

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0510

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ALAN EDWIN ERICKSON,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, The Honorable Kathy Seeley, Presiding

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STATEMENT OF THE ISSUES

Whether Erickson waived any objection to imposition of joint and several restitution and the administrative fee.

If not waived, whether the record contained sufficient evidence of the causal connection between Erickson's behavior and ensuing costs to care for the neglected horses to impose joint and several liability.

If not waived, whether the district court erred in imposing an administrative fee related to the joint and several restitution.

STATEMENT OF THE CASE

Between 2018 and July 2021, Alan Edwin Erickson (Erickson) and his father Robert Erickson (Robert) criminally neglected a herd of nearly 60 horses, and were each charged with one count of aggravated animal cruelty, a felony, in violation of Mont. Code Ann. § 45-8-217(2). (Docs. 3, 5.)

While Robert set a trial for late April 2022, Erickson entered an open guilty plea on April 7, 2022. (4/7/22 Transcript (Hr'g).) The court ordered a presentence investigation (PSI), and set sentencing for June 22, 2022, so the issue of restitution could be addressed collectively if Robert was convicted. (Hr'g at 15, 16.)

Robert was convicted, so the district court conducted a joint sentencing hearing where it considered the appropriate sentences, including restitution.

(6/22/22 Transcript (Tr.); Doc. 17.) The district court deferred imposition of sentence upon both codefendants and ordered both to pay necessary costs of care for the animals in the amount of \$343,292.26, plus a ten percent restitution fee. (Tr. at 139.) The court ordered that Erickson and Robert were jointly and severally liable for these financial obligations. (*Id.*)

STATEMENT OF THE FACTS¹

I. Erickson's history of neglecting animals

The Ericksons' documented history of criminal neglect of horses goes back to 1997, when Robert was convicted of two counts of animal cruelty to horses in Phillips County. The judgment in that case specifically mentioned Alan Erickson as being required to provide proof of financial ability to provide for the horses. In 2008, again in Phillips County, both were charged with animal cruelty and Erickson was charged with aggravated animal cruelty.

Both Ericksons entered two-year deferred prosecution agreements (DPAs) in 2009. The allegations included neglect of horses for failing to: provide adequate food and water; obtain necessary medical care or adequate hoof care; and maintain

¹In this section, unless otherwise noted, the following facts are contained in the State's affidavit in support of its motion to file an Information and the PSI where the affidavit was recounted. (Docs. 3, 5.) At no time did Erickson refute those alleged facts or the court's reliance upon them.

a safe environment. In Erickson's DPA, he acknowledged he had neglected animals in his care and custody by failing to provide sufficient food and water, resulting in the death of one horse. Both DPAs set forth a requirement to reduce the number of horses owned or possessed by the Ericksons to no more than 22 adult horses. The DPAs set forth numerous other conditions with relation to the care of horses and specified the requirements for feed.

Robert entered into a second DPA in 2011, after a petition to reinstate prosecution was filed in Phillips County. The same conditions of the original DPA were imposed. Sometime in 2010 or 2011, Erickson and Robert began keeping their horses in Lewis and Clark County. Between 2013 and 2021, Lewis and Clark County received numerous calls requesting welfare checks on horses believed to belong to the Ericksons.

II. Basis for current aggravated animal cruelty charges

On May 3, 2018, a Lewis and Clark County animal control officer (ACO) responded to the Ericksons' property on Fantasy Road with respect to an injured horse that was caught up in barbed wire. Upon arrival, she observed approximately 40 horses split between two poorly maintained pasture areas, with sections of wire and a vast amount of debris on the ground. There was no vegetation in the pastures, and 6 of the horses were very pregnant mares.

The ACO observed the injured horse, which the Ericksons had moved into a shop/barn area, and confirmed it had a large hunk of muscle hanging out from above the knee with bones and tendons visible. Erickson told the ACO that they had sent photos of the injury to an out-of-state veterinarian, who advised them the wound would be fine on its own. The shop smelled strongly of urine and had up to a foot of sucking mud and fecal matter throughout. In one pen, a stallion was on its right side with its hoof sticking up, caught in a fencing panel. It was alive, but appeared to have been caught like that for some time, based on the mud impression around its body and head.

A veterinarian was called to assess the animals and property, who then determined that the vast majority of the horses were receiving inadequate hoof care. The vet assessed that the shop/barn was “grossly inadequate for basic health and well below standard of care for equine facilities.” (Doc. 3 at 4.) The vet evaluated the two horses in detail, but also noted that several of the other horses sported scars in various locations and had extensive matting. The vet noted that the outside enclosures contained “extensive hazards.” (*Id.*) Law enforcement advised the Ericksons to get medical care for the horses and clean up the facilities. The ACO stopped by to monitor any progress for the next few weeks. While some of the deep mud from inside the shop was removed, several horses remained covered in crusted mud and in severe need of hoof care.

On May 30, 2018, law enforcement learned the Ericksons had euthanized a filly. The Ericksons reported to the vet that they had found the horse recumbent and not responsive. The vet determined the horse was septic and had sustained a trauma to her lower back that caused paralysis of the hind limbs. The vet could not determine whether the sepsis or the trauma occurred first, but noted that it is not uncommon for a foal to be stepped on by an adult horse if kept in a herd setting.

The ACO returned to the Ericksons' property on June 20, 2018, to check on clean-up efforts and conditions of the horses. The ACO discovered a mare had foaled and had a large bulge ballooning out the front of her flank. Erickson claimed a "semi-retired" veterinarian had checked the mare and claimed she was fine. The ACO requested that the vet who had euthanized Ericksons' filly check on the mare. The vet evaluated the mare on June 27, 2018, and determined she had a herniation of the large colon that was 12 by 8 inches and had occurred approximately two months prior. The mare would require treatment with a belly band for three to four months, with possible surgery to close the hernia.

