

Dog fighting case seems poised to favor defendants

By Diana M. Alba/Sun-News reporter

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LAS CRUCES - A case before the New Mexico Court of Appeals involving an alleged fight dog breeding operation in Chaparral appears poised to be sent back to a lower court, but this time under new circumstances that favor defendants Daron and Duryea Scott, twin brothers from El Paso.

The appeals court issued a preliminary ruling in May that upheld a 3rd Judicial District Court's earlier decision that key evidence couldn't be allowed because a search warrant hadn't been obtained properly.

The decision of the appeals court was preliminary because the case is currently on what's called the summary calendar. Cases handled in this manner allow the parties to issue responses to the court's proposed decisions, arguments judges take into consideration when issuing a final disposition in a case.

What makes the initial opinion seem likely to stand is that the state attorney general's office, handling the dispute for the prosecution at the appellate level, does not appear to oppose it.

In the state's response to the initial opinion, Assistant Attorney General Jacqueline R. Medina agreed that, as the facts stood, the warrant hadn't been issued properly and indicated the state has no plans to challenge the ruling.

"They said the law does not support the district attorney's office; the law supports Judge (Douglas) Driggers' decision," said Jose Coronado, attorney for Duryea Scott. "There's no such thing as a telephonic search warrant in New Mexico."

Driggers is the 3rd Judicial District Court judge in Las Cruces who ordered in February that the evidence in the case be suppressed, prompting Susana Martinez, district attorney for Do-a Ana County, to appeal the decision. At issue was that the Do-a Ana County Sheriff's Office obtained a search warrant by getting approval by telephone from a magistrate judge, instead of an in-person approval. Martinez's office has said it believed there wasn't a prohibition against telephonic warrants, but that the matter wasn't defined clearly in state law.

Deputy 3rd Judicial District Attorney Susan Riedel declined to comment this week.

A final disposition has yet to be issued by the appeals court, so the outcome is still up in the air.

But Coronado said he believes the appeals court will return the case to district court, and the district attorney's office "is going to have to decide whether to go forward with the trial."

However, if that occurred, prosecutors would be without the evidence seized in August 2007 from two properties in Chaparral, including 33 pit bulls. Another 22 pit bulls were confiscated from the Scotts' homes in El Paso.

The charges pending are 50 combined counts of dog fighting, animal cruelty and conspiracy - 30 for Duryea and 23 for Daron.

The brothers have maintained that the dogs were part of a show dog breeding operation and that they've not engaged in dog fighting, though investigators have said they believe scarring on some of the dogs was consistent with dog fighting.

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