



RESOURCES

Civil – Dog Shooting – Ray v. Roane

By **Daigle Law Group**

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Under the Fourth Amendment, unreasonable searches and seizures of “persons, houses, papers and effects” are prohibited. That last term, “effects,” means personal possessions, which includes cell phones, computers, vehicles, and every other article of moveable property. Another “effect” that we do not often think of as such, is “man’s best friend”. Because a dog is also an “effect”, the shooting and killing of a dog is considered a seizure under the 4th Amendment. A while back we reviewed two cases involving this subject: one in the 8th Circuit and one in the 2nd Circuit. In a 2017 case – Hansen v. Black, the 8th Circuit decided an officer was entitled to Qualified Immunity when the officer shot a dog that was running in and out of traffic on a busy interstate highway. While the court agreed that the shooting of the dog was covered under the 4th Amendment’s requirements of reasonableness, the court went on to state that “the property interest may be diminished when the dog is allowed to roam, unleashed, uncontrolled and unsupervised to the point the dog becomes a public nuisance”.

In the second case, Harris v. O’Hare, police officers shot a dog while searching the owner’s backyard. The 2nd Circuit determined that the rear yard was protected curtilage and there was no immediate need to go into the back yard and shoot the dog. That case made its way through the court system for over eight years and finally settled for over \$800,000.00 in damages and attorney’s fees.

Today we will look at a Virginia case and see what the 4th Circuit Court of Appeals has to say about man’s best friend.

Facts

Before we talk about the facts in this case it is important to note that this appeal comes from a Motion to Dismiss filed by the defendant officers. A Motion to Dismiss is filed by the defendants early in the case and looks at all the allegations in the complaint in a manner that favors the plaintiff. So, as we work through this case understand that the “facts” as stated here, and the appellate court’s ruling, are based solely on the allegations made by the plaintiff, Ms. Ray.

In September 2017 officers responded to Ray’s home to serve an arrest warrant for a domestic violence incident. Three officers were parked in Ray’s driveway when a fourth officer, Officer Roane, drove onto the property and parked in the rear yard. Also, in the rear yard was Jax – a 150-pound German Shepard. Jax was attached to a zip line that was tethered between two trees in what was described as Jax’s “play area”.

Officers motioned and called out to Roane to move his car out front or wait for Ray to move the dog into the house. Instead, Roane exited his vehicle and began walking forward. Jax began barking and approached Roane. Roane then backed up and drew his firearm. Ray reached the dog and grabbed the tether. At this point the dog was at the end of his lead, was being held by Ray and could not reach the officer. Seeing this, the officer took one step forward and fired a round into the dog's head. The dog later died.

Ray filed a complaint in federal court alleging a Section 1983 claim under the 4th Amendment along with a number of state claims. The officer moved to dismiss the action, alleging the plaintiff had failed to state a claim under the 4th Amendment. The district court agreed, finding that an officer "would not have known it was clearly unreasonable to shoot the dog under the circumstances". At worst, according to the trial court, "this was a 'classic case' of a bad guess in a gray area or a reasonable, but mistaken judgment." The plaintiff then appealed.

Fourth Circuit Findings

As we discussed earlier, the 4th Circuit acknowledged that procedural rules require them to view the facts in a manner most favorable to the plaintiff. The court first recognized that the shooting of Jax constituted a "seizure" under the 4th Amendment. To assess that seizure the court balances the "highly significant private interests that owners have in their dogs" against the government's "strong public interest" in protecting citizens and officers from a dangerous animal.

Balancing these interests, the court exercised a fact-intensive review of this particular incident. Putting themselves in the officer's shoes the court looked at the complaint and determined the complaint alleged a set of facts that stated a proper claim. The court noted the following factors in coming to their conclusion:

- Roane had stepped back far enough to be out of Jax's reach;
- The dog no longer posed a threat to the officer; and
- Ray was controlling the animal at the point the officer walked forward and shot the dog.

The court then turned to the question of whether the right claimed by Ray was "clearly established" at the time of the shooting. Citing several 4th Circuit cases the court determined it was clearly established at the time of the incident and that shooting the dog under the facts as alleged by Ray's complaint was a 4th Amendment violation. The court also turned to similar cases in the 2nd, 3rd, 6th, 7th and 9th circuits to support their decision.

Takeaways

This case reminds us of the importance of pre-planning and understanding that there is a big difference between euthanizing a wild animal on the side of the road and killing a family pet on the owner's property. You can imagine how this case may play to a jury if the facts stand up to those alleged in the complaint.

Pre-planning resources are especially important when it comes to controlling animals when executing a search warrant or arrest warrant. There are two issues to consider in this case: first is a question of positioning; would it be reasonable to plan officers' positioning if it is known there is a large animal on the property? The next idea is that it might be reasonable to have an Animal Control Officer with a stand-off pole on scene so that your team is able to control the animal humanely. Think of these small but useful tips when handling incidents that coincide with family pets and animals.

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