

Verbal Recall and Verbal Out for Patrol Dogs

By Terry Fleck

There has been a recent debate within our industry regarding a police service dog's verbal recall and verbal out. I'm going to quote several Federal court cases that address this issue. Please note that anything in quote marks is an actual quote from the court case itself. I have attempted to keep this as brief as possible, looking at seven cases and hundreds of pages of text. I will comment on the court's quote, after it is presented:

Kerr v City of West Palm Beach (U.S. Court of Appeals, Eleventh Circuit):

COURT QUOTE: "The severity of an apprehended suspect's injuries can be reduced if the handler has complete control over the actions of his dog. With such control, the handler can recall or restrain the dog before a bite even occurs. Alternately, the handler can quickly remove the dog from the apprehended suspect, minimizing the possibility that the suspect will be further injured in an ensuing struggle. Since a police dog that is apprehending a fleeing suspect is often far in front of its handler, canine law enforcement training stresses the use of oral commands, which the dog can obey even when its handler is at a distance, rather than "leash" commands, which require the officer to touch the dog or, in some instances, to pull the dog off the suspect. The evidence in this case established that handlers in the West Palm Beach canine unit often had to reinforce their verbal commands by leash commands. In addition, the evidence established that the canine unit's handlers often used very long leashes-up to thirty feet in length-and that the length of these leashes was blamed by some for the officers' lack of adequate control over their dogs and the resulting high frequency of injury to apprehended suspects."

Fleck's Opinion:

In this case, the Court stated that "...canine law enforcement training stresses the use of oral commands, which the dog can obey even when its handler is at a distance, rather than "leash" commands, which require the officer to touch the dog or, in some instances, to pull the dog off the suspect". In addition, the Court stated "The evidence in this case established that handlers in the West Palm Beach canine unit often had to reinforce their verbal commands by leash commands", which led to liability upon the agency.

Since this case involved three different events, this case occurred from 1980 to 1984. The department did not have remote trainers at that time. In fact, very few, if any, law enforcement agencies used remote trainers during this time period. There is no Federal case law that substitutes a remote trainer in place of verbal commands. Since times have changed since the early '80's, one could argue that a remote trainer is the same thing as a verbal command; however there is no Federal case law, to date, to back up that claim.

Fikes v. Cleghorn (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “Actions of police in using remote control device to release dog from police vehicle after officers had made arrest did not constitute “deadly force,” and arrestee who brought federal civil rights action alleging use of excessive force in violation of his Fourth Amendment rights was not entitled to instruction on use of deadly force, where police officers presented testimony that dog was trained to release arrestees on demand and arrestee did not present evidence that use of dog created substantial risk of causing death or serious bodily harm, even though dog bit arrestee on shoulder.”

Fleck’s Opinion:

In this case, the Court stated that a police dog is not deadly force, partially “...where police officers presented testimony that dog was trained to release arrestees on demand...”

Quintanilla v. City of Downey (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “Evidence from which jury reasonably could have found that use of police dog during arrest did not create substantial risk of causing death or serious bodily harm supported denial of arrestee’s motion for directed verdict in § 1983 action; arrestee suffered only nonlife-threatening injuries that did not require serious medical attention, dog was trained to release on command and did release arrestee on command, and no admissible evidence indicated dog’s capacity for harm.”

Fleck’s Opinion:

Again, in this case, the Court stated that a police dog is not deadly force, partially due to the “...dog was trained to release on command and did release arrestee on command”.

Martineau v. City of Cypress (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “Appellant argues that the district court abused its discretion in refusing to give his proposed jury instruction on the use of deadly force. Appellant contends that any use of a police dog where the dog is allowed to bite the suspect constitutes deadly force. Appellant is incorrect. We have held that whether the use of a dog to apprehend a suspect constitutes the use of deadly force depends on the individual circumstances. Thus, in situations where the dog has remained under the constant control of the handler and the suspect has not suffered life-threatening injuries, use of a dog has been found not to constitute deadly force. Because the dog’s handler was present at all times, the dog released Appellant when ordered to do so, and there was no evidence that Appellant suffered permanent or life-threatening injuries, the district court did not err in refusing to give Appellant’s proposed instruction on deadly force.”

