

## UNITED STATES COURT OF APPEAL NINTH CIRCUIT

### DECISIONS AFFECTING:

- Alaska
- Arizona
- California
- Guam
- Hawaii
- Idaho
- Montana
- Northern Mariana Islands
- Nevada
- Oregon
- Pacific Islands
- Washington

## **GRANT V CITY OF LOS ANGELES**

19 F. 3d 27 (1994)

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments **cannot** be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found use of the canine was not excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect **Grant** carjacks an automobile at gunpoint.
2. A high-speed pursuit ensued.
3. Grant crashes and flees on foot.
4. A canine team locates Grant hiding in a backyard of a residence.
5. Grant tries to flee over a six-foot wall.
6. The canine bites Grant on the leg and on the arm, removing him from the wall.
7. The canine is recalled and Grant is handcuffed.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The dog bites did **not** constitute excessive force in light of:
  - A) The apprehension of a suspect in a violent felony involving a deadly weapon;
  - B) The suspect had just led the police on a dangerous high-speed chase;
  - C) And the suspect resisted arrest by attempting to flee into a residential neighborhood on foot.

## **FORRESTER V CITY OF SAN DIEGO**

25 F. 3d 804 (1994)

### **INITIAL SUSPECT VIOLATIONS:**

Since this is not a canine case, but a question of law based on what constitutes excessive force when apprehending a suspect, the court's ruling as it applies to canine usage is reviewed below.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The test for determining whether officers used excessive force is **not** limited to consideration of:
  - severity of crime at issue;
  - whether the suspect posed an immediate threat to the safety of officers or others;
  - and whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

The test is one of objective reasonableness based upon **all facts and circumstances** of the individual case.

2. Determining whether the force used is reasonable requires a careful balancing of the nature and quality of the intrusion on the suspect's fourth amendment interests against the countervailing governmental interests at stake.
3. The question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them. (The totality of circumstances.)

## **MENDOZA V BLOCK**

27 F. 3d 1357 (Ninth Cir. 1994)

### **INITIAL SUSPECT VIOLATIONS:**

1. Armed bank robbery by suspect Mendoza.
2. Vehicle pursuit of Mendoza by deputies.
3. Mendoza then fled on foot from deputies.
4. Mendoza hides in bushes upon private property.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. Armed, fleeing, hiding felony suspect.
2. A police helicopter made at least twenty warnings that a Police Dog was being deployed.
3. The canine located Mendoza hiding in some bushes.
4. Deputies ordered Mendoza out of the bushes.
5. Mendoza refused and the canine bit his arm and pulled him from the bushes.
6. Mendoza resisted and fought both the dog and deputies. The fight lasted about one minute.
7. Mendoza was handcuffed and the canine was called off.
8. Mendoza was transported to the hospital for treatment.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court ruled that the deputy handling the dog had behaved reasonably under the circumstances, and that the deputies, therefore, were entitled to qualified immunity.
2. A law enforcement officer is entitled to qualified immunity if the officer could reasonably have believed that the conduct was lawful. This determination requires a two part analysis:

#### **A) CLEARLY ESTABLISHED LAW:**

The court held that the deputy's use of the Police Dog was objectively reasonable and therefore the officers had qualified immunity.

This decision was based in part on **Robinette v Barnes**, which stated that using a Police Dog was not unreasonable when searching for a hidden felon.

#### **B) OBJECTIVE REASONABLENESS:**

The court held that the force used was reasonable. This decision was based on **Graham v Connor**:

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officers or others:
- **And whether he is actively resisting arrest or attempting to evade arrest by flight.**

3. The decision was also based on **Tennessee v Garner**:

A) The court should consider whether the totality of the circumstances justified the force used.

4. The court concluded:

“Using a Police Dog to find Mendoza, and to secure him until he stopped struggling and was handcuffed, was objectively reasonable under these circumstances.”

