



OFFICE OF THE DISTRICT ATTORNEY
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14TH JUDICIAL DISTRICT
SERVING GRAND, MOFFAT AND ROUTT COUNTIES

January 4, 2019

Legal Conclusions Regarding Grand County Dog Death Case
(Grand County Sheriff's Office Incident Report #181179)

The District Attorney's Office for the 14th Judicial District prepared this summary of the reports produced by the Grand County Sheriff's Office. This document contains the following:

1. A synopsis of the facts of the case.
2. A brief description of the law applicable to the case.
3. The District Attorney's analysis and decision as to the filing of criminal charges based on the facts and applicable law.

Factual Background

On December 17, 2018 around 6:07 PM Deputy Steven Hines of the Grand County Sheriff's Office (hereafter, "GCSO") was dispatched to 904 Depot Ave. on a report of a dog that had been shot and killed. Prior to Deputy Hines's arrival, Sheriff Schroetlin and Officer Michael Minhas of the Kremmling Police Department arrived at the railroad tracks below the reporting parties' house. This was discovered to be the location where the dog was shot. At the railroad tracks there were two pools of blood, animal tissue, and a blue microchip. This was determined to be the location where the dog, Demon, was killed.

Deputy Hines spoke with the reporting party, Robert Ballard. Ballard stated that his friend, Jeffery Fowler, was watching his dog "Demon" while the Ballards were out. Deputy Hines then interviewed Fowler regarding the events that preceded the report.

Around 4:05 PM Fowler let Demon outside. Demon went under a fence toward a bull pen on the adjacent property. The adjacent property is a cattle ranch owned by the Sammons family. Fowler reported that Demon went into the bull pen and began jumping and barking at the bulls "playfully." Fowler attempted to call for Demon to return to the Ballard property for about 20 minutes. Demon left the bull pen, but did not return to the Ballard property. Fowler continued calling for Demon for around 15 minutes. Demon did not return to the property. Fowler ceased calling for Demon and returned inside the home to do something in the kitchen. While Fowler was inside the Ballard home about fifteen minutes later, Fowler said he heard a gunshot. Fowler rushed outside and saw that Cole Sammons had shot Demon from inside a white truck twice. After this occurred, a brown truck arrived and loaded Demon into the bed of the truck.

Deputy Hines was then contacted by Sheriff Schroetlin to respond to the Sammons residence to speak with the person who may have been involved in the shooting. Deputy Hines arrived at the residence and spoke with Cole Sammons and his mother, Christina. The Sammons's bull pen is located approximately 75 yards from their residence. The Sammons

related that they have experienced problems with dogs harassing their cattle. Cole stated that around 4:30 PM he heard a dog barking near the family's bulls. Cole saw the dog chasing and biting at the bulls. Cole retrieved his black Anderson AR-15 rifle and drove down to the bull pen. Cole stated that he shot the dog while it was still inside the pen and wounded the dog. The wounded dog ran out of the bull pen across the railroad tracks. Cole followed the dog and shot it a second time, so that the dog would not suffer.

Cole's father arrived in another truck. Cole and his father loaded the dog into the bed of the truck, and brought it back to their property where they unloaded it. Cole took Deputy Hines to the location where he unloaded the dog and the dog was given to GCSO Sgt. Trainor for transport to the Grand County Animal Shelter, pending the investigation and for burial by the owners.

Around 6:10 PM Jim Ellison, GCSO Sgt. of Investigations, was contacted by Deputy Hines to conduct follow-up investigation. Sgt. Ellison was made aware of the above stated facts. Sgt. Ellison concluded that pursuant to Colorado Revised Statutes § 35-43-126, Cole Sammons was legally authorized to kill the dog. Sgt. Ellison also concluded that the dog and dog owner was in violation Colorado Revised Statutes § 30-15-101 (Dog at Large) and Grand County Animal Control Ordinance 4RES.1985-8-6 Section 5.1. Each of these statutes will be analyzed below.

