

KSLN Wins No Cause Jury Verdict In Controversial Pet Law Case

In January, 2011, Melissa Burke And Jim Duggan successfully defended an off-duty police officer at trial in a fascinating case that presented controversial and interlocking legal issues involving handguns, the propriety of their use and the emotional relationships between neighbors and their pets.

Our client, an off-duty police officer, and his pregnant wife, were walking their pug dog in a quiet suburban sub-development outside of Rochester, NY. They were confronted by their neighbor's unleashed 95lb dog on the sidewalk in front of the neighbor's home. When the neighbor's (plaintiff) dog bared his teeth in attack mode, the police officer attempted to pull his leashed dog out of harms way. But the plaintiff's dog continued to snarl and jump at our client's dog and then went after his 5-month pregnant wife. Our client pulled out his service pistol and shot and killed the plaintiff's dog.

The plaintiff's 10-year-old son witnessed the shooting 90 feet away, from behind a glass storm door inside the house. The boy had let his dog out to run free and witnessed the shooting and subsequent death of his dog.

In an emotional uproar after the shooting, the dog owner plaintiff sued the police officer for infliction of emotional distress upon his son, from being in the zone of danger and fearing for his life. Our client was also sued for trespass in shooting the dog and for punitive damages for discharging a weapon in a suburban neighborhood.

During the trial, the plaintiff tried to get his son to say that the police officer actually pointed his gun at the boy during the shooting. But the boy recanted this story at trial during a skillful and sensitive cross-examination by Melissa.

The jury exonerated the defendant from liability after the hotly contested trial. Ms. Burke and Jim presented a compelling defense under Section 121 of New York's Agriculture and Markets Law. This rather obscure statute gives a defendant full immunity from all liability for destroying a dog if a party believes that a dog "poses a serious and unjustified imminent threat of serious physical injury to a person" or "companion animal"--- here the much smaller dog and the officer's pregnant wife.

Given the pro-dog, anti-gun environment, a very sympathetic child and the difficulty in selecting jurors who did not automatically dislike a police officer for killing a dog, this case was an intense challenge met by the defense team with great success. Our client was greatly relieved to have his name cleared as a "dog killer" and gratified by the defense verdict achieved.