## **CHEW V GATES**

27 F. 3d 1432 (Ninth Cir. 1994)

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Chew is stopped for a traffic violation.
2. Chew flees on foot from the police and hides in a scrap yard.
3. Chew had not been searched for weapons.
4. Police discover three outstanding felony warrants for Chew's arrest.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. Chew was wanted for three felonies (warrants).
2. Chew was actively resisting arrest by fleeing and hiding.
3. Chew had not been searched and was in hiding, posing a threat to the safety of officers.
4. An announcement was made by a helicopter P.A. system that a Police Dog was being released and for Chew to surrender.
5. A canine was deployed in an area to search for Chew.
6. The handler sees Chew hitting the dog with a pipe, just as the dog was biting on Chew's left arm.
7. The handler kicks Chew in an attempt to disarm him and to protect the dog.
8. The handler's kicks may have struck Chew's head, face and body.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

This case was decided by the U.S. District Court for the Central District of California. The court ruled:

The law regarding training or use of police dogs to find, seize and hold suspects was not clearly established at the time of incident (1988), and use of police dog to search for, find and seize suspect, by biting if necessary, **was objectively reasonable** under these circumstances.

The case was appealed and sent to the U.S. Court of Appeals, Ninth Circuit. The Ninth Circuit did not hear the case and sent it back to the district court. It is there that this case is remanded for a trial by jury, based upon substantial Fourth Amendment issues that exist in this case.

Prior to the district court re-hearing this case, the City of Los Angeles made an offer for an out-of-court settlement. The plaintiffs accepted. Chew is settled and offers little guidance.

## **GILLIAM V COUNTY OF LOS ANGELES**

37 F. 3d 1505 (Ninth Cir. 1994)

This canine case was affirmed by the Ninth Circuit. The court's decision was without a published opinion. Technically, this means that the court's findings, rulings and comments **cannot** be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found use of the canine was not excessive force and the canine was not deadly force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

The case does not state the circumstances of either the suspect violations or the Officer's actions.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court analyzed the canine deployment by using the Graham v Connor objective reasonableness standard:
  - The severity of the crime at issue;
  - Whether the suspect poses an immediate threat to the safety of Law Enforcement Officers or others;
  - And whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
2. The court concluded that use of the police dog did not constitute excessive force.
3. The plaintiff wanted a jury instruction that would state using a police dog should be considered deadly force. The court refused to allow this definition.
4. The court concluded the force resulting from the use of a police dog can be proper or excessive, just as a gun, baton or other tool can be. When deciding whether the canine force was proper, the jury must base it's decision on the same standard (Graham) applied to other types of force.

## SCOTT V HENRICH

39 F. 3d 912 (Ninth Cir. 1994)

### INITIAL SUSPECT VIOLATIONS

Since this is not a canine case, but a question of law based on what constitutes excessive force when apprehending a subject, the court's ruling as it applies to canine usage is reviewed below.

### COURT'S RULINGS, FINDINGS AND COMMENTS:

1. The court used both *Graham v Connor* and *Tennessee v Garner* in its ruling.
2. Under *Graham v Connor*:
  - You may only use such force as is objectively reasonable under the circumstances.
  - One factor in determining reasonableness is whether the suspect poses an immediate threat to the safety of officers or others.
  - All determinations of unreasonable force must embody allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving, while assessing the amount of force that is necessary in a particular situation.
3. Under *Tennessee v Garner*:
  - a) An officer's use of deadly force is reasonable only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others.
4. The court also ruled:

**Under the Fourth Amendment, the appropriate inquiry is whether the officers acted reasonably, not whether they had less intrusive alternatives available to them.**

It would entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

Expecting the officers to find and choose the least intrusive alternative (to deadly force) would require them to exercise superhuman judgment.

**If officers were required to choose the least intrusive alternative available, and that option only, officers would inevitably become**

**tentative and be deterred from protecting themselves and the public.**

It is for this reason that many agencies **do not** incorporate a Use of Force Continuum as previously discussed.

## **DUVALL V CITY OF SANTA MONICA**

42 F. 3d 1399 (1994) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of the canine was not excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Officers responded to a report of a suicidal man, armed with a handgun, inside his trailer. The victim, Duvall, threatened to kill himself and others.
2. Duvall refused to exit his trailer.
3. Under exigent circumstances (preserve life and avoid serious injury), officers entered the trailer without a warrant.
4. Without a warning, a police dog bit Duvall while officers took him into custody.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. Seizure of a mentally disturbed person is analogous to a criminal arrest and therefore must be supported by probable cause. Officers had probable cause to take Duvall into custody for medical treatment and evaluation.
2. The court held that the use of a dog in this instance, by officers that wished to prevent harm to themselves and the victim was objectively reasonable.
3. Looking at the Graham elements, the court concluded:
  - a) Severity of crime;

The police had probable cause to think Duvall was likely to kill himself and others.

- b) Whether the suspect poses an immediate threat to the safety of officers and others:

The officers had objective reason to believe Duvall posed an immediate safety threat.