Applicable Law

There are four statutes relevant to this case:

1. Colorado Revised Statutes § 35-43-126, "Dog Worrying Stock." This statute states, "Any dog found running, worrying, or injuring sheep, cattle, or other livestock may be killed, and the owner or harbinger of such dog shall be liable for all damages done by it."

"Worrying" is defined as "to run after; to chase; to bark at." *Failing v. People*, 105 Colo. 399 (1940).

The authorization to kill contains no limitations, and there is no requirement for a livestock owner to fire a warning shot or make any effort to drive the dog away before killing the dog. *Failing v. People*, 105 Colo. 399 (1940).

2. Colorado Revised Statutes § 18-9-202(1.5)(b) "Cruelty to Animals." This statute states, "A person commits aggravated cruelty to animals if he or she knowingly tortures, mutilates, or needlessly kills an animal."
3. Colorado Revised Statutes § 30-15-101(1)(a)(II) "Dog At Large." This statute states, "The board of county commissioners of any county may adopt a resolution for the control and licensing of dogs and other pet animals as provided in this part 1. The resolution may: require that dogs and other pet animals be under control at all times and define 'control,' which may vary from time to time, place to place, and animal to animal."

4. Grand County Animal Control Ordinance 4RES.1985-8-6 § 5.1 “Animals Running at Large – Restraining.” This ordinance states, “It shall be unlawful for any person owning a dog or other pet animal to permit such animal to run at large. It shall be unlawful for any person in possession of someone else’s dog or other pet animal to permit said animal to run at large.”

District Attorney’s Analysis of Facts Applied to Law

Below is an analysis of two distinct crimes: 1) crimes relating to Cole Sammons shooting Demon, Robert Ballard’s dog, and 2) crimes relating to Jeffery Fowler allowing Demon to run free on the Sammons property and in their bull pen.

There are two legal standards that must be met before an individual may be arrested, charged and ultimately convicted of a crime. The first is “probable cause,” meaning that evidence “is sufficient to permit a person of ordinary prudence to believe in a person’s guilt. *People v. Walker*, 675 P.2d 304 (Colo. 1984). Probable cause is required for law enforcement officers to seek an arrest warrant or to issue a summons. Probable cause is also the minimum required for the District Attorney’s Office to file criminal charges in court. *Colorado Rules of Professional Conduct*, Rule 3.8(a).

Before charging individuals with crimes in court, the District Attorney’s Office ultimately analyzes cases to determine whether evidence is sufficient to succeed at trial – that is, convince a jury “beyond a reasonable doubt” that an individual has committed a crime. *National Prosecution Standards, National District Attorney’s Association*, Standard 4-2.4.j; *Prosecution Function, Criminal Justice Section Standards, American Bar Association*, Standard 3-3.9(a). The “beyond a reasonable doubt” requirement is a higher evidentiary standard than “probable cause.” Because it is the standard required to be met before individuals may be punished for crimes by such penalties as prison and fines, “beyond a reasonable doubt” is appropriately the highest evidentiary standard in the law.

Crimes Relating to Cole Sammons Shooting Demon

This case presents the question of whether Cole Sammons was legally authorized to shoot and kill Demon. From the evidence, we conclude that the relevant facts are:

- 1) Jeffery Fowler let Demon outside,
- 2) Mr. Fowler saw that Demon went onto the Sammons property and was inside of the Sammons’ bull pen,
- 3) Demon was jumping and barking at the bulls,
- 4) Mr. Fowler unsuccessfully attempted to use verbal commands to get Demon to return to the Ballard property,
- 5) Mr. Fowler yelled at Demon for 20 minutes while the dog was in the bull pen, another 15 minutes while the dog was outside of the bull pen, before going inside the home,
- 5) Mr. Fowler did not make any attempt to physically remove Demon from the Sammons property,
- 6) Cole Sammons saw Demon inside the pen barking, biting at, and chasing the bulls therein,
- 7) the Sammons reported having previous problems with dogs harassing their cattle,

8) Cole Sammons first shot Demon while inside the pen, and then fired the fatal shot after Demon ran a short distance from the pen, and

9) Mr. Fowler reported having left the dog unattended for another 15 minutes before the dog was fatally shot.

