



BY MAGGIE MCLEITCHIE, ESQ.

POLICE OFFICERS AND CANINE ENCOUNTERS

By statute, Nevada law caps the damages for the injury or death of a pet at \$5,000. In contrast, federal courts recognize that there is a very significant interest at stake when police officers interact with dogs—if an officer unreasonably shoots your dog, your Fourth Amendment rights have been violated. How does this situation reconcile with the Nevada statute, and what obligations do police departments have to avoid shooting dogs?

The Family Dog and the Fourth Amendment

In 2005, the Ninth Circuit memorialized your Fourth Amendment rights in connection with your pets when it decided *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962 (9th Cir. 2005). The genesis of the case involved a murder investigation targeting the Hells Angels and some of their members. During the execution of the warrant, San Jose policemen shot and killed dogs at two different residences. Before the warrant service at one house at which dogs were present, the officers knew that the target had a record for weapons and narcotics. Importantly, they also knew that the target had two guard dogs, including “a Rottweiler that was known to attack without provocation,” and they had seen a sign at the residence stating, “Warning Property Protected by Guard Dog.” *Id.* at 968. According to one officer, at some

point, a Rottweiler approached him and he was scared—so he shot and killed the dog instantly.

The officers also executed a warrant on a second residence, at which they also had reason to believe the target was dangerous—and that dogs were at the house. The officers planned to enter the property by cutting through an outer fence. If dogs were present, the only plan they had in place was to poke them with a rifle. When the time came to execute the warrant, three bullmastiff-type dogs ran toward the gate and one snapped at the officers. The officers had pepper spray, but didn’t use it. Instead, they tried to scare the dogs away and, when that didn’t work, proceeded to shoot two of three dogs. (The third dog safely retreated to the backyard.)

The specific question the Ninth Circuit considered in this case was whether the officers who participated in these dog killings were entitled to the blanket protection of “qualified

immunity” (a doctrine that shields government actors from liability if their conduct doesn’t constitute a clearly established constitutional right). The Fourth Amendment issue at stake was the right to be free of unnecessary “destruction of property.” However, the court emphasized the traumatic impact that watching one’s pet die could have on a pet-owner, and recognized the special connection between people and their dogs. This special connection, the court concluded, means that dogs aren’t like other property:

....dogs are more than just a personal effect. The emotional attachment to a family’s dog is not comparable to a possessory interest in furniture.
Id. at 975.

In light of this emotional attachment, the Ninth Circuit found that the Fourth Amendment “intrusion was severe.” The court went on to evaluate the officers’ actions and found that the officers had acted unreasonably. In its evaluation, the court focused on the lack of specific plans made to address the presence of dogs during the execution of the warrants and emphasized that the officers had reason to know in advance the dogs were there, yet left themselves with no other real option than to shoot and kill the animals during the interactions they ultimately had with the dogs.

In addition to finding that the officers acted unreasonably and violated the plaintiffs’ Fourth Amendment rights, the Ninth Circuit also found that a reasonable officer would have known that the killing of these dogs was illegal.

After *Hells Angels* was decided, in an unpublished decision, the Ninth Circuit also reversed a decision from the District Court of Nevada granting summary judgment in a case involving the shooting and killing of a pit bull and mastiff by North Las Vegas Police Department SWAT team officers in *Thurston v. City of N. Las Vegas Police Dep’t.*, 552 F. App’x 640 (9th Cir. 2014), *as amended on denial of reh’g and reh’g en banc* (Feb. 28, 2014). In contrast to the *Hells Angels* case, the

warrant the officers executed in *Thurston* was a high-risk warrant. Nevertheless, the Ninth Circuit still found that the district court should not have granted summary judgment, noting that the officers had ample time to get help from animal control to prepare for the presence of dogs.

While the *Hells Angels* court found there was no evidence to hold the department liable, as a general rule, police departments—along with individual officers involved in police shootings—can be liable for dog shootings. For example, a police department aware of a history of constitutional violations that fails to address the violations or to train its officers can be liable pursuant to *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978).

Prohibition Against Breed Discrimination

Many of the cases involving wrongful dog shooting, like the *Hells Angels’* cases, involve larger breeds. Many stereotypes exist about the danger presented by certain large dog breeds, particularly pit bulls.