- c) Whether the suspect is actively resisting arrest:  
Duvall refused to come out of his trailer.

## SHANNON V CITY OF COSTA MESA

46 F. 3d 1145 (Ninth Cir. 1995)

The Ninth Circuit Court affirmed this canine case. The court's decision was without a published opinion. Technically, this means that the court's findings, rulings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found that it was **objectively reasonable** to use a Police Dog to apprehend a fleeing misdemeanor who was a threat to the safety of officers and residents, and was actively resisting arrest by hiding.

### INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:

1. Traffic violation.
2. Traffic stop, suspect: Shannon flees on foot and hides in a residential backyard.
3. Officers have knowledge that Shannon has prior arrests for armed robbery.
4. Shannon does not surrender after a canine deployment announcement.

### COURT'S RULINGS, FINDINGS AND COMMENTS:

1. The court looked to *Graham v Connor*. Using the objective reasonableness test, the decision to use the canine force to arrest Shannon was reasonable.
  - a) The severity of the crime at issue:

The severity of the crime was minimal: speeding, running red lights, and fleeing from police on foot.
  - b) Whether the suspect poses an immediate threat to the safety of law enforcement officers or others:

Officers had knowledge that Shannon had prior arrest for armed robbery. Shannon also hid in a residential backyard. The officers wished to prevent harm to themselves and the residents of the area.
  - c) And whether the suspect is actively resisting arrest or attempting to evade arrest by flight:

Shannon was actively resisting arrest when he hid in the bushes and did not come out after a canine deployment announcement.

d) The totality of the circumstances.

**Note:**

It was also in this case where BROOKS V CITY OF SANTA ANA is found and was also upheld. Both Shannon and Brooks were tried together, even though the court erred in doing so. The cases were to be tried separately.

The decision in Brooks held that the use of a Police Dog on a felony hit and run arrestee, who escaped custody at a hospital and hid in a construction zone, was reasonable. (Brooks may have been handcuffed.) Brooks was not just a concealed suspect; he was an escaped and concealed arrestee.

## **FIKES V CLEGHORN**

47 F. 3d 1011 (Ninth Cir. 1995)

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Fikes flees from police by automobile and then on foot.
2. Fikes was pulled to the ground by a police officer during the foot pursuit.
3. Fikes fought the officer by kicking at him.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. The officer released his police dog from his car by use of a remote control device to assist him in taking Fikes into custody.
2. The dog bit Fikes until the officer controlled the suspect and commanded the dog to release. The dog released upon command.
3. Fikes was arrested and pled guilty to driving under the influence of alcohol, driving without a license and resisting arrest, all misdemeanors.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court concentrated on jury instructions. The court instructed the jury that in making a lawful arrest, an officer has the right to use such force as is necessary under the circumstances to effect the arrest. Whether or not the force used in making an arrest was unreasonable is a question to be determined by you in light of all the surrounding circumstances. Now, you must determine the degree of force that a reasonable and prudent officer on the scene at that time would have applied in effecting the arrest under the circumstances shown from the evidence received in this case.
2. The court looked at the Supreme Court's decision in *Graham*, the three factors that a fact finder should consider in determining whether force is excessive, including:
  - a) The severity of the crime at issue;
  - b) Whether the suspect poses an immediate threat to the safety of the officers or others;
  - c) And whether he is actively resisting or attempting to evade arrest by flight.

The court stated that the major holding of *Graham* was that excessive force claims should be analyzed under a Fourth Amendment "reasonableness" test rather than a substantive due process "shocks the conscience" test. The focus should be on the facts and circumstances of each particular case as judged from the perspective of an objective reasonable officer at the scene.

3. The court concluded in saying that the Graham court instructed that the jury should consider whether the totality of circumstances justifies a particular sort of seizure.
4. The court held that the force used by the police officers against Fikes was reasonable.
5. Lastly, Fikes argued that a police dog was deadly force. The court ruled that deadly force is a force that creates a substantial risk of causing death or serious bodily harm. The dog did not create such a risk. The dog was trained to release arrestees on command, as it did in this case.

In light that the officers did not use the dog in a way that presented a risk of death or serious bodily injury to Fikes, and the fact that police officers could effectively limit the amount of force the dog exerted against Fikes, Fikes did not present evidence that a police dog is deadly force.

Control effectively limits the amount of force the dog exerts against a suspect.