Over the next few months, several other horses suffered lacerations that were not properly treated, the horses became further underweight going into winter, and the number of horses on the property continued to grow. The Ericksons were evicted from this property at some point and moved the horses to a new location.

On May 3, 2021, an ACO was driving by the Ericksons' pastures located at 6705 Applegate Road and noticed a horse with fencing wire wrapped around its back-left leg. The ACO went into the pasture to release the animal and, while there, noticed several horses with extremely neglected hooves, which prevented them from being able to walk properly or balance without issue. Additionally, one horse had a severe hernia (two feet in diameter) on the right side of its torso that protruded out. The ACO also observed numerous horses with visible ribs from being under-fed, and saw two underweight stallions in a confined shed/barn area that also had extreme hoof overgrowth.

The ACO notified the Lewis and Clark County Sheriff's Office (LCCSO) and deputies responded. The officers met with Erickson, who stated he was the responsible party for the horses, and he was the only person taking care of them at this point. Erickson was very hostile towards both the ACO and the deputies, and asserted the animals' hooves were fine and not in need of care and all the horses were receiving regular feed.

Based on the condition of the horses, LCCSO was granted a search warrant for Ericksons' property and returned to check on the horses with the assistance of equine veterinarian Jamie Clark (Clark). Clark assessed a total of 40 horses that day. When Clark and the ACO asked if the additional 13 horses located in the

adjacent pasture were his, Erickson stated they were not. However, the ACO later learned that those 13 horses did belong to the Ericksons.

While assessing the horses, Clark discussed their care with Erickson and Robert, who had arrived later. Clark noted numerous horses were underweight, including mares still nursing yearlings that should have been weaned off. Clark also noted many horses had overgrown hooves that would cause harm to the animals if not addressed. When discussing the need for a trained farrier to manage the severe overgrowth to the horses' hooves, Erickson told Clark that he had worked at a race-horse breeding and training facility in Kentucky and claimed he could care for the overgrown hooves.

Three weeks later, the ACO was dispatched to Wylie Drive and Bishop Lane for a horse that had jumped the fence and was running loose. The ACO learned the reporting party had contacted Erickson because he owned the horse. Once the mare was contained, the ACO evaluated the animal and noted she was underweight (ribs visible) and her hooves were extremely overgrown, to the point they were growing sideways and curling up and a front hoof had separated. Erickson arrived on scene and was directed to immediately get the horse in for hoof care.

Further investigation revealed that Erickson was purchasing hay locally every week. However, according to Clark, the amount of feed being purchased was insufficient to maintain the number of horses under Erickson's care.

On June 1, 2021, the LCCSO executed a search warrant on Ericksons' Applegate property. Fifty-eight horses were seized and transported to the Lewis and Clark County Fairgrounds, where Clark performed a more thorough assessment. Eight horses were scored as underweight and a total of 19 horses had a foot condition scored as overgrown. Clark advised law enforcement that overgrown hooves can lead to serious health problems because once a hoof is overgrown it changes the way a horse walks and can stretch tendons and permanently damage the horse. Additionally, some horses had lice and at least five horses had abdominal hernias. Each of these horses needed treatment, possibly including surgery, to correct the issues.

Based upon the extremely poor health and condition of their 58 horses, Erickson and Robert were each charged with one count of felony aggravated animal cruelty in violation of Mont. Code Ann. § 45-8-217(2). (Doc. 5.)

III. Erickson's change of plea hearing

On April 7, 2022, Erickson entered an "open plea" of guilty to aggravated animal cruelty, a felony. (Hr'g at 4.) Erickson's attorney, Ellie Boldman (Boldman), appeared at the hearing remotely, via Zoom. (*Id.*) After waiving his rights and entering a guilty plea, Erickson attempted to provide a factual basis. (*Id.* at 10.) He admitted he let the hooves of one of his horses get overgrown. (*Id.*)

The district court questioned the sufficiency of the factual basis. (Hr'g.) After some brief discussion, Erickson was given the opportunity to discuss his plea with Boldman. (*Id.* at 12.) Erickson subsequently went back on the record, and Boldman explained she had assumed that the statute only required harm to one animal in a herd of ten or more, calling it a “nuance thing.” (*Id.* at 12-13.) The court responded, “Well, I don’t know if its really nuanced. I guess I just need to know, is he willing to plead guilty to ten or more or is he wanting to go to trial?” (*Id.* at 13.)

Erickson and his attorney then had the following exchange:

MS. BOLDMAN: If the Court’s interpreting it that it’s ten, then, Alan [Erickson], you feel comfortable with that; correct?

[ERICKSON]: Yes.

MS. BOLDMAN: Okay. So, Alan, on June 1st, 2021, in Lewis and Clark County, did you know that you neglected ten horses by letting their hooves get overgrown and it caused them pain and made it difficult for them to walk?

[ERICKSON]: Yes.

(*Id.* at 13.)

A PSI was ordered, and sentencing was set for June 22, 2022. (Hr'g at 17.) This date was selected in anticipation of a potential guilty verdict in Robert’s jury trial, scheduled for April 25, 2022. (*Id.* at 16.) The State informed the court that

sentencing would encompass restitution, which would be a “very complex issue.”

