

2019 ANIMAL ABUSE AND DOMESTIC VIOLENCE CONFERENCE

Friday, October 4, 2019
Maricopa County Security Building
9th Floor Ballroom
222 N. Central Avenue,
Phoenix, Arizona



DOMESTIC VIOLENCE AND ANIMAL CRUELTY: HOW PROSECUTING ANIMAL CRIMES CAN SAVE LIVES

Presented by:

Erin Aiello

Assistant District Attorney
Northwestern District Attorney's Office, Massachusetts
The Humane Society of the United States

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

PLYMOUTH, ss.

COMMONWEALTH OF MASSACHUSETTS

DISTRICT COURT
HINGHAM DISTRICT
DOCKET NO: [REDACTED]

COMMONWEALTH

v.
[REDACTED]

**COMMONWEALTH'S MOTION IN LIMINE TO ADMIT EVIDENCE OF PRIOR
BAD ACTS BY GRIZZLY**

The Commonwealth moves this Honorable Court *in limine* to rule admissible at trial evidence of certain "bad acts" demonstrating the previous aggression between the victim "Ben" and the defendant's dog "Grizzly." The Commonwealth seeks to introduce this evidence during its case in chief.

The specific evidence the Commonwealth seeks an *in limine* ruling is as follows:

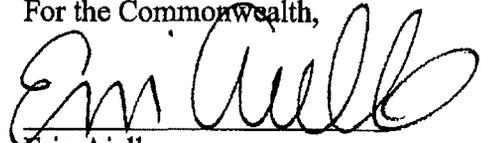
1. On or about 2013, the defendant's dog Grizzly and the victim Ben were involved in a previous altercation where Grizzly scratched the nose of Ben.
2. The defendant told Ben's owner [REDACTED] that Grizzly scratched Ben.
3. Due to the altercation between the dogs Tracy Siciliano asked the Defendant in the future to keep the dogs separated.
4. The Defendant was to board the dog Ben within the Defendant's home as to comply with [REDACTED]'s wishes of keeping the dog's separated.
5. The anticipated testimony of [REDACTED] will show that the Defendant was made aware of the potential danger of housing these dogs together.

As grounds therefore, the Commonwealth states that evidence of such "prior bad acts" is being offered:

- 1) To establish the hostile nature of their relationship between the defendant's dog and the victim, Commonwealth v. Hunter, 416 Mass. 831, 837 (1994), Commonwealth v. Leonardi, 413 Mass. 757, 764 (1992); Commonwealth v. Robertson, 408 Mass. 747, 749-752 (1990); Commonwealth v. Nardone, 406 Mass. 123, 128 (1989); and Commonwealth v. Jordan (No. 1), 397 Mass. 489 (1986);
- 2) To help establish the defendant's modus operandi and pattern of conduct toward the victim, and his identity as the person responsible for the alleged attack, see Commonwealth v. Crimmins, 46 Mass. App. Ct. 489, 494-495 (1999); Commonwealth v. Helfant, 398 Mass. 214, 224-229 (1986);

- 3) To present as full a picture as possible of the events surrounding the incident itself Commonwealth v. Bradshaw, 385 Mass. 244, 269-270 (1982), *citing* Commonwealth v. Chalifoux, 362 Mass. 811, 816 (1973); and Commonwealth v. Chartier, 43 Mass. App. Ct. 758, 760-761 (1997).
- 4) To negate any claim of accident or self-defense, *see* Commonwealth v. Barrett, 418 Mass. 788, 795 (1994);
- 5) To prove the objective reasonableness of the alleged victim's fear, *see* Commonwealth v. Gordon, 407 Mass. 340 (1970).

Respectfully Submitted
For the Commonwealth,



Erin Aiello
Assistant District Attorney

Date:

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, S.S.

DISTRICT COURT DEPARTMENT
HINGHAM DIVISION
DOCKET NO.: [REDACTED]

COMMONWEALTH

v.
[REDACTED]

MOTION IN LIMINE TO INCLUDE NECROPSY PHOTOGRAPHS

Now comes the Commonwealth and moves this Honorable Court to include in the Commonwealth's presentation of evidence photos of the dog "Ben" at the Veterinary Hospital as well as necropsy photos taken of Ben at Tufts.