## **MARQUEZ V ANDRADE**

79 F. 3d 1153 (1996) Ninth Circuit

## **ANDRADE V CITY OF BURLINGAME**

847 F. Supp. 760 (N.D. Cal 1994)

**(See Canine Liability Settlement Agreement Section)**

## **CASE: QUINTANILLA V CITY OF DOWNEY**

84 F. 3d 353 (Ninth Cir. 1996)

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Quintanilla is driving a stolen vehicle.
2. Vehicle pursuit of Quintanilla by officers.
3. Quintanilla throws a bottle at an officer, then flees on foot from officers.
4. Quintanilla hides in a poorly lit truck-yard.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. A fleeing, hiding, un-searched, felony suspect who has already assaulted a peace officer.
2. A warning was made by a canine handler that a police dog would be released to find him (Quintanilla).
3. Canine locates Quintanilla hiding between two trucks, beyond the officers' reach.
4. The canine bites Quintanilla's arms and legs.
5. Officers see Quintanilla holding the dog in a headlock, controlling him.
6. The canine handler repeatedly orders Quintanilla to release the dog and surrender.
7. Quintanilla refuses, the canine handler drags Quintanilla out into an open area.
8. Other officers handcuff Quintanilla, the dog is ordered away and immediately complies.
9. The scuffle between the dog and Quintanilla lasted about one minute.
10. Quintanilla is given medical treatment but suffered no serious injuries.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The arrestee could not recover on a claim against the City and the Police Chief for maintaining allegedly unconstitutional policy on the use of police dogs without showing that the individual arresting officer violated arrestee's constitutional rights by use of a police dog to search and detain

arrestee. Quintanilla could not show that his individual Federal rights were violated.

2. The evidence presented did not support deadly force jury instructions, asserting that the use of a police dog during the arrest constituted excessive force. The arrestee suffered only non-life threatening injuries that did not require serious medical attention. The dog was trained to release upon command and did so on command.
3. The evidence found that the use of a police dog during the arrest did not create substantial risk of causing death or serious bodily harm (the deadly force definition).
4. The Court referred to *Tennessee v Garner*: The court ruled that the dog did not create a “substantial risk of causing death or serious bodily harm” and therefore did not violate Garner’s “deadly force” rule.
5. The Court also referred to *Fikes v Cleghorn*: Quintanilla suffered only non-life threatening injuries that did not require serious medical attention. Moreover, the dog was trained to release upon command, and it did in fact do so. These two facts make this case distinguishable from *Fikes*.
6. Lastly, the court referred to *Graham v Connor* (the excessive force rule): Excessive force must be analyzed under the “reasonableness” standard in *Graham*, which includes the totality of circumstances, including:
  - a) The severity of the crime;
  - b) Whether the suspect poses an immediate threat to the safety of officers or others;
  - c) And whether the suspect actively resists arrest or attempts to evade arrest by flight.

## **CASE: JETTON V CITY OF DOWNEY**

86 F. 3d 1162 (1996) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments **cannot** be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a canine was not excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect Jetton was a fleeing armed robbery suspect.
2. A police service dog handler verbally warned Jetton to stop or he would release a police dog.
3. Jetton did not stop. The dog was released and Jetton was bit by the dog.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court instructed the jury to focus its excessive force deliberations on the officers' use of the dog to catch and stop Jetton, and whether the dog's continued attack on a prone Jetton constituted an excessive use of force. The jury found the canine force was reasonable.
2. Jetton contended that the use of the dog violated Garner's deadly force test. The court ruled:
  - a) The dog is not deadly force and therefore Garner is not applicable.
  - b) Even if Garner is applicable, its conditions have been satisfied. Jetton was an armed robbery suspect, he posed a significant threat of serious injury. The officer had no means short of using a gun to stop Jetton. The handler warned Jetton to stop or the dog would be sent and the use of the dog was necessary.

## **MARTINEAU V CITY OF CYPRESS**

95 F. 3d 1158 (1996) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog did not constitute deadly force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. The case does not indicate either the initial suspect violations or the officer's actions.
2. Suspect Martineau was bitten by a police dog.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. Martineau argued that any use of a police dog where the dog is allowed to bite the suspect constitutes deadly force and therefore supports a jury instruction on deadly force.
2. The court ruled that a reasonable jury could have found that the use of the dog did not constitute deadly force.
3. In situations where the dog is in constant control of the handler, the dog releases the suspect when ordered to do so, and the suspect did not suffer life-threatening injuries, a police dog is not deadly force.