(*Id.*) The prosecutor explained:

So, Your Honor, I think the main things that Ms. Boldman and I have discussed, to kind of give you a preview, I believe there’s going to be argument about the conditions with regards to future ownership of horses; there may be discussion with regards to the amounts of restitution, whether or not there’s some amount of, you know, ability to recoup costs through sale of horses, and I will have testimony with regards to those things

That doesn’t matter whether it’s one defendant or five defendants, *that evidence is the same*. So I anticipate the State’s portion would be approximately two hours to make sure we get through all of those anticipated issues.

(*Id.* at 16-17 (emphasis added).)

Robert’s attorney was present for Erickson’s change of plea hearing, and he affirmed that should Robert be convicted, he agreed with the prosecutor’s representations. (Hr’g at 17.) Erickson offered no opposition to the court conducting a combined sentencing hearing pursuant to the State’s explanation for imposing restitution. Everyone understood that the evidence that was going to be presented at the restitution hearing would include the costs of care for the same 58 horses.

Although Erickson refused to cooperate with the PSI, he did return his PSI questionnaire, which included the question: “What reason do you have for your involvement in this offense?” (Docs. 13, 14 at 5.) Erickson’s response was: “I am

the designated care taker [of the horses],” which was consistent with his discussions with law enforcement during the investigation. (*Id.*)

IV. Erickson’s and Robert’s combined sentencing hearing

At the joint sentencing hearing on June 22, 2022, the State asked for joint and several restitution in the amount of \$323,696.36. (Tr. at 5.) This was consistent with the documented receipts attached to the PSI. (Doc. 14.) To support the requested restitution amount and describe the county’s significant efforts to mitigate those expenses, the State called Clark as a witness. (Tr. at 10.) Clark had been providing veterinary care for the 58 horses since they had been seized by law enforcement in 2021. (*Id.*) Clark believed that if the horses were sold at auction, they would garner about \$1,000 each, for an approximate total of \$58,000. (*Id.*)

Clark explained that, in addition to discounting her medical bill by about 25 percent, many other costs had been lowered significantly by volunteer care. (Tr. at 11.) Clark concluded that the value of the discount on veterinary bills, in addition to numerous donations of vaccines and supplies and volunteer hours, would “far exceed” the \$58,000 they might receive if the horses were auctioned off. (*Id.* at 19.)

Robert testified at the hearing and opposed the restitution amount by disputing Clark’s opinion about the horses’ value. (Tr. at 48-77.) During his

testimony, Robert consistently described Erickson as a main caretaker of the entire herd. For instance, Robert stated that when the herd was, “in our care, they [were] worth \$3 million.” (*Id.* at 50.) Also, Robert defended the low amount he and Erickson reported spending on the horses, noting that Erickson’s labor was all “freebie stuff.” (*Id.* at 50, 56-57.) Robert estimated the labor Erickson put into the horses to be worth about \$40,000 to \$50,000 annually. (*Id.* at 57.)

Throughout the hearing, the parties referred to evidence from Robert’s trial a number of times. For example, in objecting to a series of questions during Clark’s cross-examination, the prosecutor stated, “Your Honor, I just want to kind of interject here. I understand [Boldman] wasn’t part of the trial, but we have heard testimony from both Alan Erickson and Robert Erickson that they stopped going to auction in 2010.” (Tr. at 36.)

During the hearing, no one expressed or implied confusion about which horses were being discussed, nor was the issue of who neglected a specific horse ever mentioned. The following two examples from Clark’s cross-examinations are consistent with the manner in which responsibility for the horses was referred to throughout the hearing.

[BOLDMAN]: . . . You said that when their horses were seized, 58 of them, were they all allegedly abused, neglected all of them?

[CLARK]: Based on the care of the most vulnerable, the horses that had adequate foot scores and adequate body condition scores at the time they were seized are likely horses that were able to cope better in

their situation. They're still uncatchable. They're still unhandleable. And they were still living in the same environment as those that were struggling.

[BOLDMAN]: So why would they have seized the ones that were; do you know?

[CLARK]: Because they were all receiving the same care.

(Tr. at 29.) Robert's attorney also referred to the horses without distinguishing ownership or responsibility of care for any specific horse:

[ROBERT'S ATTORNEY]: You would agree these horses were the property of the Ericksons, correct?

[CLARK]: As far as I know, yes.

(*Id.* at 44.) At no point during the sentencing hearing did the codefendants suggest they did not collectively own and care for the horses at issue.

The State recommended a 6-year deferred imposition of sentence for Erickson and Robert, with no possibility for early termination and no conditional discharge from supervision, as well as 180 days in jail. (Tr. at 111.) The State requested that the court impose joint and several restitution in the amount of \$323,696.36, plus the ten percent administrative fee. (*Id.*) Finally, the State further requested the court order that all the horses be forfeited and that the Ericksons not own, possess, control, or "care for [horses] in any iteration of what we were talking about at trial." (Tr. at 112.)

Boldman argued the court impose a 3-year deferred imposition of sentence, with the 180 days suspended, and “restitution at a reasonable amount.” (Tr. at 120.) Boldman further clarified, “Alan is willing to pay restitution in an amount that this court feels is reasonable and contribute with his father.” (*Id.*)

Erickson’s last words to the judge prior to his sentence were, “I hope that we get all—I want all the horses back, but I hope to get some of them back.” (Tr. at 124.) In his allocution, Robert added, “I had the cash flow to keep them fed, and Alan was taking good care of them and—and then—but we didn't have arenas.” (Tr. at 131.)