As grounds therefore the Commonwealth states these photos probative value outweighs any potential unfair prejudice to the Defendant. Furthermore, the Commonwealth contends the photos are relevant to proving the Commonwealth's burden. The photos demonstrate the Defendant's failure to provide the animal with proper shelter as well as knowingly and willfully permitting the animal to be subjected to unnecessary torture, suffering, or cruelty of any kind.

In Commonwealth v. Daly, the Court addressed the admission of a photograph depicting a deceased dog in a plastic bin. 90 Mass. App. Ct. 48 (2016). The Court in Daly found no merit in the Defendant's argument that the judge should exclude the photograph, which was relevant to disproving justification and to proving the use of excessive force. ("[I]f the photographs possess evidential value on a material matter, they are not rendered inadmissible solely because they are gruesome or may have an inflammatory effect on the jury"). See Commonwealth v. Ramos, 406 Mass. 397, 407 (1990), quoting from Commonwealth v. Bys, 370 Mass. 350, 358 (1976).

In Commonwealth v. Alleyne, the Court addressed the use of photos as well. In Alleyne, the Defendant challenged the admission of nineteen photographs and the failure of the trial judge to give a contemporaneous limiting instruction. 474 Mass. 771(2016). The defendant's argument was based on the contention that the close-up photos of the victim's body and the effect of decomposition were unnecessarily gruesome and prejudicial. "The question whether the inflammatory quality of a photograph outweighs its probative value and precludes its admission is determined in the sound discretion of the trial judge." Commonwealth v. Amran, 471 Mass. 354, 358 (2015), quoting Commonwealth v. Pena, 455 Mass. 1, 12 (2009). We defer to the judge's exercise of discretion unless the judge has made "a clear error of judgment in weighing' the factors relevant to the decision, . . . such that the decision falls outside the range of reasonable alternatives" (citations omitted). L.L. v. Commonwealth, 470 Mass. 169,185 n.27 (2014).

The Commonwealth recognizes that these photos are difficult to view, however they should be admitted "they are important to the resolution of any contested fact in the case." Commonwealth v. Bastarache, 382 Mass. 86 , 106 (1980). In this matter, one of the contested issues is whether the defendant permitted the animal to be subjected to unnecessary torture, suffering, or cruelty of any kind. The scope of the animal's injury is best explained by a photograph demonstrating that a reasonable person would have understood the extent of the injuries and would have taken actions to not only prevent such injuries, but to act swiftly once they occurred. In this instance, this matter can be likened to proving the element of extreme atrocity or cruelty in a murder case and similarly the photographs are necessary to prove an element of the crime.

Wherefore, the Commonwealth respectfully requests the Court to allow the Commonwealth to admit a limited number of photographs of the dog "Ben" into evidence. The Commonwealth also recognizes that a limiting instruction is appropriate upon admission of the photos.

Respectfully Submitted,
By the Commonwealth,

Erin Aiello
Assistant District Attorney

Dated:

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, S.S.

DISTRICT COURT DEPARTMENT
HINGHAM DIVISION
DOCKET NO.: [REDACTED]

COMMONWEALTH

v.
[REDACTED]

COMMONWEALTH'S MOTION IN LIMINE TO ALLOW THE COMMONWEALTH AND WITNESSES TO CALL THE VICTIM BY NAME

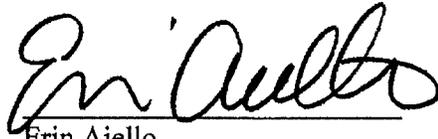
Now Comes the Commonwealth and moves this Honorable Court to allow the Commonwealth and the witnesses call the victim by name. The animal owned by [REDACTED] is a golden doodle named "Ben [REDACTED]" Defense is requesting the animals be referred to by a letter or number (Dog A, Dog B, etc.) due to potential humanization of these animals to a jury.

As grounds in opposition of the Defendant's request, the Commonwealth refers to Commonwealth v. Welansky, where the Court found that if more than one animal is involved in a single prosecution, individual animals should be uniquely identified in complaint or indictments. 316 Mass. 383 (1944). In this matter, Ben is identified in the application of complaint. Furthermore, the Court has long established that "live animals are not the equivalent of inanimate objects." Coolidge v. Choate, 52 Mass. 79 (1846).