## **MEDINA V CITY OF CULVER CITY**

100 F. 3d 963 (1996) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog was excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect Medina was in a parking lot acting strange, possibly under the influence of PCP.
2. Medina was holding a screwdriver in his hand. He was not violent and was not threatening.
3. Officers ordered Medina to drop the screwdriver. When he failed to comply, a police dog was sent and bit him.
4. Medina stabbed the dog with the screwdriver. The dog was recalled and sent again. Medina stabbed the dog again and the dog was recalled.
5. Medina walked away, stopped and faced the officers, holding the screwdriver at his waist, not threatening the officers.
6. The canine handler shot Medina and killed him.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court ruled, under the totality of circumstances, that the use of the police dog was an unreasonable and unlawful use of force.
2. Because of the close proximity and connection between the use of the dog and the shooting, the court found the use of the dog created the situation causing Medina's death.
3. The handler was found liable for \$95,000 in damages, plus costs and attorney fees.

## **WARREN V LAS VEGAS METRO POLICE DEPARTMENT**

111 F. 3d 139 (1997) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of deadly force with a canine present was reasonable.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect Warren was armed with a knife and threatening to kill officers.
2. Officers brought in a police dog as an alternative to deadly force.
3. Warren lunged at the officers with a knife and the officers shot Warren.

### **COURT RULINGS, FINDINGS AND COMMENTS:**

1. The presence of a police dog as an alternative to deadly force did not establish liability.
2. Had Warren not lunged toward officers when he did, the police dog might have been a viable means of disarming Warren prior to using deadly force.
3. The officer's actions did not exacerbate the situation causing Warren to lunge at the officers.

## **NUNLEY V CITY OF LOS ANGELES**

121 F. 3d 716 (1997) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog was not excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect Nunley was seen stealing metal from a scrap yard.
2. Officers believed a felony had been committed and a police dog was requested.
3. A canine announcement was given several times and the dog was released to search.
4. The dog located Nunley hiding and bit her.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court concluded that the use of the dog to find a hidden, felony suspect was reasonable. The officer announced his presence several times and gave Nunley opportunity to surrender.
2. The court also concluded that the dog was not deadly force.

## **VERA CRUZ V CITY OF ESCONDIDO**

139 F. 3d 659 (Ninth Cir. 1998)

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Vera Cruz is intoxicated in public.
2. Vera Cruz challenges victims to a fight.
3. Vera Cruz vandalizes the victim's property.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. Three misdemeanor crimes, possibly a burglary (felony).
2. Vera Cruz has a visible knife strapped to his hip.
3. Vera Cruz attempts to evade arrest by running from the officers.
4. A canine deployment announcement is made.
5. A Police Dog seizes Vera Cruz by biting.
6. An officer disarms Vera Cruz, the canine is called off and the dog immediately complies.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court ruled that under the *Graham v Connor* objective reasonableness test, the use of a Police Dog was reasonable.

- a) The severity of the crime at issue:

Severity of crime was minimal, three misdemeanors. However, at the time of deployment the handler believed a burglary had possibly been committed.

- b) Whether the suspect poses an immediate threat to the safety of law enforcement officers or others:

Vera Cruz had a visible knife strapped to his hip. He posed an immediate threat to officers who were attempting to take him into custody.

- c) And whether the suspect is actively resisting arrest or attempting to evade arrest by flight:

Vera Cruz was attempting to evade arrest by flight. Even after the canine handler ordered him to stop and made a canine deployment announcement, Vera Cruz continued running.

2. The court focused on and reviewed whether the use of a Police Dog constitutes deadly force under *Tennessee v Garner*. The court focused on the definition of deadly force.
  - a) The court stated that the question is, how likely must death be in order to consider the force deadly?
  - b) Under *Garner*, deadly force is that force which is reasonably likely to cause death.
  - c) *Vera Cruz* presented no evidence that properly trained Police Dogs are reasonably capable of causing death. The court noted that there is only one reported case where a Police Dog actually killed a suspect (*Robinette v Barnes*).
  - d) A Police Dog could kill a suspect under highly unusual circumstances. The prospect of such an "aberration" does not convert otherwise non-deadly force into deadly force.
3. The court therefore concluded that Police Service Dogs are not deadly force.
4. The court also stated that criminals can largely control the circumstances of their crimes, and can thus minimize the risk that force will be necessary.
5. The court again stated that the Police Dog was called off and immediately complied.

