on a careful evaluation of the legislature’s intentions as expressed in statutory enactments.”

Utility beyond merger law?

- *Justice v. Vercher* (currently pending in Oregon Court of Appeals)



Fessenden: Case Facts

State v. Fessenden (2014, Oregon)

- Neighbours Complain re: “Very Skinny” Horse (Grace)
- Sheriff’s Deputy Responds
 - Permission to enter shared driveway
- Lawful Vantage Point → Plain View Observation
 - “Could see every bone protrusion”
 - “Swaying a little bit”; “hard time [urinating]”
 - Visual assess at Henneke Body Score 1 (of 9)
- Belief of Medical Emergency & Criminal Neglect
 - 4 – 8 hours to get warrant, likely to die while waiting
- Calls for Vet, Has Grace Transported ← Seizure
 - Vet: .5 Body Score; organ failure had begun
- Owners Charged with Neglect II



Fessenden: Legal Issue

Legit Seizure?

- Defence Moves to Suppress
 - 4th Amendment, Federal Constitution
 - “No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure...”
 - Article I § 9, Oregon Constitution
 - “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...”

(For a deeper dive → retired Oregon Justice Jack Landau’s *The Search for the Meaning of Oregon’s Search and Seizure Clause*, OREGON LAW REVIEW 2008)

- Trial Court Rejects on Two Alternative Grounds
 - Emergency Aid
 - Exigent Circumstances



Emergency Aid vs Exigent Circumstances

Both Are

- Warrant Exceptions via Case Law
 - I.e. 'this search/seizure is reasonable *even without* a warrant, because....'

Emergency Aid

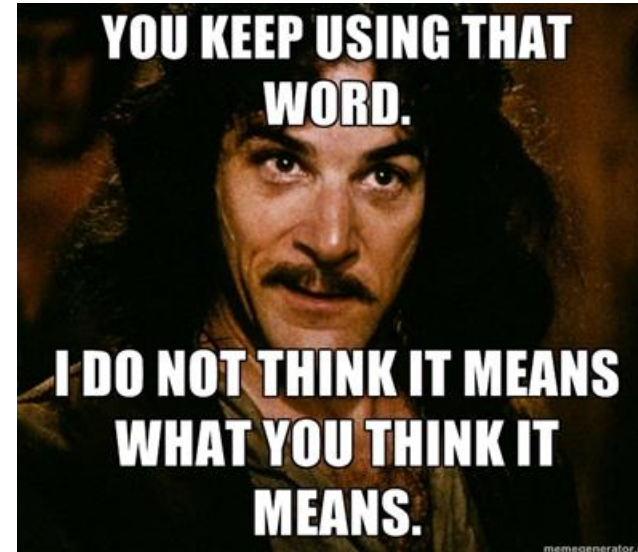
- "Necessary to ... render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm"

Exigent Circumstances

- Probable Cause(i.e. 'information sufficient to justify a prudent person believing crime is afoot')
- +
- "Danger to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence"

The Difference?

- Exigent Circumstances Requires PC of Crime
- Emergency Aid Requires a Person (?)



Defense Argument

No To

- Emergency Aid
- Exigent Circumstances

Because...

- Interest in Protecting Animals \neq Interest in Protecting Humans
 - Legality of being owned/hunted/slaughtered shows “lower status”
- Property Protection \neq Reasonable Warrantless Search & Seizure
- “Person” \rightarrow Emergency Aid is for Humans Only
- Why Do We Have Animal Cruelty Law?
 - Because protecting animals is useful to humans, not because about animals have intrinsic value



Fessenden: Appellate Decision

Upholds on Emergency Aid

Fascinating Reasoning!

- Recognizes Existing Decisions re: Emergency Aid are in Human Terms
 - “...understandable, perhaps inevitable, given that the few emergency aid cases ... all have turned on perceived threats to human safety.”
 - That court has never been asked whether Emergency Aid applies to animals does not mean animals cannot get Emergency Aid
- Why Does Emergency Aid Exist → Apply that Logic to Animals
 - Intrinsic value of being → intervene to prevent imminent, serious physical harm
- Do Animals Have this Intrinsic Value?
 - Yes ← evident societal interest in preventing maltreatment / minimizing suffering
 - Because animals are sentient

What Result?