Before announcing their sentences, the court stated,

Okay. The jury heard the evidence, and all 12 of them determined, Mr. Robert Erickson, that you had committed the offense of aggravated animal cruelty. Mr. Alan Erickson pled guilty to that offense. There is no—I’ve heard a lot of talk like nothing went on here. Yeah, it did. The evidence was presented, and the jury made its choice and its decision unanimously.

(Tr. at 137.)

The district court addressed Erickson first, explaining that, “I have some concern with the argument on behalf of Mr. Alan Erickson that there was no need to take the horses.” (*Id.*) After referencing testimony from Robert’s trial, the court further explained that “from 2018 to 2021 there were people trying to be involved. People trying to give advice, assistance, trying to make this work. And the horses

ended up moved to another spot. Their access was cut off. And there was not cooperation.” (*Id.*)

The court acknowledged that the rules of evidence were relaxed for sentencing, and added, “I’ve never heard a word from a vet supporting any of the, frankly, self-serving statements that I’ve heard from the defendants.” (Tr. at 137-38.) Additionally, the court took “strong issue” with the contention that these horses were the Ericksons’ livelihood, observing, “This is some sort of odd hobby that these fellows have.” (*Id.* at 138.) The court noted that both Erickson and his father had previous involvement with animal cruelty and horses, and, although they had not purposely tortured the animals, they were not providing appropriate care. (*Id.*)

The court also addressed Erickson’s culpability in the written judgment. (Doc. 17 at 6.). The court ordered that Erickson “should not own or attempt to care for horses,” explaining that there were concerns for years regarding the lack of care Erickson provided to horses “for which he was responsible.” (*Id.*) The court concluded, “He does not or cannot follow instructions or cooperate with authorities. He pled guilty but apparently fails to recognize the reality that he has committed aggravated animal cruelty.” (*Id.*)

The court deferred imposition of sentence upon Erickson and his father for 6 years, and imposed 180 days in jail, but suspended that period entirely. (Tr. at

139-40.) The court ordered that neither codefendant was allowed to “own, possess, [or] care for a horse.” (*Id.*) The district court ordered restitution in the amount of \$343,292.36, plus the ten percent restitution fee, and further ordered that the Ericksons were “jointly and severally liable for that.”² (*Id.*)

SUMMARY OF THE ARGUMENT

Erickson failed to preserve the issue of joint and several restitution and imposition of the administrative fee. Not only did Erickson fail to object to imposition of joint and several restitution, he actually suggested that he be responsible for the costs with his codefendant father.

Even if this Court entertains the issue on appeal, the record contains more than sufficient evidence of a causal nexus to support the district court’s conclusion that Erickson’s involvement with the horses was not limited. In fact, he described himself as the herd’s designated caretaker. The court did not err by ordering father and son codefendants to share equally in the costs associated with caring for the defendants’ horses. Nor did the court err when it imposed the ten percent

²Neither the court’s oral pronouncement nor its written judgment used the restitution amount requested by the State based on the PSI (*i.e.*, \$323,292.36, plus the ten percent fee, for a total of \$355,321.69). (Tr. at 5, 111; Docs. 14, 16.) Regardless, Erickson has not challenged the amounts and the amount that was orally imposed is the controlling amount. *See City of Whitefish v. Curran*, 2023 MT 118, ¶ 35, 412 Mont. 499, 531 P.3d 547.

administrative fee on the restitution obligation as mandated by the general restitution provisions which also apply to convictions for animal cruelty.

ARGUMENT

I. Standard of review

District court orders imposing restitution present mixed questions of fact and law that are reviewed *de novo*. *State v. Arthun*, 2023 MT 214, ¶ 11, ___ Mont. ___, ___ P.3d ___ (citation omitted). Findings of fact regarding the amount of restitution ordered as part of a criminal sentence are reviewed to determine whether they are clearly erroneous. *Arthun*, ¶ 11; *State v. Simpson*, 2014 MT 175, ¶ 8, 275 Mont. 393, 328 P.3d 1144. “[A] finding of fact is only clearly erroneous if it is not supported by substantial evidence, if the lower court has misapprehended the effect of the evidence, or if this Court’s review of the record leaves the Court with the firm conviction that a mistake has been made.” *Arthun*, ¶ 11. Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence. *Simpson*, ¶ 8; *Arthun*, ¶ 11.

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II. Erickson waived the issue of joint and several restitution and imposition of the administrative fee by failing to raise any objections to the district court.

This Court will not put a district court in error for failing to address an issue or an argument that was not made before it. *State v. Johnson*, 2011 MT 116, ¶ 21, 360 Mont. 443, 254 P.3d 578 (citing *State v. Payne*, 2011 MT 35, ¶ 39, 359 Mont. 270, 248 P.3d 842). An objection must be sufficiently specific to be preserved for purposes of appeal. *Johnson*, ¶ 21 (citing *In re T.J.F.*, 2011 MT 28, ¶ 21, 359 Mont. 213, 248 P.3d 804).

While this Court may consider an unpreserved claim under the plain error review doctrine, Erickson has not asserted that theory on appeal. This Court has declined “to invoke the common-law doctrine of plain-error review when a party raises such a request for the first time in a reply brief.” *State v. Strizich*, 2021 MT 306, ¶ 33, 406 Mont. 391, 499 P.3d 575. “To invoke plain-error review [this Court] still require[s] the assertion of plain error to be raised and argued on appeal.” *Strizich*, citing *In re B.H.*, 2018 MT 282, ¶ 15, 393 Mont. 352, 430 P.3d 1006. Thus, the State has not argued that plain error review is unwarranted and this Court should not consider application of that doctrine here. Rather, this Court should apply the timely-objection rule here, as it did in *Johnson* and *Simpson*.