## **PARRA V CITY OF CHINO**

141 F. 3d 1178 (Ninth Cir. 1998)

This canine case was affirmed by the Ninth Circuit. The court's decision was without a published opinion. Technically, this means the court's findings, rulings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found that it was objectively reasonable to use a police dog to apprehend a fleeing felon, known to be armed with a gun, and was actively resisting arrest by fleeing.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect is inside his home when officers arrive to execute a felony arrest warrant on him.
2. Officers knew that suspect Parra had previously broken into a house with a loaded gun.
3. Officers use a police dog to search for Parra.
4. Parra attempts to flee from the backyard.
5. A canine warning announcement ordering Parra to stop was made.
6. The canine bites Parra and he continues to struggle to flee. This struggle lasts 20 to 25 seconds.
7. Parra complies and the dog is immediately recalled.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court ruled "there is no constitutional or federal right to defend oneself against a dog attack."
2. "The search of the home with the police dog appears justified. The police were executing a valid felony arrest warrant, could not find Parra in the house with a visual inspection, and thus used the dog to search for Parra."
3. Parra argued that the dog was deadly force. The court disagreed, saying "the dog was trained to bite and hold" when a suspect acts aggressively or tries to flee. In this incident, the dog continued to bite Parra only while Parra tried to flee. Upon receiving the release command, the dog immediately released his hold of Parra. The use of a police dog did not constitute deadly force."

## **WATKINS V CITY OF OAKLAND, CA**

145 F. 3d 1087 (1998)

### **INITIAL SUSPECT VIOLATIONS:**

1. Silent alarm at a warehouse.
2. A person was seen running inside.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. A canine deployment announcement was given twice.
2. A canine was deployed into the building.
3. The canine located and bit the suspect.
4. The suspect was ordered to show his hands.
5. The suspect, who was still being bitten, did not comply.
6. The canine handler pulled the suspect to the ground.
7. The suspect showed his hands.
8. The dog was recalled.

### **COURT RULINGS, FINDINGS AND COMMENTS:**

1. Oakland police canine employed a “bite and hold” policy. “Police dogs were allowed to act independently of the handler and were thus often out of visual contact when they found and bit a person.”
2. The court ruled that “Oakland’s bite and hold policy did **not** violate clearly established law concerning the use of excessive force at the time of the incident.”
3. During the search, the police dog “ran out of sight” of the officer, located the suspect and bit him.

The duration of force applied in effecting arrest after officers caught up with the dog could constitute excessive force.

4. After the dog bit the suspect, he was ordered to show his hands. The suspect, who was “recoiling” from the dog’s bite, failed to comply. The handler pulled the suspect to the ground and the dog continued the bite until the suspect complied and showed his hands. Duration of the bite was 10 to 30 seconds.

The court ruled “that it was clearly established that the excessive duration of the bite and improper encouragement of a continuation of the attack by officers could constitute excessive force.”

The case was sent back to the U.S. District Court for the Northern District of California for trial.

Prior to the District Court re-hearing this case, the City of Oakland made an offer for an out-of-court settlement. The plaintiffs accepted. Watkins is settled and offers little guidance.

## **CHRYSLER V CITY OF WEST COVINA**

165 F. 3d 915 (1998) Ninth Circuit

This canine case was affirmed by the Ninth Circuit. The court's decision was without a published opinion. Technically, this means the court's findings, rulings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog was not excessive force

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Felony warrant service of a parolee at his residence.
2. Officers with a police dog ordered suspect Chrysler to put his hands up.
3. Chrysler's right hand was not visible.
4. Chrysler did not comply with the officer's commands and instead reached for the floor.
5. Officers believed Chrysler was arming himself with a weapon.
6. The police dog was sent and bit Chrysler.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. Based upon the events, the court found that the use of the police dog was reasonable. The court reached this conclusion using the Graham standard.
2. The court also ruled, citing *Vera Cruz v City of Escondido*, that the use of a police dog was not deadly force.

Since *Vera Cruz*, the jury verdict form would properly ask "Did the use of the police dog create a reasonable probability of causing death?"

## **BREWER V CITY OF NAPA**

210 F. 3d 1093 (2000) Ninth Circuit

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Brewer is driving a stolen vehicle and is fleeing from police in a high-speed chase.
2. Brewer crashes the vehicle, flees on foot and hides in a residential backyard.