Fleck’s Opinion:

Again, in this case, the Court stated that a police dog is not deadly force, partially due to the fact that “...the dog released Appellant when ordered to do so”.

Vera Cruz v. City of Escondido (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “Responding to a call from the said employees, Escondido Police Officer Eric Distel and his K-9 companion were the first to arrive at the scene. Distel spotted Vera Cruz in a doorway at the rear of the Del Taco throwing objects out of the building. When the officer identified himself, Vera Cruz began walking away. Distel then warned Vera Cruz to stop or he would release the dog; Vera Cruz started running. After giving another warning, Distel released the dog, who bit Vera Cruz on the right arm, bringing him to the ground. After disarming Vera Cruz, Distel ordered the dog to release his bite, and the dog immediately complied. Vera Cruz sustained a large laceration and several puncture wounds on his upper right arm; he required surgery and eight days of hospitalization. Vera Cruz presented no evidence that properly trained police dogs are reasonably capable of causing death (“[A] litigant is entitled to have the jury charged concerning his theory of the case if there is any direct or circumstantial evidence to support it.”). In fact, Vera Cruz presented no evidence at trial that police dogs can kill under any circumstances.”

Fleck’s Opinion:

Again, in this case, the Court stated that a police dog is not deadly force, partially due to the fact that “After disarming Vera Cruz, Distel ordered the dog to release his bite, and the dog immediately complied.”

Parra v. City of Chino (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “Parra first contends no reasonable jury could conclude that the use of the dog and the baton against him did not constitute deadly force, i.e. force that could cause death or serious bodily injury. What constitutes deadly force depends on the object's capacity, in the manner of its use, to endanger one's life, not the nature of the object itself. The defendants submitted evidence that Munko, the police dog that bit Parra, was a friendly, even-tempered and highly trained dog. Munko had been trained to search for a suspect and bark upon finding him. The dog was also trained to “bite and hold” when a suspect acts aggressively or tries to flee. In this incident, Munko continued to bite Parra only while Parra tried to flee. Upon receiving the release command, Munko immediately released his hold of Parra. Based on this evidence, we find a reasonable jury could conclude that this particular use of a police dog did not constitute deadly force.”

Fleck’s Opinion:

Again, in this case, the Court stated that a police dog is not deadly force, partially due to the fact that “Upon receiving the release command, Munko immediately released his hold of Parra.”

Miller v. Clark County (U.S. Court of Appeals, Ninth Circuit):

COURT QUOTE: “It is important that Deputy Bylsma arrived on the scene soon after he heard Miller scream and that Deputy Bylsma commanded Kimon to release Miller as soon as Deputy Bylsma determined that Miller

was unarmed. This was good police work, and it showed Deputy Bylsma's desire to minimize harm to the suspect".

Fleck's Opinion:

In this case, the Court stated that commanding the dog to release the suspect "...was good police work and it showed Deputy Bylsma's desire to minimize harm to the suspect."

THE UNITED STATE POLICE CANINE INDUSTRY STANDARD:

In addition, there is a United States canine industry standard. That standard is certification / testing with a verbal recall and verbal out.

There are approximately a dozen states with a state standard for police canine. All of them test a verbal recall and verbal out. In addition, every national, regional or local canine association that I know of has that same standard in place as well. I do not know of any state or canine association that does not test the verbal recall and verbal out.

SUMMARY:

Based upon these cases and the U.S. police canine industry standard, police service dogs should have a verbal recall and verbal out. I believe one of the reasons why police dogs have not been ruled as deadly force, is our ability to verbally recall and verbally out a police dog.