



DECLINE TO FILE MEMORANDUM

TO: File
FROM: Brad King, State Attorney
DATE: May 25, 2018
RE: State v. Brewton/FWNE18OFF6065 /Filing Decision

On May 15, 2018, an anonymous citizen contacted FWC to complain about the actions of Forest High School agriscience teacher, Dewie Brewton III. The anonymous citizen was the mother of a student in Mr. Brewton's class, and she was upset about the drowning of two raccoons and a possum by Mr. Brewton. The anonymous citizen was adamant that she did not want her or her child's name used in this investigation.

FWC went to the school to investigate and interviewed Mr. Brewton. During the post-Miranda interview, Mr. Brewton explained that in one of his classes, his students raise chickens as a project that remain in a pen on campus. He indicated that the students cared a great deal for the chickens, with many of them giving the birds names. Over the course of a few weeks, Mr. Brewton indicated that approximately 8 chickens had been killed, with their dead carcasses left behind by the culprit. Over time, Mr. Brewton determined that it was likely raccoons that were destroying the students' farm animals. He determined it was best to trap these animals to stop the incessant and unnecessary killing of the students' birds.

Students brought traps from their homes, and upon their setting and leaving those traps, Mr. Brewton explained that they captured two raccoons and a possum. The students indicated their desire to kill these nuisance animals to Mr. Brewton. The killing of the animal is a legal option under these circumstances.



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One idea proposed by the students was to kill them by shooting them. As Mr. Brewton explained, it was a violation of the law and school board policy to have a gun on campus, and he was keenly aware of and pointed out the recent shooting on campus, which this office is currently prosecuting. Another suggestion was to bludgeon them, but Mr. Brewton determined that option inappropriate as too brutal and messy. It is also important to note Marion County officials have placed the county under a rabies alert for raccoons. ¹

Mr. Brewton explained that the most humane way to dispose of these nuisance animals was to drown them. He was clear that he never intended to be cruel, or vicious, nor did he intend to torment or torture the animals. When he decided to employ this option, he told students that any student that did not want to witness or be involved with this removal of these nuisance animals could stay in the classroom with a paraprofessional. Some students stayed behind in the classroom, and others went to assist in the removal of the nuisance animals.²

Near the conclusion of the interview, Mr. Brewton asks the FWC officer if the officer believed that he was being cruel in his manner of disposal of the nuisance animals. The officer explained that he did not believe it was Brewton's intent to be cruel, but that FWC adheres to specific guidelines in the euthanasia of nuisance animals. The officer then erroneously tells Mr. Brewton that drowning is neither listed as humane or inhumane.

Florida Administrative Code (FAC) 68A-9.010 does allow for individuals to take and euthanize nuisance animals, and the animals taken by Mr. Brewton and his class would qualify as nuisance animals. The FAC indicates further that "Euthanasia of nuisance wildlife shall be humane as defined by the American Association of Zoo Veterinarians or the American Veterinary Medical Association." The American Veterinary Medical Association, in fact, does indicate in Appendix 3 on the final page of a 102-page document that drowning is not an acceptable *primary* means of euthanasia and is inhumane.³ It does not explicitly state, if under certain circumstances, whether it would be acceptable or not – perhaps what the officer meant when he expressed his opinion to Mr. Brewton.

Florida Standard Jury Instructions state, in relevant part:



To prove the crime of Animal Cruelty, the State must prove beyond a reasonable doubt that Mr. Brewton unnecessarily tormented or killed an animal.

“Torment or a “cruel” manner includes every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief, except when in the interest of medical science.

While it is uncontroverted that Mr. Brewton did, with the assistance of numerous students, kill these nuisance animals, of significant concern to the successful prosecution of this case is the issue of whether the killing was “unnecessary.” Clearly, Florida law allowed for the killing of the animals as nuisance animals; that fact alone creates an impediment to proving that the killing was unnecessary. The only other theory to operate under is that the defendant unnecessarily tormented the nuisance animals. Clearly, Mr. Brewton considered other alternatives in the destruction of these nuisance animals, and he found none of these alternatives reasonable. The definition of torment requires proof that the pain or suffering be unjustifiable, of which there is essentially no proof, particularly as to the defendant’s state of mind. Furthermore, Mr. Brewton indicated that he saw no reasonable remedy, as he weighed his available options. This reality casts further doubt on the ability of the State to prove the allegations beyond and to the exclusion of every reasonable doubt.

There are short, video snippets of some of the event, but those videos barely show Mr. Brewton, except for one brief moment. The majority of the video is of the students performing these acts. A number of parents contacted by FWC indicated that they did not want their children involved in this investigation. In order to introduce these videos into evidence, the State would need someone who was present at the incident to authenticate the videos before they would be admitted into evidence. The fact that the complainant steadfastly wanted to remain anonymous and



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that most parents did not want their children involved would be a further impediment to the State's proof. Additionally, that any other students used to authenticate the videos were active participants in the act would subject them to intense scrutiny and cross-examination, further weakening their testimony as State witnesses.

Further, the fact that Mr. Brewton has taken an early retirement and has been exposed to incredibly intense media scrutiny seems a fitting resolution, particularly when there has been public outcry both for and against Mr. Brewton.⁴ By the Future Farmers of America's account, Mr. Brewton has "always gone above and beyond his call of duty to ensure that his students had everything they needed. He has spent late nights, weekends and has provided around the clock support for his club and for his school."⁵ Additionally, he had been nominated as a Teacher of the Year by his peers as recently as 2010.⁶

This decision to decline to file charges is not made in a vacuum. This office had just recently gone to trial on an animal cruelty case where a defendant cut the tails off of four kittens with rusty scissors. A jury of his peers found him not guilty.⁷ Based on the totality of the circumstances in this case, Mr. Brewton did not intend to torture or torment these nuisance animals; he was simply attempting to protect his class's school project in an appropriate manner.

¹ <http://www.ocala.com/news/20180301/alert-issued-after-raccoon-tests-positive-for-rabies>

² The paraprofessionals interviewed by FWC confirmed that Mr. Brewton gave students the option to come outside for the removal of the nuisance animals or stay in the classroom.

³ <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>

⁴ A Google search of Dewie Brewton yields 17,700 results, of which the majority are articles about this case.

⁵ <http://www.ocala.com/news/20180516/former-students-defend-marion-teacher-who-drowned-raccoons>

⁶ *Id.*

⁷ <http://www.ocala.com/news/20180510/kitten-tail-snipper-found-not-guilty-of-animal-cruelty>