In *Johnson*, this Court upheld a restitution order requiring the defendant, an insurance provider, to reimburse clients for penalties incurred when he transferred

their annuities without their informed consent. *Johnson*, ¶¶ 2-3. This Court held the issue was not preserved, because the objection was not made until after the restitution hearing, and only in the context of a broader argument regarding the measure of the restitution. *Id.* ¶¶ 20-21.

Similarly, in *Simpson*, this Court affirmed a restitution order for theft and property damage to three victims, none of whom testified or provided affidavits for the PSI. *Simpson*, ¶¶ 5-7. Simpson “made a general objection at the restitution hearing to the lack of evidence presented” for the restitution award. *Id.* ¶ 12. Citing *Johnson*, this Court held that the district court’s alleged failure to require evidentiary support for the losses was an objectionable error that Simpson had failed to preserve. *Simpson*, ¶ 12.

In contrast, this Court has concluded that a juvenile defendant properly preserved this issue by arguing at his dispositional hearing that he should be accountable only for damages that he admitted to causing. *In re B.W.*, 2014 MT 27, ¶ 13, 373 Mont. 409, 318 P.3d 682. In *B.W.*, there were over 200 reports that included windows being broken and/or shot out with a bb gun, and two cars that were set on fire from December 22, 2011, to January 1, 2012. *Id.* *B.W.*, along with several of his juvenile friends, was charged with criminal mischief, common scheme, a felony. *B.W.*, ¶ 5. *B.W.* admitted to committing the charged offense, but during his allocution he admitted to committing acts of vandalism on only

December 22 and 29, 2011. *Id.* Over B.W.'s objection that he should only be responsible for the dates he admitted to vandalizing property, the district court ordered that B.W. was responsible for the entire restitution amount since he pled guilty to a common scheme. *B.W.*, ¶ 8. This Court determined B.W.'s specific allocution, that he participated in only two nights of vandalism, was sufficient to preserve the restitution issue for appeal. *B.W.*, ¶ 13.

Unlike B.W., Erickson advanced no such arguments or objections to the district court's order imposing joint and several restitution. Boldman's comment to the court demonstrated they understood that restitution would be required, and essentially acknowledged that it would be ordered as joint and several by telling the court Erickson "is willing to pay restitution in an amount that this court feels is reasonable and contribute with his father." (Tr. at 120.)

When the district court pronounced the sentence in this case, it had been obvious for months that the State believed both Erickson and his father were liable for substantial restitution, and that the amount was continuing to accrue. Indeed, the issue was even addressed at the change of plea hearing when the State specifically requested a combined sentencing hearing to address the issue of restitution.

Over two months later, and after Robert's trial where he was convicted of the same offense, Erickson's only request at sentencing was to have all the horses

returned. Erickson made no objection to imposition of joint and several restitution, and even invited the court to impose restitution “with his father.” The district court cannot be put in error for a procedure in which the appellant acquiesced or participated, or to which no specific and timely objection was made. *See State v. Gardner*, 2003 MT 338, ¶ 44, 318 Mont. 436, 80 P.3d 1262 (citing Mont. Code Ann. §§ 46-20-104, -701(2)).

Without an objection from Erickson for either imposition of the restitution fee or joint and several liability, the district court had no notice or argument on how to portion the restitution obligation between the codefendants, nor did the court have any reason to assume that doing so was necessary. The court also had no opportunity to explain its statutory authority to impose the restitution fee.

Had Erickson indicated anything other than his willingness to be jointly responsible for the costs with his father, the State would have had the opportunity to present arguments or additional evidence to support its request. This would have included the charging documents and reference to the testimony presented at Robert’s trial, as the parties did while addressing other matters. In addition, the State could have emphasized Erickson’s averment that “I am the designated care taker” from the PSI. (Doc. 14 at 5.) The State could also have presented testimony from the ACO who determined from multiple sources, including Erickson himself, that Erickson was responsible for caring for all of the 58 neglected animals.

Because Erickson did not object to joint and several restitution, and actually acknowledged his willingness to be responsible with his father, this Court should deem the issue as waived. *Johnson*, ¶ 21. Likewise, this Court should not consider Erickson's unpreserved claim that the court lacked statutory authority to impose the restitution fee as he did not assert such an argument to the district court. *Id.*

However, should this Court choose to address these claims, Erickson has failed to establish the court lacked authority to impose the fee, and the record contains more than sufficient evidence to establish a causal nexus between Erickson and the neglect and cruelty he exhibited towards the herd of 58 horses he owned and cared for with his father.

III. The district court appropriately ordered joint and several restitution because the record established a direct causal relation between Erickson's conduct and the State's loss.

A sentencing court may find the requisite causal nexus for restitution from record evidence, including an offender's admitted or adjudicated criminal conduct, and the asserted victim loss, upon an admission, by implication from proof of the elements of the charged offense, upon victim affidavits included with a PSI, or upon other evidence presented at or incident to sentencing. *State v. Pierre*, 2020 MT 160, ¶ 13, 400 Mont. 283, 466 P.3d 494; Mont. Code Ann. §§ 46-18-241(1), -242(1)(b).

The district court had compelling record evidence to establish Erickson was responsible for caring for the entire herd of 58 horses. For instance, the State's affidavit in support of the Information contained several facts supporting Erickson's responsibility for the family's herd of horses. As described in the charging documents, when the ACO addressed an issue with these horses, she dealt primarily and almost exclusively with Erickson (*e.g.*, dealing with the wounded horse at the Appelgate property on May 3, 2018; Erickson arriving to take custody of the escaped mare on May 24, 2018; Erickson advising the ACO on June 20, 2018 that the mare with the hernia had been seen by a "semi-retired vet").

