10th Circuit holds that Dogs are Property Protected by the Fourth Amendment

Description

During Use of Force Policy discussions and Training across the Country the topic often leads to a discussion of using force against an animal that is a pet. While litigation history has shown officers who have used force against the family pet are often faced with an internal affairs complaint or civil action for the unnecessary harm caused to the pet. While often these animals pose a significant threat of harm to officers the fact they are family pets have an emotional aspect that really seems to get the attention of the judge and jury. We are always looking for guidelines on the use of force against the family pet that presents a significant threat of harm and on June 20, 2016, the Tenth Circuit Court of Appeals decided Mayfield v. Bethards et al. [i], which discusses whether animals are considered property protected by the Fourth Amendment.

According to the Complaint in Mayfield, the deputies saw the Mayfieldsâ?? dogs Suka and Majka lying in the front yard of the Mayfieldsâ?? private residence in Halstead, Kansas, on July 13, 2014. The deputies exited their vehicle and entered the Mayfieldsâ?? unfenced front yard to approach the dogs. In the Complaint, the Mayfields allege a witness observed that although neither dog acted aggressively, both officers began firing on the dogs once on the Mayfieldsâ?? property. Deputy Clark fired on Suka, the Mayfieldsâ?? brown dog, but missed as she fled to the back of the house. Deputy Bethards shot Majka, the Mayfieldsâ?? white Malamute Husky, three times, killing her on the front porch.

The deputies then unsuccessfully searched for Suka behind the house, where she had disappeared into a wooded section of the Mayfieldsâ?? property. The Complaint further alleges that upon returning to the front yard, the deputies first moved Majkaâ??s body in an apparent attempt to obscure that she had been shot on the Mayfieldsâ?? property and then tried to hide her body in a row of trees. [ii]

The Mayfieldâ??s sued the deputies for shooting and killing Majka and alleged that it violated their Fourth Amendment rights. The district court denied qualified immunity for Deputy Bethards, the deputy that shot Majka. He appealed to the Tenth Circuit Court of Appeals. On appeal Deputy Bethards argued that dogs were not â??effectsâ?• that are subject to protection under the Fourth Amendment. Further, he argued that killing Majka was legal under Kansas law. At the outset, the Tenth Circuit stated that, at this stage of the case, they must view the facts that are in dispute in a light most favorable to the plaintiff. In other words, they must make their decision based on the plaintiffâ??s version of events and if qualified immunity is not appropriate, then a jury would decide which facts to believe.

Next, the Tenth Circuit examined relevant legal principals. The court noted that:

The Fourth Amendment protects â??[t]he right of the people to be secure in their persons, houses, papers, and **effects**, against unreasonable searches and seizures.â?• U.S. Const. amend. IV. [iii] [emphasis added] Thus, the court set out to decide whether dogs were â??effectsâ?• under the Fourth Amendment. In examining the law related to this issue, the court stated: **Although the Fourth Amendment uses the word â??effects,â?• the Supreme Court has long equated that term with personal property.** See United States v. Place, 462 U.S. 696, 700-01 (1983) (â??In the ordinary case,

the Court has viewed a seizure of personal property as per se unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.â?•); see also Illinois v. McArthur, 531 U.S 326, 330 (2001) (same). **And Kansas has recognized for at least as long that dogs are their ownersâ?? personal property.** See Kan. Stat. Ann. Â§ 79-1301 (â??A dog shall be considered as personal property and have all the rights and privileges and be subject to like lawful restraints as other livestock.â?•); State v. Fenske, 61 P.2d 1368, 1369 (Kan. 1936) (upholding larceny conviction for stealing a dog and stating â??[w]e have no hesitancy in saying a dog is personal propertyâ?•). **Thus, it is unlawful to seize a dog absent a warrant or circumstances justifying an exception to the warrant requirement.** See G.M. Leasing Corp. v. United States, 429 U.S. 338, 358 & n.21 (1977) (discussing exceptions to warrant requirement).

â??**A â??seizureâ?? of property occurs when there is some meaningful interference with an individualâ??s possessory interests in that property.â?•**United States v. Jacobsen, 466 U.S. 109, 113 (1984). **Killing a dog meaningfully and permanently interfere with the ownerâ??s possessory interest. It therefore constitutes a violation of the ownerâ??s Fourth Amendment rights absent a warrant or some exception to the warrant requirement. [iv]**

Thus, since dogs are personal property protected by the Fourth Amendment, and since shooting and killing a dog meaningfully interferes with an ownerâ??s possessory interest, the shooting and/or killing of a dog, as a Fourth Amendment seizure, must be pursuant to a warrant or an exception to the warrant requirement.

Deputy Bethards further argued that, even if killing Majka was a Fourth Amendment seizure, it was reasonable because it was in accordance with Kansas law. Particularly, the deputy argued that Kansas law allowed the killing of dog that attacks livestock and the deputy thought Majka attacked livestock. The statute at issue, states, in pertinent part, the following:

Section 47-646 of the Kansas Statutes allows â??any person at any time to kill any dog which may be found injuring or attempting to injure any livestock.â?• Kan. Stat. Ann. Â§ 47-646. [v]

The court then discussed the Kansas Supreme Courtâ??s interpretation of the statute and stated:

The Kansas Supreme Court affirmed, holding that section 47-646 allows a person to shoot a trespassing dog â??which he finds on his premises injuring or attempting to injureâ?• livestock â??either at the time the dog is found in the act . . . or within a reasonable time thereafter,â?• which includes â??the right within such reasonable time, if necessary, to pursue such dog after it has left his premises, and to shoot . . . such dog off his premises.â?• Id. at 442.**In reaching that conclusion, the Kansas Supreme Court identified two prerequisites that make application of the statute a fact-intensive inquiry. First, McDonald places the burden of proof on a defendant seeking to rely on the statute â??to show by a preponderance of the evidence that he was justified in shooting the dog.â?• Id. at 443. Second, where the aggrieved livestock owner pursues the dog onto its ownerâ??s property and shoots it, the defendant must establish that he entered the dog ownerâ??s land â??with authority, or under such circumstances that authority to enter such otherâ??s land may be implied**.â?• Id.

And the Kansas Supreme Court further explained that whether a livestock owner in hot pursuit has entered the dog ownerâ??s property with consent or implied consent is a question for the jury. Id. [emphasis added]

Thus, it is incumbent on the deputy to provide facts and evidence that show (1) he was justified in shooting the dog because it was actively attacking or had just attacked livestock, and (2) he was on the dog ownerâ??s land with proper legal authority (hot pursuit or consent). However, the details of the deputyâ??s rationale are contained in his police report, rather than the Complaint and the police report is not incorporated by reference into the Complaint. Further, the Complaint alleges that the deputy was mistaken about Majka attacking livestock and that neither Majka or their other dog was acting aggressively at the time of the shooting and at this stage of litigation (the motion for qualified immunity), the court must view the facts most favorable to the plaintiff. Thus, this question must go to a jury to decide whether the deputy was properly acting within the Kansas statute.

Thus, the court held that the plaintiffâ??s alleged sufficient facts to support a Fourth Amendment violation such that the case should be decided by a jury, rather than by the court at summary judgment.

The Tenth Circuit also held that the law was clearly established that a dog was protected property under the Fourth Amendment and as such, the district court was correct to deny qualified immunity for the deputy.

Therefore, the Tenth Circuit affirmed the denial of qualified immunity.

_____

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

_____

CITATIONS:

[i] No. 15-3074 (10th Cir. Decided June 20, 2016)

[ii] Id. at 2-3

[iii] Id. at 5

[iv] Id.

[v] Id. at 8

Date Created
06/12/2017