Massachusetts has long recognized the rights of "irrational beings." See Commonwealth v. Turner, 145 Mass. 296 (1887). However, recently other high courts in other states have also recognized that animals shall be afforded some of the same basic rights as human beings. In State v. Arnold Nix, the high court in Oregon ruled that a man who was convicted of starving 20 horses and goats on his property could be sentenced -- not just on one count of second-degree animal neglect -- but on 20 counts, meaning each animal was treated as a separate "victim." If an animal was not capable of being a named victim under a complaint or an indictment, the charge animal cruelty would be unnecessary and the defendant would be charged with a property crime.

Wherefore, the Commonwealth respectfully requests the court to be allowed to refer to the animals by name.

Respectfully Submitted,
By the Commonwealth,

A handwritten signature in black ink, appearing to read "Erin Aiello". The signature is written in a cursive, flowing style.

Erin Aiello
Assistant District Attorney

Dated: 11-13-17

ANIMAL PROTECTION LAWS OF ARIZONA

ARIZONA

1. <u>DEFINITION OF "ANIMAL"</u>	"[M]ammal, bird, reptile or amphibian" ARIZ. REV. STAT. § 13-2910(H)(1)
2. <u>GENERAL CRUELTY *</u>	<p>Unlawful killing of livestock ARIZ. REV. STAT. § 3-1307 <i>Class 5 felony</i></p> <p>General cruelty, neglect, abandonment ARIZ. REV. STAT. § 13-2910(A)(1)-(7),(12) <i>Class 1 misdemeanor</i></p> <p>Aggravated cruelty ARIZ. REV. STAT. § 13-2910(A)(8)-(11),(13) <i>Class 6 felony</i></p> <p>Intentionally killing or disabling working or service animal ARIZ. REV. STAT. § 13-2910(E) <i>Class 6 felony</i></p> <p>Violating special provisions regulating the confinement of calves raised for veal and pregnant pigs ARIZ. REV. STAT. § 13-2910.07 <i>Class 1 misdemeanor</i></p> <p>Horse tripping ARIZ. REV. STAT. § 13-2910.09 <i>Class 1 misdemeanor</i> <i>Mandatory minimums defined in statute</i></p>
3. <u>EXEMPTIONS</u>	<p>Wildlife, accepted farm animal husbandry practices, slaughter ARIZ. REV. STAT. § 13-2910(C) ARIZ. REV. STAT. § 13-2910.05</p> <p>Pest control ARIZ. REV. STAT. § 13-2910(B)</p>

ANIMAL PROTECTION LAWS OF ARIZONA

	<p>Rodeo ARIZ. REV. STAT. § 13-2910.05</p> <p>Other ARIZ. REV. STAT. § 13-2910(B) ARIZ. REV. STAT. § 13-2910.05</p> <p>Wildlife, rodeos, other ARIZ. REV. STAT. § 13-2910.06</p>
<p><u>4. FIGHTING & RACKETEERING</u></p>	<p>Various animal fighting and cockfighting activities ARIZ. REV. STAT. §§ 13-2910.01, -2910.03 <i>Class 5 felony</i></p> <p>Being a spectator at an animal fight or being present at any place where an animal fight is being prepared ARIZ. REV. STAT. § 13-2910.02 <i>Class 6 felony</i></p> <p>Being a spectator at a cockfight or being present at any place where a cockfight is being prepared ARIZ. REV. STAT. § 13-2910.04 <i>Class 1 misdemeanor</i></p> <p>Theft of an animal for fighting purposes ARIZ. REV. STAT. § 13-1802(G) <i>Class 6 felony</i></p>
<p><u>5. SEXUAL ASSAULT</u></p>	<p>A public act involving the sexual assault of an animal ARIZ. REV. STAT. § 13-1403 <i>Class 1 misdemeanor</i> <i>If minor under 15 is present: Class 5 felony</i></p> <p>Sexual assault ARIZ. REV. STAT. § 13-1411 <i>Class 6 felony</i> <i>If minor under 15 is forced to sexually assault an animal: Class 3 felony</i></p>
<p><u>6. MAXIMUM PENALTIES & STATUTE OF LIMITATIONS**</u></p>	<p>Class 1 misdemeanor 6 months imprisonment <i>and/or</i> \$2,500 fine</p>

