

1998

# Provo City Corporation v. Robert L. Murray : Reply Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

Reply Brief, *Provo City Corporation v. Murray*, No. 970110 (Utah Court of Appeals, 1998).

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IN THE UTAH COURT OF APPEALS

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PROVO CITY CORPORATION,	:	
	:	
Plaintiff/Appellee,	:	
	:	Case No. 970110-CA
vs.	:	
	:	
ROBERT L. MURRAY,	:	Priority No. 2
	:	
Defendant/Appellant.	:	
	:	

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ARGUMENT

POINT I

**THE TRIAL COURT ERRED IN ITS CONCLUSION THAT IT IS INHUMANE TO KILL A DOMESTIC ANIMAL "WITHOUT CAUSE"**

The Supreme Court has held that penal statutes are to be strictly construed so that each person may know with certainty when he is committing a crime. United States v. Reese, 92 U.S. 214 (1875). The plain statutory language of Provo City Code Section 8.02.030 states that it is unlawful "To destroy any domestic animal except in a reasonable and humane manner." It does not provide that a person needs to establish the existence of a cause in order to lawfully destroy a domestic animal.

The statute does not require a defendant to present a cause or need that motivated the destruction in order to make the it lawful. The court concluded that the defendant was in violation of the statute because he killed a dog that was healthy. The court reasoned that the dog "was not ill, or sick, or suffering

from any debilitating problem" that presented a need to kill the dog (R.52). The court found that the absence of a cause to kill the dog constituted the destruction of a domestic animal in an inhumane manner. However, the statute does not require that a need must exist in order for a person to lawfully destroy a domestic animal. The only requirement is that a person must act in a reasonable and humane manner.

The trial court found that the defendant had the design of [killing the dog] swiftly and without suffering by using the shotgun. Defendant acted in a "reasonable and humane manner." The only basis the court articulated for finding that the defendant had violated the statute was killing the dog without cause. The court did not conclude that defendant's actions were otherwise unreasonable or inhumane. It simply maintained that the lack of cause to kill the dog constituted inhumane behavior. Defendant asserts that the trial court misinterpreted the statute which does not include any language pertaining to cause.

## POINT II

### **DEFENDANT'S ACTIONS DO NOT CONSTITUTE EXTREME MISTREATMENT OF AN ANIMAL**

Provo City Code §8.02.030(1) provides that it is unlawful "To maim, disfigure, torture, beat, mutilate, burn or scald, or otherwise mistreat any animal." The trial court found that there is no evidence that shows that defendant by nature or habit was

cruel to or would mistreat animals, either the particular animal in question in this case or other dogs. The court also concluded that the defendant lacked the specific intent to actually torture or maim the dog (R. 51).

The facts do not show that the defendant did not value the life of the dog. Testimony during the trial indicated that defendant did not have a history of mistreating animals (Tr. at 101-104). Witnesses testified that the defendant was attempting to train the dog (Tr. at 26-27, 34). The defendant had asked two or three people if they would adopt the dog prior to the shooting (Tr. at 113-14).

The facts do show that the defendant was in a distressed state at the time of his decision to kill the dog. He decided to use a gun to destroy the dog because he reasoned that it "would be quick and in the head and it would feel nothing, no pain" (Tr. at 121). Despite his mental state and unfamiliarity with the borrowed weapon, the defendant was able to kill the dog within fifty seconds of the initial shot (Tr. at 18). The court found that the defendant "simply botched the job, based on his lack of focus or his distress state" and that he intended to kill the dog, "probably with one blast from the shotgun" (R. 51).

The defendant's emotional stress, difficulty in training the dog, and failure to locate a suitable home for the dog were all factors in the defendant's decision to destroy the dog. The

defendant elected to use a shotgun because he thought it would result in a painless death for the dog. The defendant does not have a history of mistreating animals. His actions do not reflect a desire to mistreat the dog.

**CONCLUSION AND PRECISE RELIEF SOUGHT**

Based upon the arguments set forth above and in Appellant's brief, the defendant asks this Court to reverse his conviction on the grounds that the trial court erred in its interpretation of Provo City Code Section 8.02.030(2) and that the defendant did not destroy the dog in an inhumane or unreasonable manner.

Dated this 4 day of February, 1998.

  
Margaret P. Lindsay  
Attorney for Murray

**CERTIFICATE OF MAILING**

I hereby certify that I mailed, postage prepaid, two true and correct copies of the foregoing Reply Brief of Appellant to Rick Romney, Deputy City Attorney, P.O. Box 1849, Provo, Utah 84603 this 4 day of February, 1998.

