



TROOPER SUED FOR SHOOTING LARGE DOG RUNNING LOOSE ON THE INTERSTATE

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On September 18, 2017, the Eighth Circuit Court of Appeals of decided *Hansen v. Black*ⁱ, in which the court discussed whether a state trooper violated the Fourth Amendment when he shot a large dog that was running loose on an interstate. The relevant facts of *Hansen*, taken directly from the case, are as follows:

On Sunday morning, May 20, 2012, Trooper Black was dispatched to respond to calls regarding a dog on or near the I-29 roadway near busy Frederick Avenue exit ramps into St. Joseph, where the speed limit was 65 miles per hour. After accessing the southbound lanes, Trooper Black saw a collared, unleashed German Shepherd -- Conan -- running loose in the roadway. Trooper Black did not see anyone attempting to catch the dog, and southbound vehicles were swerving onto the right shoulder or rapidly changing lanes to avoid hitting the dog. To reduce the obvious traffic hazard, Trooper Black positioned his patrol car across the center stripe, shutting down both southbound lanes, while he attempted to capture the dog.

Initially, Black exited his patrol car and tried calling and running at the dog, but it ran away, down the center stripe of the southbound lanes. Black re-entered his patrol car and drove after the dog, then positioned the car to again block traffic, got out, and tried to capture the dog by "yelling, shouting, [and] running towards [him]." The dog again ran away. When Black activated his patrol car sirens to scare the dog off the road, it looped north and circled his patrol car. Black again got out and tried to scare the dog off the road by shouting and raising his hands. The dog ran away at a "full sprint," heading south on the southbound lanes of the interstate. By this time, Trooper Black could see hundreds of southbound vehicles backed up a quarter mile, which in his experience created a serious risk of "secondary" crashes.

Trooper Black reentered his patrol car and drove as close to the running dog as he could. He exited and fired a shot at the dog from fifty to seventy feet away. The dog fell down. As Trooper Black approached from the north, the dog continued south down the center of the southbound lanes, using his front paws because his back legs were injured. Trooper

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Black shot the dog a second time in the torso or chest. The dog dragged itself onto the grass median between the southbound and northbound lanes. Observing the dog was now in pain and gravely wounded, Black fired two more shots "to humanely kill the dog."ⁱⁱ

Hansen later filed suit in federal district court and alleged that Trooper Black violated her Fourth Amendment rights when he shot and killed her dog. The trooper filed a motion for qualified immunity, and the district court denied the motion. Trooper Black appealed the denial of the motion for qualified immunity to the Eighth Circuit Court of Appeals.

On appeal, the court noted that there is two-prong inquiry in determining whether qualified immunity is appropriate. First the court must determine if a constitutional right was violated. Second, the court must determine if the law was clearly established at the time of the violation such that the illegality of the conduct is "beyond debate" or clear to a reasonable officer.

The court of appeals next examined whether the Fourth Amendment applies to a seizure of a person's dog. The court stated

The Fourth Amendment protects "persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It "protects property as well as privacy." Soldal v. Cook Cty., 506 U.S. 56, 62 (1992). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." United States v. Jacobsen, 466 U.S. 109, 113 (1984). This court and other circuits that have considered the issue agree that privately-owned dogs "should be considered effects within the meaning of the Fourth Amendment." Altman v. City of High Point, 330 F.3d 194, 202 (4th Cir. 2003); see Andrews v. City of W. Branch, 454 F.3d 914, 918 (8th Cir. 2006); Brown v. Muhlenberg Twp., 269 F.3d 205, 210-11 (3d Cir. 2001); Fuller v. Vines, 36 F.3d 65, 68 (9th Cir. 1994), cert. denied, 514 U.S. 1017 (1995), *overruled on other grounds by* Robinson v. Solano Cty., 278 F.3d 1007, 1013 (9th Cir. 2002); Leshner v. Reed, 12 F.3d 148, 150 (8th Cir. 1994).ⁱⁱⁱ [emphasis added]