ANIMAL PROTECTION LAWS OF ARIZONA

	<p>ARIZ. REV. STAT. § 13-707(A)(1) ARIZ. REV. STAT. § 13-802(A)</p> <p>Class 6 felony 2 years imprisonment <i>and/or</i> \$150,000 fine ARIZ. REV. STAT. § 13-702(D) ARIZ. REV. STAT. § 13-801(A)</p> <p>Class 5 felony 3 years imprisonment <i>and/or</i> \$150,000 fine ARIZ. REV. STAT. § 13-702(D) ARIZ. REV. STAT. § 13-801(A)</p> <p>Class 3 felony 7 years imprisonment <i>and/or</i> \$150,000 fine ARIZ. REV. STAT. § 13-702(D) ARIZ. REV. STAT. § 13-801(A)</p> <p>Repeat offenders may face additional penalties based on the history of offenses. ARIZ. REV. STAT. § 13-703</p> <p>Statute of Limitations <i>Misdemeanor: 1 year</i> Ariz. Rev. Stat. § 13-107(B)(2) <i>Class 2-6 felony: 7 years</i> Ariz. Rev. Stat. § 13-107(B)(1)</p>
<p>7. <u>CROSS ENFORCEMENT & REPORTING</u></p>	<p>-----</p>
<p>8. <u>VETERINARIAN REPORTING & IMMUNITY</u></p>	<p>Veterinarians shall report in writing, within forty-eight hours of treatment or examination, any suspected dog fighting or animal abuse to a local law enforcement agency; and in cases of suspected abuse of livestock, to the department of agriculture. Veterinarians are immune from civil liability for reports filed in good faith. ARIZ. REV. STAT. § 32-2239</p>
<p>9. <u>LAW ENFORCEMENT POLICIES</u></p>	<p>-----</p>

ANIMAL PROTECTION LAWS OF ARIZONA

<p>10. <u>SEIZURE</u></p>	<p>A peace officer, animal control agent or deputy may use reasonable force to open a vehicle and rescue an animal when physical injury or death is likely to result. ARIZ. REV. STAT. § 13-2910(D)</p> <p>A peace officer, county enforcement agent or animal control officer who lawfully seizes an animal shall give notice of the seizure. ARIZ. REV. STAT. § 13-4281(A)</p> <p>Special provisions for seizure of horses ARIZ. REV. STAT. § 3-1721</p>
<p>11. <u>COURTROOM ANIMAL ADVOCATE PROGRAM</u></p>	<p>-----</p>
<p>12. <u>PROTECTION ORDERST</u></p>	<p>ARIZ. REV. STAT. § 13-3602</p>
<p>13. <u>RESTITUTION †</u></p>	<p>Upon conviction, owner is liable for the expenses incurred in rescuing the owner's cruelly treated or neglected animals. ARIZ. REV. STAT. § 12-1011</p> <p>An owner is responsible for the cost of care for an animal that was properly seized and the owner is required to post a bond to defray the cost of care. ARIZ. REV. STAT. § 13-4281(A)(5)</p>
<p>14. <u>FORFEITURE & POSSESSION BANS †</u></p>	<p>The court may terminate the rights of the seized animal's owner upon a finding of cruel mistreatment, cruel neglect or abandonment. ARIZ. REV. STAT. § 13-4281(B)</p> <p>If the owner of a seized animal fails to post bond, or to request or attend a hearing, the owner forfeits the animal to the seizing agency. ARIZ. REV. STAT. § 13-4281(C)</p>
<p>15. <u>COURT-ORDERED TREATMENT †</u></p>	<p>-----</p>
<p>16. <u>HOT CARS</u></p>	<p>Intentionally, knowingly, or recklessly leaving an animal unattended in</p>

ANIMAL PROTECTION LAWS OF ARIZONA

	<p>a motor vehicle knowing death or injury is likely to result ARIZ. REV. STAT. § 13-2910(a)(7) <i>Class 1 misdemeanor</i></p> <p>Civil immunity for removing a domestic animal from a vehicle ARIZ. REV. STAT. §12-558.02</p>
17. <u>CIVIL NUISANCE ABATEMENT</u>	<p>A commercial building where criminal activity regularly occurs is an abatable nuisance. Ariz. Rev. Stat. Ann. § 12-998</p>
18. <u>AG-GAG LAWS</u>	-----
19. <u>BREED SPECIFIC LEGISLATION</u>	<p>Breed specific regulations are prohibited ARIZ. REV. STAT. § 9-499.04</p>