Two statutes appear to conflict. The “Dog Worrying Stock” statute appears to give Cole Sammons complete legal authorization to shoot and kill Demon. However, the “Cruelty to Animals” statute appears to prohibit such conduct. Which statute prevails? The Colorado Supreme Court answered that question in *People v. Failing*.

In *Failing*, a stock owner killed two dogs that were chasing some of the stock owner’s cattle. *People v. Failing*, 105 Colo. 399 (1940). The Colorado Supreme Court found that a dog that is found running, chasing, or barking at cattle falls within the definition of “worrying” the cattle. *People v. Failing*, 105 Colo. 399 (1940). Further, the court found that the permission to kill a dog found within the “Dog Worrying Stock” statute takes precedent over the then-existing version of Colorado’s “Cruelty to Animals” statute. Last, the court found that there is no limitation on when a stock owner can kill a dog that is worrying his or her stock and stated that the stock owner need not attempt to chase the dogs away, nor fire a warning shot prior to killing a dog. *People v. Failing*, 105 Colo. 399 (1940).

The facts of this case are analogous to those in *Failing*. Here, Demon was chasing after the bulls, barking at them, and according to Cole Sammons, attempting to bite them. The District Attorney’s Office concludes that the “Dog Worrying Stock” statute gives Mr. Sammons complete authority to kill a dog harassing his cattle, as happened here. Therefore, our office will decline to pursue any charges against Mr. Sammons in connection with the killing of Demon.

Crimes Relating to Jeffrey Fowler Allowing Demon to Run Free on the Sammons Property

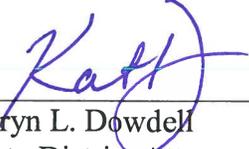
The case also presents the question of whether an offense was committed by Jeffrey Fowler for allowing Demon to run free on the Sammons property and in their bull pen, by his own admission for around 40 minutes. The “Dog at Large” statute authorizes counties to enact ordinances regarding the control of dogs at certain times and in certain places. The Grand County Ordinance, quoted above, does just that. In pertinent part to the case at hand, the statute states, “It shall be unlawful for any person in possession of someone else’s dog or other pet animal to permit said animal to run at large.” Grand County Ordinances define “running at large” as “an animal off the premises of the owner and not under the physical or audible control of the owner or his authorized representative. An animal intruding upon the property of another person other than the owner shall be prima facie ‘running at large.’ An animal within an automobile or other vehicle of its owner shall not be deemed ‘running at large.’”

In this case, Jeffrey Fowler was in possession of Robert Ballard’s dog, Demon, while the Ballards were out. Fowler let Demon outside, and Demon proceeded to go onto the Sammons property and into their bull pen. Demon barked, and according to Cole Sammons, attempted to bite some of the bulls located in the pen. Fowler attempted to gain audible control of the dog, but was unsuccessful in doing so. Because Mr. Fowler permitted Demon another person’s dog to run onto the property of another without physical or audible control over the dog, there is probable cause to charge Mr. Fowler with dog at large.

Nevertheless, the District Attorney's Office has chosen to exercise prosecutorial discretion in this case and will decline charges for Dog at Large. The District Attorney's Office recognizes that Mr. Fowler and Mr. Ballard have suffered the loss the dog.

Conclusion

After analyzing the applicable facts and law our office is declining charges against Cole Sammons because the Dog Worrying Stock statute gives Mr. Sammons complete legal authority to kill an animal harassing his livestock. We are also declining charges against Jeffrey Fowler for Dog at Large as an exercise of prosecutorial discretion.



Kathryn L. Dowdell
Deputy District Attorney