The ACO learned Erickson was the person purchasing feed for the horses and, when describing his hostility towards law enforcement, she noted that Erickson stated he was the person responsible for caring for the horses. Erickson confirmed this information in his PSI questionnaire when he asserted that he was "the designated care taker." The record in Erickson's case provided more than sufficient evidence for the court to determine he should be equally responsible for restitution with his father.

The district court had also observed the evidence at Robert's trial, including Erickson's testimony, which falls squarely within "evidence presented at or incident to sentencing." *Pierre*, ¶ 13. The court referenced Robert's trial during the joint sentencing hearing, to which neither defendant objected.

The causal connection evidence between Erickson's neglect and the entire herd was further corroborated during the joint sentencing hearing. Robert repeatedly referred to the horses as collectively owned with Erickson, with his references to the horses as "our studs" and "our mares" and statement that "I had the cash flow to keep them fed, and Alan was taking good care of them." (Tr. at 61-62, 131.) Additionally, Erickson's final comment to the district court was a request for return of all the horses.

The district court properly considered Erickson's admitted criminal conduct and its implication from proof of the elements of the charged offense, information learned at Robert's trial, the county's reported statement of costs, and the evidence presented at the sentencing hearing. *Pierre*, ¶ 13. The district court was presented with substantial evidence to support its decision to impose joint and several restitution, and the court did not misapprehend the effect of the evidence. *Arthun*, ¶ 11.

Erickson contends his sentence was illegal because the district court held him liable for the acts of Robert. (Opening Brief (Br.) at 12.) He claims that since he admitted to neglecting only ten horses, while Robert was convicted by a jury of cruelty to the entire herd, imposing joint and several restitution was illegal. (*Id.*) This argument conflates the evidence that supported the underlying convictions with the record evidence that the district court relied on to establish a causal nexus

between Erickson's conduct and joint and several restitution. Moreover, just as in *Arthun*, Erickson was fully apprised that the State accused him of neglecting nearly 60 horses. *Arthun*, ¶ 15.

In support of his argument, Erickson relies upon *B.W.*, *supra*, *State v. Doyle*, 2007 MT 125, 337 Mont. 308, 160 P.3d 516, and *State v. Maetche*, 2008 MT 184, 343 Mont. 464, 185 P.3d 980. (Br. at 11-12.) These cases are readily distinguishable.

First, neither *Doyle* nor *Maetche* involved analysis of restitution, but rather applied the principles of criminal liability through accountability. In *Doyle*, the defendant was convicted of deliberate homicide by accountability, and claimed, in part, that the evidence was insufficient to uphold the conviction as it was based solely on the testimony of codefendants. *Doyle*, ¶ 53. This court upheld the conviction, citing sufficient evidence beyond the testimony of the codefendants. *Id.* ¶¶ 56-58.

Similarly, in *Maetche*, the defendant and her family “completely trashed” a trailer home they were renting. *Maetche*, ¶ 3. Prior to holding a bench trial, the State informed Maetche that it would seek to prove the criminal mischief charge under a theory of accountability. *Id.* ¶ 5. In affirming the district court's determination of guilt, this Court stated that this circumstance, “combined with the direct evidence of the purposeful nature of the destruction, was sufficient to permit

a rational trier of fact to conclude that Maetche was criminally accountable for other destruction to the mobile home.” *Id.* ¶ 24.

B.W. is also distinguishable from the facts presented here. As explained above, this Court reversed an order for joint and several restitution that included damages for every night of the spree, after noting that the only evidence of B.W.’s involvement was his own statements. *B.W., supra.* As this Court explained, “There is nothing in the record to establish that B.W. aided, abetted, or conspired in the commission of criminal mischief, common scheme, on nights he was not present.” *B.W.*, ¶ 23.

Erickson’s plea to aggravated animal cruelty was not under a theory of accountability or a common scheme. While he tried to limit his initial allocution, with the court’s clarification that he must admit to neglecting at least ten animals, Erickson admitted as such without designation of which particular animals he neglected. Unlike *B.W.*, *Maetche*, or *Doyle*, this case was not charged or otherwise argued under a theory of accountability or common scheme for either Erickson or Robert. Rather, both were charged and convicted independently of one another for their own animal cruelty with respect to the same herd of 58 horses.

While the district court obtained the minimally sufficient evidence to accept Erickson’s plea of guilty, Erickson cites no binding authority that the court was required to base imposition of restitution on Erickson’s attempt to enter a bare

minimum factual basis when he pled guilty to aggravated animal cruelty.

Erickson's reliance on *B.W.* is unavailing.

Further, the offense Erickson was charged with is substantially different from the vandalism in *B.W.*, which was identified by specific acts and dates. The animal cruelty here involved years of neglect, resulting in severe malnourishment, overgrown hooves, and ongoing untreated serious medical ailments. As opposed to a juvenile who admitted participating in only two nights of vandalism, both Erickson and Robert collectively owned the 58 horses and were responsible for them. The care of the horses, or lack thereof, was simultaneously attributable to both Erickson and Robert, whether their personal neglect was independent from, or attributable to, the neglect of the other.