In 2013, reflecting the need to combat this misleading stereotype, Assemblyman James Ohrenschall (D), Nevada, sponsored AB 110. The bill—which passed almost unanimously—modified prior law pertaining to vicious dogs (NRS 202.500). It does two things: first, it mandates that a dog cannot be deemed vicious for the purposes of criminal liability solely based on its breed. Second, it prohibits local authorities from “adopting an ordinance or regulation that deems a dog dangerous or vicious based solely on the breed of the dog.”

In light of this statute (and the underlying policy), police departments should not shoot dogs with which they interact merely because they are pit bulls, Chihuahuas, poodles or any other breed.

Nevada Statutory Cap on Damages for Loss of an Animal (and the Limits on its Application)

While civil rights liability is a significant risk, by statute, Nevada law expressly contains restrictions on the recovery of damages for the death of an animal. NRS 41.740(3) caps *all* damages to just \$5,000 total. This statute could seem to limit Nevadans seeking relief if

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they believe their dogs were wrongfully killed. However, the statute only applies to state law claims and should not be interpreted as limiting federal relief. Accordingly, the Nevada statute doesn’t limit 42 USC § 1983 liability.

Successful civil rights plaintiffs are entitled to appropriate damages for the indignity and suffering associated with a constitutional violation—even without independent evidence of damages. In addition, plaintiffs who prevail in federal civil rights claims are entitled to reasonable attorney’s fees and costs pursuant to 42 USC 1988, which was designed to incentivize lawyers to take civil rights cases.

It is also important to note that—even as it applies to tort liability—the limitation in Nevada statutory law only applies to actions against “natural persons.” Thus, if a plaintiff wins claims against a police department or another local governmental entity, the cap doesn’t apply.

Training Required: SB 147 Passed Almost Unanimously in 2015

After the media covered a number of dog shootings by police officers, and in light of growing national attention

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THE FAMILY DOG AND THE FOURTH AMENDMENT

focused on dog shootings by officers, the Nevada Legislature passed Senate Bill 147 in 2015. Senator David Parks, Senator Mark Manendo, Senator Joyce Woodhouse and Assemblyman Richard Carrillo were the bill's primary sponsors. Only one legislator—Assemblywoman Robin Titus—voted against the final bill.

encounters is an important part of being a professional police officer.

SB 147 (NRS 289.595) mandates that training specifically has to include:

- a) Differentiating between aggressive and nonthreatening dog behaviors;
- b) Nonlethal methods of handling potentially dangerous dogs; and
- c) The role and capabilities of local animal control agencies.

The bill also allows for the addition of other areas of training to this list.

The required training topics dovetail with Ninth

Circuit case law requiring that officers plan for dog encounters, if possible, and prohibiting the type of “shoot first and ask questions later” approach that can lead to liability for officers—and for police departments.

Read together with AB 110/NRS 202.250, police departments should train their officers to focus on a dog's behavior rather than its breed when

evaluating the danger a dog presents and how best to respond to it.

Current Status

What impact have AB 110 and SB 147 had within police departments in Nevada? Because there are no publicly available statistics that evaluate the impact the bills have had on reducing dog shootings in Nevada, it's hard to measure their effect. However, if meaningfully followed, the bills should necessarily reduce the number of dogs shot by police officers. Moreover, even if a rogue officer shoots someone's dog in violation of the Fourth Amendment, following these laws can limit a department's liability for civil rights violations. As noted above, departments can be liable for civil rights violations, but not under a vicarious liability theory. Instead, a civil rights plaintiff has to establish a specific theory, such as failure to train. It follows that if a police department implements specific training, it can limit its potential exposure. Thus, the implementation of comprehensive training centering on officers' interactions with dogs is a service to the public and to police departments. **NL**

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Prior law (Chapter 289 of the Nevada Revised Statutes) required officers to receive training in various areas as a condition of certification. SB 147 amended Chapter 289 to specifically require that police departments in Nevada adopt policies requiring training in responding to incidents “involving dogs or where dogs are present.” Thus, the bill recognizes that training in dog

The author's canine companions Caliban and Ophelia.

MAGGIE MCLETCHE is a civil rights and media lawyer, and founding partner of McLetchie Shell, LLC. Along with her co-counsel, Jennifer Braster, and law partner, Alina Shell, McLetchie is currently representing plaintiffs in two lawsuits involving the shooting of pit bulls. One case was brought against North Las Vegas and specific officers and the other was filed against both North Las Vegas and Henderson, and the shooting officer where a warrant was jointly executed by the two departments. She also owns two pit bull mixes that are happy and healthy—and very gentle.