### **CANINE DEPLOYMENT DECISION/FACTORS:**

1. A fleeing, hidden, un-searched felony suspect.
2. A warning was made by the canine handler, informing Brewer that if he refused to surrender, a dog capable of biting him would be released to locate him.
3. The dog located Brewer on the other side of a 6' fence.
4. The handler could not tell if Brewer was armed and ordered Brewer to raise his hands.
5. Brewer complied, but then started to drop his hands down.
6. The handler thought Brewer was trying to reach a weapon and the handler ordered the dog to bite.
7. The dog bit Brewer, he was physically controlled, the dog was recalled and Brewer was handcuffed.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. Brewer was not entitled to a jury instruction stating "in determining the reasonableness of the officer's use of force, the police dog, you may consider whether or not alternative courses of action were available."

The question for the jury is the reasonableness of the force based upon the totality of the circumstances as described in *Graham v Connor*. The three factors in *Graham* help determine if the force was reasonable.

2. The existence or absence of probable cause to believe a person to be arrested is armed lacks relevance to an excessive force issue outside the deadly force context. Police dogs are not generally deadly force.

In this case, the relevant inquiry for the jury was whether Brewer might have posed an immediate threat to the safety of officers or others under *Graham*, not the existence of probable cause to believe Brewer was armed.

3. Tennessee v Garner makes it clear that its holding requiring probable cause applies specifically to use of deadly force, not to the use of a police dog, non-deadly force.

## **KISH V CITY OF SANTA MONICA**

216 F. 3d 1083 (2000) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's findings, rulings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog, without a warning, was reasonable.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. A commercial burglary.
2. Suspect Kish was seen inside.
3. Forced entry at a rear door.
4. A canine warning announcement was given.
5. The canine located and bit Kish.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

(Kish contends that a canine warning announcement was not given. The court focused on whether an announcement should have been made.)

1. Suspect Kish wanted this jury instruction: "The police should give a warning before force is used against a person, if feasible. The warning should inform the person what force the police intend to use if their commands are not obeyed."

The court disagreed and ruled that there has been no decision by the Ninth Circuit or the Supreme Court that "the police should give a warning before non-deadly force is used on a person."

This decision has been changed based upon a newer case, *Sorchini v City of Covina*.

2. Kish also argued that the City of Santa Monica was liable for "failure to train."

The court disagreed and ruled that since jury found that no excessive force was used on Kish (the police dog), the court needs not and does not address this failure to train claim.

## **SEBULSKY V CITY OF RIVERSIDE**

221 F. 3d 1349 (2000) Ninth Circuit

The Ninth Circuit affirmed this canine case. The court's decision was without a published opinion. Technically, this means the court's rulings, findings and comments cannot be used or referred to in other cases.

Even with this decision without published opinion, the case may be referred to when certain matters of law are pointed out by the Ninth Circuit.

The unpublished decision found the use of a police dog was not excessive force.

### **INITIAL SUSPECT VIOLATIONS AND OFFICER'S ACTIONS:**

1. Suspect Sebulsky steals a vehicle.
2. A high-speed chase ensues with police.
3. Sebulsky crashes the vehicle and flees on foot into a field.
4. Multiple canine warnings are made by a helicopter overhead.
5. Sebulsky does not surrender or comply. The dog is released and Sebulsky is bit.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court ruled that the use of a police dog in this circumstance was reasonable.
2. The court also agreed with *Vera Cruz v City of Escondido*, in that deadly force in the context of a police dog bite case as "that force which is reasonably likely to cause death." The evidence presented by Sebulsky did not satisfy this requirement.

## **SORCHINI V CITY OF COVINA**

250 F. 3d 706 (2001) Ninth Circuit

### **INITIAL SUSPECT VIOLATIONS:**

1. Suspect Sorchini attempted to steal a car and fled from police.
2. Suspect hides under a parked truck.

### **CANINE DEPLOYMENT DECISION / FACTORS:**

1. The court did not address this.

### **COURT'S RULINGS, FINDINGS AND COMMENTS:**

1. The court referred to *Kish v City of Santa Monica*. The *Kish* case held that there has been no decision by the Ninth Circuit or the Supreme Court that police should give a warning before non-deadly force is used on a person.

Because the *Kish* case is an unpublished opinion, it is not a precedent and neither *Kish's* holding or observations about the state law, have any bearing.

2. The City of Covina presented uncontroverted evidence that police policy requires its officers to give a warning prior to using a dog.