Another key difference between this case and *B.W.*, is that *B.W.* "did not know when he admitted to the detective that he participated in the vandalism on two nights that 'what is intended' is that he be held responsible for tens of thousands of dollars of damages inflicted by others while he was not present." *B.W.*, ¶ 26 (quoting Mont. Code Ann. 41-5-1402). This Court analyzed the affidavit, and pointed out that nowhere in the petition or affidavit was there notice that the State would seek to hold all the juveniles jointly and severally liable for all damages that had been inflicted when they were not present. *Id.*

In this case, however, Erickson was fully aware he would be responsible for the costs of care for all 58 horses prior to his change of plea hearing. (Hr'g at 16-17; Tr. at 133-35.) Not only was he apprised that the costs were substantial and would continue to accrue, Erickson was offered the opportunity to mitigate his share of the costs by forfeiting his right to the horses. (Tr. at 134.) If Erickson was truly responsible for the care of only ten of the horses, the appropriate time to mention the issue was upon receiving that offer. Instead, Erickson pled guilty and, later, asked the district court for the return of all the horses.

To accept Erickson's self-serving factual basis at face value, the district court would have had to ignore overwhelming contradictory evidence that he was responsible for caring for the entire herd. An offender is responsible only for pecuniary losses he or she has agreed to pay or that are directly or indirectly caused by an offense he or she committed or is criminally accountable for; *Pierre*, ¶ 12. Unlike in *Pierre*, here, there was substantial credible and uncontested evidence of a causal connection between Erickson's actions/non-actions and the resulting costs to care for the 58 horses.

Pierre involved multiple defendants who committed burglaries at a "main house" and a "guest house" belonging to the same victims. *Pierre*, ¶ 3. Pierre admitted that he entered the guest house on one occasion, and removed collectible dolls found inside. *Id.* ¶ 4. He adamantly denied ever entering the main house or

otherwise aiding the others in the commission of any main house burglary or theft. *Id.* Pierre filed a written objection to joint and several restitution, which he voiced again at sentencing. *Id.* ¶ 7.

At sentencing, the detective admitted that he had only speculative evidence that Pierre ever entered the main house. *Pierre*, ¶ 8. In reversing the district court's order for joint and several restitution with respect to the main house, this Court determined that there was "no record evidence that [Pierre's] admitted commission of the guest house burglary directly caused any pecuniary loss resulting from any burglary of the main house . . . by others." *Pierre*, ¶ 22.

Similarly, in *State v. Cole*, 2020 MT 259, 401 Mont. 502, 747 P.3d 323, this Court reviewed and followed the holdings of *B.W.* and *Pierre*, concluding that the record did not contain sufficient evidence of a causal connection between the defendant's conduct and the damages he was being ordered to pay. *Cole*, ¶¶ 6, 11, 14. Cole pled guilty to criminal possession of dangerous drugs and criminal possession of drug paraphernalia after law enforcement discovered methamphetamine in his bedroom. *Id.* ¶¶ 4-6. Based on the prosecutor's description of the plea agreement, the record established that the State did not believe Cole was responsible for anything outside his bedroom. *Id.* At sentencing, the court imposed the total costs to renovate the entire apartment on Cole. *Id.* In overturning the restitution order, this Court held, "There was no evidence the

criminal conduct to which Cole admitted and pled caused any damage to the apartment.” *Id.* ¶ 16. This Court reasoned, “[I]t is too great a leap to conclude that since Cole possessed methamphetamine and a glass pipe, that he caused over \$30,000 of damage to the apartment.” *Id.* ¶ 17.

This is not a case where there is “no evidence,” “nothing in the record,” or “insufficient evidence” of a causal connection between the criminal conduct and joint and several restitution, as occurred in *B.W.*, *Pierre*, and *Cole*. Rather, like *Arthun*, the record in this case contains compelling evidence that Erickson was responsible for neglecting the entire herd.

Further, Erickson was presented with the opportunity to forfeit his interest in the horses to mitigate his restitution amount. He declined that opportunity, undoubtedly anticipating that the district court would return “all” of the horses. As this Court noted in *Arthun*, “evidence presented in favor of restitution must be substantiated in the record ‘such that a reasonable mind’ could conclude that the award of restitution was warranted.” *Arthun*, ¶ 17 (citing *State v. Patterson*, 2016 MT 289, ¶ 16, 385 Mont. 334, 384 P.3d 92). Here, the court was presented with substantial and undisputed evidence that both codefendants were equally responsible for the conditions of the 58 horses and the care they subsequently required.

A defendant has a due process right to “explain, argue, and rebut any information’ presented at sentencing.” *Simpson*, ¶ 14 (internal citation and quotes omitted). When a defendant does not present contradictory evidence, the district court does not err in relying on a victim’s estimates of loss. *Id.* Erickson had the opportunity to rebut the evidence that established the causal connection between his care for the herd and the costs imposed. He did not and, in fact, invited the imposition of joint and several restitution. The district court’s findings were supported by substantial evidence that the court did not misapprehend. *Arthun*, ¶ 11. Erickson has not met his burden to establish that the court’s findings were clearly erroneous or that it committed an error of law. *Id.*

IV. The district court properly imposed the statutorily mandated ten percent administrative fee to supervise the payment of restitution.

The district court did not err by imposing the ten percent administrative fee. Regardless of who incurred the costs or how they were labeled, they were properly classified as restitution.

Erickson asserts that LCCSO, “the State,” is not a victim. (Br. at 14, 15.) Erickson further argues that, since these costs are specifically required under Mont. Code Ann. § 45-8-211(3)(a), there is “no statutory authority allowing for the application of an additional ten percent fee in cases of animal cruelty where costs are part of the judgment.” (Br. at 13.) Neither argument is compelling.

First, LCCSO is a government entity that incurred a loss of over \$300,000 as a result of the commission of an offense in this state. Based upon the plain language of the statute, LCCSO falls squarely within the statutory definition of a “victim.” Mont. Code Ann. § 46-18-243(2)(a)(iii)(A).

