



Constitutional Policing Update

Ninth Circuit Case Update Canines and Qualified Immunity

Law enforcement is not entitled to qualified immunity when a canine is deployed, and a suspect is bitten for more than twenty seconds after he surrendered and lay prone on his stomach with his arms outstretched. *Rosenbaum v. City of San Jose*, 107 F.4th 919 (9th Cir., July 11, 2024).

The Court also determined that a jury could find the three other officers and their Sergeant were “integral participants” in the canine officer’s use of excessive force and therefore also potentially subject to liability even when they did not have training or control of the police dog. *For more on Integral Participants see Constitutional Policing Update 24-15.*

What happened in the *Rosenbaum* case?

On the evening of September 10, 2019, San Jose police responded to two-story home for a report of domestic violence. The reporting party alleged Rosenbaum was under the influence of alcohol or narcotics, previously owned firearms, had training in mixed martial arts and boxing, and fought with the police in a prior DV incident. Officers wearing body-cameras entered the home after deploying the canine to clear the first floor of the house. Officers entered with their guns drawn and saw the suspect at the top of the stairs. For six minutes officers instructed the suspect that he was under arrest and if he did not come down the stairs, a police dog would be sent upstairs and would bite him. The suspect did not comply.

The canine handler deployed Kurt, the police dog. As officers approached, the suspect was found unarmed and seated with his back against the wall with Kurt biting the suspect’s right forearm. Approximately five seconds after officers reached the second floor, Kurt dragged the suspect onto his stomach. The bodycam video shows the suspect sliding down without resistance as the canine handler says, “good boy.” At least one officer has his gun drawn and pointed at the suspect. A second officer stood on the suspect’s legs, while another officer held the suspect’s left arm behind his back, and a fourth officer had his foot on the suspect’s right shoulder. Kurt then pulled the suspect’s right arm above his head, giving one last forceful shake before commanded to let go. Approximately 43 seconds elapsed between Kurt’s deployment upstairs until the bite was released. The court noted the suspect never tried to evade, resist, strike or kick the officers or dog, or use threatening language at any point during the period in which he was bitten. Kurt held the bite for more than twenty seconds after the suspect surrendered and lay prone on his stomach with arms outstretched. The suspect had to have multiple surgeries and has some permanent damage to his arm.

Bottom Line: No Qualified Immunity. Civil Rights Case to be Heard by a Jury

Ninth Circuit caselaw clearly establishes that officers violate the Fourth Amendment when they allow a canine to continue biting a suspect who has fully surrendered and is under officer control. **Officers will not have qualified immunity when a dog holds a bite longer than reasonably necessary under the specific circumstances of the case.** Complete documentation is key. Officers should articulate both the tactical and factual concerns which support his or her decision to maintain the canine’s hold on the suspect.

