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EL DORADO COUNTY, CALIFORNIA

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DISTRICT ATTORNEY'S OFFICE INDEPENDENT REVIEW: BEAR SHOOTING DID NOT VIOLATE THE LAW

After a comprehensive independent review of the evidence, the El Dorado County District Attorney's Office has determined there is no criminal liability for the shooting of a bear inside a South Lake Tahoe residence on May 27, 2024.

On May 31, 2024, the El Dorado County District Attorney's Office requested all reports and evidence from the California Department of Fish and Wildlife ("CDFW") regarding the bear shooting incident that occurred on May 27, 2024, on Player Drive in South Lake Tahoe. The purpose of this request was to independently review the investigation of CDFW, consider all relevant legal principles, and determine if any criminal activity occurred.

The District Attorney's Office received and reviewed the following evidence as part of its independent review:

1. CDFW Investigation Report # 2405-1156 which included the following:
 - a. A summary of a 911 call placed by the suspect.
 - b. A summary of the observations of the CDFW Officer who responded to the incident where the shooting occurred, and a description of physical evidence collected.
 - c. A summary of the interview of the suspect by the CDFW Officer.
 - d. A summary of the interview of a neighbor witness by the CDFW Officer.
 - e. A summary of an examination of the bullet wounds on the deceased bear.
2. A Forensic DNA Report from CDFW Wildlife Forensic Laboratory Report # C-3780 documenting the DNA comparison of the deceased bear with bear fur located in the suspect's residence.
3. May 27, 2024 audio recording of the suspect's 911 call to CDFW, dispatch logs, as well as audio recordings of all dispatch communications with EDSO and CDFW.
4. Evidentiary photos taken by CDFW of the deceased bear.
5. Evidentiary photos taken by CDFW of the interior of the suspect's residence where the incident was reported to have occurred.
6. Evidentiary photos taken by CDFW of the firearm and related shell casing.
7. Evidentiary photos taken by CDFW of the vantage point of a neighboring witness who provided a statement to law enforcement.
8. A report of a prior incident taken by CDFW on September 22, 2021, where the same suspect reported that a mother bear and her 3 cubs had entered his residence on 3 separate occasions and

caused damage to his kitchen and living room and ransacked his refrigerator [Wildlife Incident Report # 2021-003557].

9. Two associated evidentiary photos of the prior September 22, 2021, incident showing damage to the suspect's living room, kitchen, and ransacked refrigerator.
10. A state and federal criminal history report of the suspect involved in the incident.
11. An El Dorado County District Attorney Investigative Report which included the following:
 - a. A re-interview with neighbor witnesses.
 - b. A re-interview with the suspect.
 - c. An examination of the scene of the shooting and the surrounding area.
 - d. Photographs of the scene and surrounding area.

The District Attorney's Office also reviewed the relevant statutes and case law surrounding this incident. A summary of the law is explained below:

A person who "maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime." (Cal. Penal Code § 597 subdivision (a) (Westlaw 2024)). This crime also does not interfere with other code sections giving an individual the "right to destroy any animal known as dangerous to life or limb." (Cal. Penal Code § 599c (Westlaw 2024)). Additionally, the defenses normally available to a criminal defendant including the right to self-defense and defense of property still apply. The owner of real property may use reasonable force to protect that property from imminent harm. Reasonable force means the amount of force that a reasonable person in the same situation would believe is necessary to protect the property from imminent harm. (Judicial Council of California Criminal Jury Instructions 3476). The law presumes that an individual has a reasonable expectation of protection against unwanted intruders in his home. (*People v. Grays* (2016) 246 Cal.App.4th 687-688 (Westlaw 2024)).

It is unlawful to "take any bear with a firearm without first procuring a tag authorizing the taking of that bear." (Cal. Fish and Game Code § 4750 (Westlaw 2024)). Upon the killing of any bear, that person is required to immediately complete a bear tag and attach one part of the tag to the deceased bear. The holder of the bear tag shall also immediately, upon harvesting a bear, notify the CDFW. (Cal. Fish and Game Code § 4753 (Westlaw 2024)). These laws, however, do not apply when the killing is otherwise justified to protect land or property from damage or threatened damage from a bear. (Cal. Fish and Game Code § 4763 (Westlaw 2024)).