Second, the victim here clearly suffered “pecuniary losses.” While the restitution imposed included the costs of veterinary care for the horses, which are mandatory costs described at Mont. Code Ann. § 45-8-211(3)(a), those costs also fall under the definition of “pecuniary loss” in the restitution statutes, which require restitution of “all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender’s criminal activities.” Mont. Code Ann. § 46-18-243(1)(a).

Montana’s lawmakers did not replace the general restriction provisions by describing the restitution at issue for animal cruelty cases. Rather, by describing the unique types of expenses incurred in animal cruelty cases, the Legislature specified *additional* sentencing mandates to those in place for all criminal offenses at Mont. Code Ann. §§ 46-18-201(5), and -241 through -249.

Just as the sentencing provisions at Mont. Code Ann. § 46-18-201 apply to all Title 45 offenses, so too does Mont. Code Ann. § 46-18-241. *See* Mont. Code Ann. § 46-18-201(5) (requiring imposition of restitution pursuant to Mont. Code

Ann. §§ 46-18-241 through 249); Mont. Code Ann. § 46-18-241 (“As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss . . .”).

These restitution provisions must be read together to give effect to them all; especially when considering that for all Title 45 offences—including animal cruelty—Mont. Code Ann. § 46-18-201 applies. When possible, all provisions of a statute or regulation must be read together to give meaning to all. *State v. Brendal*, 2009 MT 236, ¶ 18, 351 Mont. 395, 213 P.3d 448 (Court will “read and construe the statute as a whole to avoid an absurd result and to give effect to a statute’s purpose”).

Erickson cites *State v. Warren*, 2019 MT 49, ¶ 41, 395 Mont. 15, 439 P.3d 357, for the proposition that “recoupment of costs by the State in animal cruelty cases are distinct,” and therefore “restitution statutory requirements do not apply.” (Br. at 15.) While *Warren* did have a similar factual history, albeit with dogs instead of horses, it did not consider application of the ten percent restitution fee, but rather the sufficiency of the evidence to support imposition of restitution.

In *Warren*, this Court approved the imposition of over \$60,000 of costs, as they were “reasonably supported by the evidence.” *Warren*, ¶¶ 44, 46. Notably, this Court approved “lost revenue” as part of the sheltering costs of the forfeited animals. *Id.* ¶ 45. “Lost revenue,” or income, is not specified in the animal cruelty

statute, but it is covered within the definition of “pecuniary loss” in the restitution statute. Mont. Code Ann. § 46-18-243(1)(a). Therefore, while this Court noted at ¶ 41 that restitution for animal cruelty offenses is described at Mont. Code Ann. § 45-8-211(3), it still applied the general restitution principles from Mont. Code Ann. § 46-18-241 et seq.

Contrary to Erickson’s argument on appeal, this Court did not hold in *Warren* that the provisions of the criminal restitution statute, which mandate how restitution is to be paid, collected, distributed, and supervised, and which render it non-dischargeable until paid in full, do not apply to the specific costs required by Mont. Code Ann. § 45-8-211(3)(a). *See* Mont. Code Ann. § 46-18-241(2)(b). Such an interpretation would lead to absurd and inconsistent results in the application of these statutes.

“Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898 (citing *Mont. Sports Shooting Ass’n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003). “Harmonizing and reading the statute holistically does not permit such a rendering. Statutory interpretation cannot divest the authority of other provisions, or render other provisions, superfluous.” *Id.* (citing *Hendershott v. Westphal*, 2011 MT 73, ¶ 20, 360 Mont. 66, 254 P.3d 806). “We will not adopt such an absurd and unreasonable result where reasonable

interpretation will avoid it.” *State v. Ohl*, 2022 MT 241, ¶ 10, 411 Mont. 52, 521 P.3d 241 (citing Mont. Code Ann. § 1-3-233). Accepting Erickson’s position would lead to absurd results.

For example, it is the restitution statutes that require a victim to offset any amounts recovered in a civil action from amounts recovered in a restitution award. Mont. Code Ann. § 46-18-249(3). No such provision is included in the costs of the animal cruelty statute, Mont. Code Ann. § 45-8-211(3). Thus, if the provisions of the criminal restitution statute do not apply to the costs imposed under the animal cruelty statute, a victim is not required to offset any amounts recovered in a civil action. Clearly, the Legislature did not intend to entitle a victim in a case of animal cruelty to recover twice.

Another possible absurd result would be the absence of any authority to order an investigation into the victim’s loss under Mont. Code Ann. § 46-18-242(1). In addition, since Mont. Code Ann. § 46-18-241(2)(b) mandates that repayment of restitution be supervised by the Department of Corrections, accepting Erickson’s proposition would require this Court to conclude the Legislature did not intend for anyone to supervise repayment of restitution if it was imposed pursuant to a violation of the animal cruelty statutes. This would violate basic tenants of statutory construction by failing to read statutes together and create absurd results.

Restitution, whether imposed under Mont. Code Ann. § 46-18-241, or as mandatory costs of veterinary care under the animal cruelty statute, must be subject to the same statutory provisions regarding payment, collection, and supervision, including the ten percent administrative fee for supervising repayment. To accept Erickson's argument to the contrary would lead to absurd and inconsistent results in application of Montana's sentencing provisions.

CONCLUSION

This Court should affirm the district court's order imposing joint and several restitution upon Erickson and his father. This Court should also affirm the district court's order imposing the mandatory ten percent restitution fee.

Respectfully submitted this 30th day of November, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 8,432 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

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I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-30-2023:

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