- * States may have other more specific statutes in addition to the general animal protection statutes referenced in this table.
- ** Despite statutory maximums, states often employ sentencing guidelines that may significantly alter the allowable sentence.
- † This table generally references only those provisions that are within each state's animal protection statutes. States may employ similar provisions within other non-animal-specific criminal and civil statutes, and may also have a variety of animal-related regulations in effect.



Animal Cruelty Investigation Case Checklist

By Claudine Wilkins and Jessica Rock, Founders of Animal Law Source™

COMPLAINANT/WITNESSES

- Record each complainant/witness's name, address, home and work phone #'s.
- Note address and description of the property/location where animal is located.
- Get physical description(s) of animal(s): breed, color, gender, altered or not.
- Note time dispatched, time arrived.
- Note complainant/witness's relationship to animal and owner/keeper.
- Note complainant/witness's description of animal cruelty in detail: days, times, injuries, action or inaction (i.e. failure to provide food/water).
- Obtain a detailed written statement from each complainant/witness.

ANIMAL SUBJECT(S)

Plain View – No warrant

- If animal(s) is in plain view, appears to be the subject of cruelty, and does not need emergency medical attention, take photos of location, surrounding areas, and the animal(s).
- Statements and photos and other legally available evidence are used to seek a warrant.
- Warrant is written with specific situation in mind and is detailed.* See Search Warrants in Animal Cruelty Cases.
- Warrant is executed. Evidence collected. Photos taken.
- Search warrant return is filed.
- If exigent circumstances exist (i.e. animal is in need of immediate medical attention) seize animal(s) and take to vet immediately.

Warrant being executed

- Animals are seized pursuant to a warrant and return is filed.
- If the animal(s) is in need of immediate medical care, procedures were followed to take and transport the animal to a veterinarian.
- Take photos of location and animals as appropriate at site and by veterinarian.

Animal not in plain view – no warrant

- If the animal(s) is not in plain view, but statements and visible conditions indicate an animal is being treated cruelly, an affidavit is prepared and a warrant sought.*
- Warrant is executed. Evidence collected. Photos taken.

No seizure

- Animals were not seized at this time because _____

SUSPECT

- Suspect's location is described upon arrival.
- Record suspect's name, dob, address, home and work phone numbers.
- Record spontaneous statements by suspect.
- Record any pre-arrest statement by suspect.
- Describe suspect's emotional condition.
- Document evidence of alcohol and drug use at the time of cruelty.
- Ask about presence, location, type of firearms and ammunition and other deadly weapons.
- Ask about animal(s) veterinarian and other caregivers (farrier, groomer, etc.).
- If arrested, advise of Miranda rights, and ask if s/he wants to make a statement.
- Obtain a written or recorded statement from the suspect.
- Obtain a NCIC check for criminal history.

EVIDENCE

- Record the dispatch (911 call number) and incident number.
- Obtain call recording.
- Photograph multiple views of animal (s) - alive and dead.
- Photograph crime scene.
- Collect pertinent evidence from both crime scene and case veterinarian.
- Place animals in a safe, secure location.
- Keep dead animals refrigerated for necropsy.
- Attach related reports, photos and evidence tags.

*Terminology may include the following and more: Search for animal evidence: All animals living or dead, born or unborn, above or below the ground, contained or free roaming, inside or outside. All cages, crates, containers, or other items or objects that could be used for the confinement or shelter of an animal. All animal or related to animal records written or electronically kept (computers, CD's DVD's, thumb drives)... including medical treatment, drugs and other prescribed items, intake or export, sales receipts, food and water bills, proof of ownership documents, care and boarding contracts and agreements, photographs. Any and all implements for the training, control or transport of animals. Paperwork that ties parties/owners to the location evidence is found. Food, supplies, medications. Places to be searched: All buildings, barns and outbuildings attached or unattached. Fenced pasture and gated fields. All vehicles or trailers used for the transport of animals.



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