The court also noted that the trooper had the legal authority and duty to seize the large, unleashed dog running on a busy interstate creating a road hazard. Thus, *the issue before the court was whether the manner in which the trooper accomplished the seizure was reasonable under the Fourth Amendment.* Particularly, the court stated

Trooper Black unquestionably had the authority, indeed a public duty, to seize a large, unleashed dog running unrestrained down a busy high-speed interstate highway, causing vehicles to swerve, change lanes, and seek safety on the shoulder. Thus, it is not the seizure that is in question, it is the degree of force Black employed to accomplish a necessary seizure. "Determining whether the force used to effect a particular seizure is 'reasonable' requires balancing of the individual's Fourth Amendment interests against the relevant government interests." Cty. of Los Angeles v. Mendez, 137 S. Ct. 1539, 1546 (2017) (quotation omitted). The analysis "turns on the facts and circumstances of each particular case." Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015), quoting Graham v. Connor,

490 U.S. 386, 396 (1989); see Wertish v. Krueger, 433 F.3d 1062, 1066 (8th Cir. 2006).^{iv}
[emphasis added]

The court then set out to determine whether a constitution violation occurred. The district court, when it denied qualified immunity, opined that the trooper was reasonable in shooting the dog the first time. However, when he shot it the second time, after its back legs were disabled, the district court stated that a jury could find that the trooper acted unreasonably under the Fourth Amendment because he could have picked the dog up and carried him off the interstate.

The court of appeals stated

A dog owner's protected property interest wanes if her pet escapes. "[W]hile we do not denigrate the possessory interest a dog owner has in [her] pet, we do conclude that dog owners forfeit many of these possessory interests when they allow their dogs to run at large, unleashed, uncontrolled, and unsupervised, for at that point the dog ceases to become simply a personal effect and takes on the nature of a public nuisance." Altman, 330 F.3d at 205-06.^v [emphasis added]

The court then applied the facts of the case and balanced Hansen's Fourth Amendment interests against the interests of the government. The court observed that the trooper encountered a large dog running loose on the interstate causing cars to swerve between lanes and drive on the shoulder. The trooper attempted multiple times to catch the dog without using any force but was unsuccessful. The trooper then noticed that traffic was stopped and backed up about a quarter of a mile, which posed a significant risk of traffic crashes. The court noted that the trooper did not have snare or taser and there were no other troopers on scene to assist him with his duty to quickly safeguard motorists on the interstate. Thus, the court of appeals agreed with the district court that the first shot was reasonable under the Fourth Amendment.

However, the first shot wounded but did not stop the dog. He continued to struggle to evade the trooper and was crawling away. At this point, the trooper shot the dog a second time. The court of appeals stated that they are not going to use hindsight and require the trooper to have picked the wounded dog up and carried him off of the interstate, as the district court opined. Further, there is no guarantee the trooper would have been able to open the interstate if he had carried the injured dog who was still trying to escape on the median.

The court of appeals then held

An officer's use of deadly force is always tragic, but the actions of Trooper Black were objectively reasonable under the circumstances, and he is therefore entitled to qualified immunity.^{vi}

Thus, under the first prong of the qualified immunity test, the trooper is entitled to qualified immunity.

However, the court also examined the second prong, which is whether the law was clearly established to the level of placing the officer's action beyond debate as a violation of the Fourth Amendment (assuming only for the sake of the second prong that the use of force was unconstitutional). The court stated that the plaintiff provided no case precedent that held it was unconstitutional to shoot a large

dog that was running loose on the interstate creating a serious risk to public safety after it avoided multiple attempts at capture him without force. Therefore, the law was not clearly established and that would also be a second reason to grant qualified immunity.

Therefore, the decision of the district court was reversed.

ⁱ No. 16-4162 (8th Cir. Decided September 18, 2017)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 4

^{iv} Id. at 4-5

^v Id. at 6

^{vi} Id. at 7

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