- New Animal Emergency Aid Trigger:
 - Imminent threat of serious physical injury/cruel death
 - Unless injury/death is lawfully inflicted



Fessenden: Supreme Decision

A Critical Approach to the Status Question

- Property Status ≠ Object Status
- Sentience Undercuts Defense's 'No/Low Intrinsic Value' Argument
 - Not about property protection or public morals
 - About “protecting individual animals themselves from suffering” (cites *Nix*)

Exigent Circumstances

- Applies to Animals!
- Has Already Been Applied in Cases Beyond Threats to Human Life/Welfare

Emergency Aid

- Decline to Rule
- “We ... exercise judicial restraint and leave for another day questions unnecessary to the resolution of this case, such as whether the emergency aid exception extends to animals.”



Fessenden: Practical Implications

- Warrants & Technology
- Which Animals?
- Popular Consciousness

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**Oregon Animals Now Have Some Basic Rights
Formerly Reserved for Humans**
Smithsonian - August 25, 2014



Dogs Are Officially People, Too (in Oregon)
Esquire - June 23, 2016

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Fessenden: A Closing Thought

How Does Oregon Supreme Court Describe Animal Exigency?

- “probable cause to believe ... warrantless action was necessary to prevent an ongoing criminal act from causing further serious imminent harm to the victim of the crime—an animal entitled to statutory protection. In those circumstances, the exigent circumstances exception permitted the officer's actions.”
- But! Traditional Exigent Circumstances are...
 - ...Danger to life
 - ...Serious property damage
 - ...Escaping suspect
 - ...Destruction of evidence

So What is Happening Here?

- Suggests Crime Victim Exigency Trigger
 - Does this occupy ground between Emergency Aid and (Classic) Exigent Circumstances?
 - i.e. PC + Prevention Harm to Victim



State v. Newcomb (2016)

First, a bit of search-and-seizure background

- The Fourth Amendment of the United States Constitution and Article I, section 9, of the Oregon Constitution protect against unreasonable searches and seizures by the government
 - For examination of property to constitute a “search,” a person must have a protected privacy interest in the item.
 - General rule for “closed containers”



Meet Juno!



Motion to suppress

Was the blood test a “search” under either the state or federal constitution?

If a search, it was unlawful, because there was no warrant or applicable exception.

Trial court:

- No search, so motion denied. Jury found defendant guilty of neglect.

Court of Appeals: Conviction reversed. It was an unlawful search.

- Applied same analysis to Juno’s blood as it would to objects in a closed container

State of Oregon petitioned for Supreme Court review.



Newcomb: Oregon Supreme Court

No search.

Property rights and privacy interests aren't necessarily the same thing.

Under Art. I, § 9, a protected privacy interest is an interest in freedom from scrutiny
“as determined by legal and social norms of behavior.”

Did the fact that Juno is “a living animal” and “not an inanimate object or other insentient physical item of some kind” make a legal difference?

- Yes. Animals are fundamentally different from other property.
 - They are entitled to explicit statutory protections *because* they are alive and capable of suffering
 - The law places an affirmative obligation of minimum care on an animal's custodian, unlike any other kind of property

But that's not the end of the inquiry...



Newcomb, continued

Must also consider the nature and circumstances of the intrusion

Fact that defendant had lost the right to possess Juno made a difference, as did the lawful seizure

- If one has right to possess an animal, she has a privacy interest that prevents interference in a way that offends social norms
- And obligation to provide minimum care applies to *anyone* with lawful custody of an animal—and the owner has no right to countermand that obligation to provide care

The veterinary diagnostic purpose of the test mattered

- Juno was in apparently serious condition, and the test was to diagnose the reason

Given those circumstances, Juno “is not analogous to, and should not be analyzed as though he were, an opaque inanimate container in which inanimate property or effects were being stored or concealed.”



Newcomb (last one)

What about the Fourth Amendment?

Same result, with slightly different analysis

- No legitimate expectation of privacy in a living animal, not ordinarily used as a container for other property
- Under the circumstances of the intrusion (after lawful seizure, test for medical purposes), no legitimate expectation of privacy



Some Closing Thoughts

“...the legal status of animals has changed and is changing still...” – State v. Fessenden

The Project of Animal Law

- Questions Unanswered—Sometimes Yet Unasked
- Animalness is Legally Relevant
- Does “That Distinctive Fact Make[] A Legal Difference”? (*State v. Nix*)
 - Yes, Yes it Does!



Questions & Discussion

