



Illinois State Police
Law Bulletin – 08/16/17
Use of Force - Canine

ISP Directive OPS-034, Canine, provides that canine teams will use only that force which is reasonable and necessary to take a person into custody, safely detain, and deliver that person to confinement (see ISP directive OPS-046, "Use of Force").

Background: The continued use of force (including but not limited to a canine) in an arrest situation depends critically on whether the suspect is subdued or has surrendered. *Johnson v. Scott*, 576 F.3d 658 (7th Cir. 2009). In determining the reasonableness of force used, the courts will examine factors such as:

- The Severity of the Crime at Issue
- Information Known to Officer
- Timing of Use of Force
- Actions of Suspect
 - Whether the Suspect Poses an Immediate Threat to the Safety of the Officers or Others
 - Whether the Suspect is Actively Resisting Arrest or Attempting to Evade Arrest

Facts: Mr. Becker was arrested on a warrant that alleged that he had previously held a knife to his brother-in-law's neck while threatening to kill him. One of the officers serving the warrant was Officer Zachary Elfreich, who was a police dog handler. Becker was injured by Elfreich's dog during the arrest and filed suit against both Elfreich and the city claiming excessive force.

On March 11, 2011, four Evansville Police Department officers went to the home of Becker's mother in order to execute an arrest warrant for him because he was staying at her house at that time. Officer Elfreich initially guarded the back door of the house with his German Shepherd, Axel, while other officers went to the front of the house. While at the rear of the house, Officer Elfreich saw an individual who told Officer Elfreich that Becker was inside the house with his mother and her sister. Meanwhile, at the front of the house officers spoke with Becker's mother, who called upstairs to her son that the police were there to arrest him. The mother and aunt told the officers he was alone in the house and waited outside on the porch.

The officers called Officer Elfreich to the front of the house with Axel. After waiting about 30 seconds and not seeing or hearing Becker, Officer Elfreich released Axel inside the house and directed the dog to "find him," which was the command for the canine to bite the first person he finds and hold that person until he is commanded to release. Officer Elfreich testified that he gave a loud, clear warning about 30 seconds before he released Axel. However, both Becker and his mother disputed this testimony.

Becker testified he replied he was getting dressed and would be down and that within two minutes of his mother yelling at him, he began coming down the stairs with his hands on top of his head and his girlfriend followed. As Becker reached a landing on the stairs, about three steps from the bottom, he encountered Axel who bit his left ankle. Officer Elfreich ordered Becker to get on the floor and grabbed Becker by his shirt collar and yanked him down the last few steps onto the floor, where he landed hard on his chest and head. As Officer Elfreich pulled Becker down the steps Axel continued to bite him while violently shaking his head. Officer Elfreich placed his knee in Becker's back, handcuffed him, and only then ordered Axel to release his grip.

Becker was not sure how long Axel bit him, but his girlfriend estimated a few minutes. Axel severely injured Becker, who was transported to a local hospital for treatment. Becker required surgery, remained

hospitalized for two or three days, suffered permanent muscle and nerve damage, and continues to suffer daily with pain.

Holding: Based upon the totality of the circumstances – there was no particular reason to believe the suspect was armed, the officer was armed and was not alone, and the officer was aided by a canine – it was unreasonable for the officer to pull the suspect down three steps and place a knee in his back while allowing the dog to violently bite his leg. *Becker v. Elfreich*, 821 F. 3d 920 (7th Cir. 2016)

Rule of Law: No more than minimal force was permissible to arrest a non-resisting, or passively resisting suspect. Prior flight does not necessarily cast doubt on the genuineness of surrender especially where the suspect is effectively trapped and compliant. *Alicea v. Thomas*, 815 F.3d 283 (7th Cir. 2016).

Future Guidance:

- The preservation of all life is our first priority and affecting an arrest with the least amount of force necessary is our goal.
- Constantly re-evaluate the threat and your need to use force, especially deadly force.
- Carefully document the totality of the circumstances surrounding any use of force.

Please note: the purpose of this law update is not to make you an expert on the subject. The purpose is to bring to your attention new, relevant case law. If you have any questions regarding the Legal Guidance given herein, please contact the Illinois State Police Legal Office at (217) 782-7658.