It is also unlawful to discharge a firearm in a grossly negligent manner. (Cal. Pen. Code § 246.3 (Westlaw 2024)). To prove this crime, the prosecution must prove beyond a reasonable doubt that the shooter "did not act in self-defense" at the time of the shooting. (Judicial Council of California Criminal Jury Instruction 970). Additionally, the shooting must create a risk of great bodily injury or death to others. (*People v. Alonzo* (1993) 13 Cal.App.4th 535, 540 (Westlaw 2024)).

The suspect, in this case, did not procure a bear tag authorizing the taking of the deceased bear. It is also undisputed that the suspect did not affix any bear tag to the deceased bear. However, the suspect immediately notified CDFW that he had shot and killed a bear that had entered his residence. The District Attorney's Office reviewed the 911 audio recording wherein the suspect told the 911 dispatcher that a bear had broken into his home and entered his kitchen before he fired the shots. The suspect told the dispatcher, "I didn't want to do it. He was going to eat my dog." At one point in the audio recording, the suspect spontaneously states, "God damnit.... He scared me!" The suspect sounded very nervous and out of breath during the recording. When CDFW arrived to speak with the suspect the officer noted in his report that the suspect appeared very distraught and shaken up by the incident while expressing relief that he and his dog were not injured during the altercation.

The suspect told CDFW officers during the initial investigation that the 70–85-pound bear cub had entered his backdoor that was left partially open, advanced towards his dog which was lying on a doggie bed and began aggressively growling at the dog. The suspect stated that he attempted to yell and wave his arms at the bear to stop its advance but that the bear nevertheless continued to growl and continue its advance toward his dog. The suspect said that upon retrieving his rifle he observed the bear “nearly on top” of his dog before he aimed his rifle and shot at it twice from a close distance. The bear then retreated out the back door where it had previously entered and ran up a pine tree in his backyard. The bear eventually fell out of the tree shortly afterwards and the suspect then dispatched the bear with a third and final shot out of concern for its suffering.

CDFW located the rifle used by the suspect during the shooting, which was identified as an older model Ruger 10-22 .22 rimfire semi-automatic rifle, as well as an associated .22 caliber rimfire cartridge on the living room floor near the suspect’s dog bed consistent with the suspect’s statement of where he fired the first shot at the bear. CDFW also found a clump of bear fur inside the home. CDFW located three bullet wounds in the deceased bear consistent with the statement provided by the suspect regarding the shooting.

CDFW interviewed a neighbor who confirmed that he observed a bear cub enter the decedent’s residence and that the bear was also undeterred by the neighbor’s attempt to bang pots and pans to try to keep the bear from entering the suspect’s residence. These two observations corroborate the suspect’s statement that the bear entered his residence and corroborated the suspect’s statement that waving his arms and yelling at the bear would not have been a deterrent for this bear.

The neighbor did contradict the suspect’s statement that the bear had completely entered his residence by stating he always observed the bear’s “hind legs” before the shooting. The neighbor also stated that he did not hear any shots until the bear had exited the residence. However, CDFW inspected the vantage point where the neighbor observed the incident and noted that the view into the suspect’s backyard was obstructed by a tree and shed making it plausible that the bear entered the residence at some point when the neighbor’s vision was obscured. (See attached photograph). The shell casing, as well as bear fur located inside the residence, also provide physical evidence corroborating that the first shot was fired while the bear was inside the residence as the suspect claimed. (See attached photograph). CDFW also confirmed through DNA analysis that the bear fur located inside the suspect’s residence belonged to the deceased bear. The examination of the deceased bear’s wounds also showed a projectile channel fired from an angle consistent with the bear facing the shooter and not retreating at the time the first shot was fired. It is also plausible that a gunshot fired from a small .22 caliber rimfire cartridge from the interior of a residence some distance away may not have been heard by the neighbor and that he only heard the second and third shots after the bear had already fled out of the residence. This is also consistent with a different neighbor’s comment to dispatch that the bear had been shot with a “BB gun” and not a firearm.

The District Attorney’s Office independently re-interviewed this neighbor regarding the initial statement given to CDFW at the time of the incident. The District Attorney Investigator noted during this second interview that the neighbor had trouble placing the bear at the time the first shot was heard. The neighbor also told the investigator in the second interview that the bear was “casually” exiting the residence when the shot was fired whereas he had told the warden in the first interview that the bear was quickly exiting the residence. The neighbor also stated that once he heard the first gunshot from his balcony he immediately went to the far side of the suspect’s property and continued along the fence line when he heard the second shot. This makes it implausible that he observed the suspect fire the second shot from that position. The District Attorney Investigator noted in his report that when he examined the neighbor’s view from the balcony where he stated he observed the first shot it was over 80 feet away from the suspect’s back door and was significantly obscured by foliage as well as other buildings. In the investigator’s opinion, it was “improbable” that the neighbor could have observed the entire incident from that position.

The District Attorney's Office also re-interviewed the suspect and examined the backyard and the surrounding area where the shooting took place. The suspect's second interview was largely consistent with his initial interview with CDFW. The suspect stated that the bear was aggressive, snarling, grunting, and posturing by standing up as it continued its slow further advance into the residence and kitchen before the shots were fired. The suspect did acknowledge that the second shot was fired when the bear had exited the back door. However, the District Attorney Investigator noted in his report that the wounded bear would have been trapped in a confined area in the backyard and presumably could still have been a threat at the time the second shot was fired.

The District Attorney Investigator also concluded that the small caliber .22 long rifle rounds would likely have been stopped by the walls and door of the home. Additionally, the suspect's backyard was surrounded by numerous barriers including nearby trees, foliage, outbuildings, and a large wooden fence capable of stopping the small caliber rounds. The District Attorney Investigator noted that there were no houses in the immediate area behind the suspect's property in his line of sight and the nearby recreation trail was behind a heavily wooded area. The suspect was also determined to be in an elevated position in relation to the bear at the time of the shooting making the trajectory downward towards the ground and other obstacles on the property. Therefore, the .22 caliber rounds fired by the suspect would not have been "likely" to produce great bodily injury or death to others.

It should also be noted that the District Attorney's Office had received comments from the public alleging "prior" incidents with the suspect. These rumored prior incidents were determined to be unfounded. A records check confirmed there were only two prior contacts with the suspect, both being described as the suspect reporting bear-related activity in his area. Neither of the prior incidents involved misconduct by the suspect against bears. The District Attorney Investigator conducted detailed follow-up with surrounding neighbors who referred him to a single third-party neighbor who when questioned stated that her account was "hearsay" and refused to provide further information.

When deciding whether an individual used reasonable force, the law also requires us to consider all the circumstances as they were known to and appeared to the suspect at the time of the shooting in deciding whether his use of force was reasonable. (Judicial Council of California Criminal Jury Instructions 3476).

On September 22, 2021, the same suspect reported to CDFW that a mother bear and her three cubs had entered this same residence and caused damage to his living room and kitchen, ransacked his refrigerator, and attacked his dogs. In support of his claim, the suspect provided two photographs of the associated damage to CDFW. (See attached photographs). This prior incident makes it likely that at the time of the shooting, the suspect actually and reasonably believed that the bear was a threat to himself, his property, or his dog.

Based on the totality of the evidence reviewed by the District Attorney's Office, we have reached the determination that the suspect in this incident shot the bear out of a concern for the safety of himself and his property within the meaning of Fish and Game Code § 4763 and therefore the shooting did not violate the provisions of the Fish and Game Code. The suspect also acted out of a reasonable threat of harm to his property and therefore acted within the meaning of the law surrounding the defense of property and therefore has not violated Penal Code § 597 or Penal Code § 246.3. Additionally, an examination of the scene of the shooting and the path of travel of the rounds fired concluded that the rounds fired by the suspect in self-defense were unlikely to cause great bodily injury or death to the surrounding neighborhood. Thus, based on our independent review, there is no criminal liability for this incident.

Photograph from Vantage Point of Neighbor:



Photograph of Shell Casing Located in Suspect's Residence:



Photographs of Damage to Suspect's Residence from September 22, 2021 bear incidents:

