

## EXPERT WITNESSES

### Qualifications

*Mr. Haas reviewed and evaluate the actions of members of the Ada County Sheriff's Department concerning the use of a K9 during the search an Ada County homeowner's yard and this would be his expert testimony.*

*He retired in 2018 as a Police Commander from the Cathedral City Police Department. Before his retirement, he was the Investigations Bureau Commander. His law enforcement experience included 23 years with the Cathedral City Police Department, six years with the Palm Springs Police Department, and two years with the Riverside County Sheriff's Department's Indio Station. He has a total of 31 years in law enforcement. He has expertise in law enforcement policies, procedures, and practices, use of force, and conducting, supervising, and managing criminal and administrative investigations.*

*Mr. Haas was a K9 handler for the Palm Springs Police Department for four years. His K9 partner was a single-purpose, search/apprehension-trained patrol dog. He completed basic K9 Handler training and many (over 200) in-service trainings and recertifications. He assisted in training other K9 teams throughout Southern California, and he was responsible for coordinating many training events that included multiple agencies.*

*As a sergeant, he was assigned as the K-9 Program supervisor for the Cathedral City Police Department where he supervised K9 operations, training, and selection. As a lieutenant, he managed the K9 program where he was more involved in team selection, program direction, purchasing, use review and investigation, and data collection and analysis.*

*Dr. Haas is the former President/C.E.O. of Operant Learning Systems, Inc. Operant is a firm that developed and presented education and training material to public safety agencies, corrections, and probation departments. As an instructor for Operant Learning Systems, Inc., he developed and taught an advanced law enforcement course titled Communication Strategies for Conflict. He designed this course using research gained during his doctoral work. The course was certified in 2019 by the State of California and awarded a grant for innovative training.*

*He is currently a Professional Practice Assistant Professor of Criminal Justice at Utah State University, where he teaches Intro to Criminal Justice, Corrections, Foundations of Leadership, Advanced Leadership, and Executive Leadership.*

*A complete list of Mr. Haas's qualifications, awards, experience, training, and education is contained in his CV.*

### Facts or Data Considered in Forming Opinions

Mr. Haas has relied on his decades of education, training, and experience in the field of law enforcement in formulating his opinions in this case. The facts and data considered by Mr. Haas in forming his opinions include, but are not limited to:

1. Boise Police Department Reports Bates Numbers Ada County 000001 - 8;
2. Ada County Sheriff's Office Reports Bates Numbers Ada County 000009- 30;
3. Ada County Sheriff's Office Policy Manual Bates Numbers Ada County 000598 - 663;
4. Ada County Sheriff's Office K9 Policy Bates Numbers Ada County 000659 - 663;
5. Ada County Sheriff's Personnel File for Deputy Matthew R. Servatius Bates Numbers Ada County 000664 - 709;
6. Ada County Sheriff's 2020 – 2022 Training Records for Deputy Brian Orcutt Bates Numbers Ada County 001286 - 1405;
7. Ada County Sheriff's 2020 – 2022 Training Records for Django and Orcutt Bates Numbers Ada County 000853 - 1285;
8. Ada County Sheriff's Deployment Records for Django Bates Numbers 001286 - 1405;
9. Ada County Defendants' First Supplemental Answers and Responses to homeowner's First Set of Interrogatories, Requests for Production, and Requests for Admission dated October 25, 2024;
10. Ada County Defendants' Answers and Responses to homeowner's First Set of Interrogatories, Requests for Production, and Requests for Admission dated September 3, 2024;
11. Ada County Deputy Orcutt's May 1, 2022, Body 3 Video depicting K9 Handler Searching Plaintiff's Backyard.
12. Boise Police Department Welfare Check 911 Hang Up BPD2022-206900  
5 Gilliam Video from Accompanying K9 Handler Searching homeowner's Backyard.
13. Boise Police Department Welfare Check 911 Hang Up BPD2022-206900-  
6 S. Martinez-Video Depicting BPD Officer Request Permission to Search homeowner's Backyard;
14. Boise Police Department Welfare Check 911 Hang Up BPD 2022- 206900-8 Reimers Identify as "Video from Residence Where 911 Hang Up Call was Made";

15. Deposition of Brian Orcutt; and

16. Deposition of Steve Martinez.

Mr. Haas reserves the right to review and consider any facts and data that are disclosed by the parties throughout the course of discovery, obtained during depositions taken by the parties, or that are otherwise developed by the parties in the future.

#### **Complete Statement of All Opinions to be Expressed**

Below is a complete statement of all opinions Mr. Haas will express, including the basis and reasons for them.

##### **A. Deputy Orcutt lacked justification for the off-leash deployment of the K9.**

Ada County Sheriff's Office Policy Manual (P7.5.05 – K9 Apprehension Guidelines): Permits off-leash use when a handler reasonably believes a suspect has committed a serious offense and poses an imminent threat, resists arrest or hides in an area where entry poses a safety risk, with a caveat to minimize unintended injury. Orcutt's rationale—Suspect's flight and potential violence (no-contact violation, strangulation history)—meets the serious offense threshold (if the person was Suspect). However, no drone or perimeter evidence confirmed the Suspect or anyone else's presence in the homeowner's yard, and BWC video shows no unique hazards of tangling a long leash beyond static items that can be avoided.

BPD officers had no specific information the man seen running away was the Suspect. An unknown officer can be heard saying, "His face wasn't to us" (BWC X81265075, 04:50:04) and "Yeah, very well could have been him, I didn't see his face, so." (BWC X81265075, 04:50:17) A BPD officer can be heard on BWC video X81158305 (05:10:17) telling other officers he would have been going west. On BWC X81265075 (04:38:51) an officer can be heard saying, "He would have been going to the west because we checked the house to the very south and he did not jump there, so he would have had to continue west." From the original location where the 911 call originated, and from all the yards searched, the homeowner's yard is to the south, not the west.

The homeowner where the no-contact order was in place denied the Suspect had been there, and there was no positive identification of the person who fled. Officers communicated that the subject had to be going in a westerly direction, away from the homeowner's yard, and no other perimeter or search officers (or bystanders) saw the subject, nor did they have information he was in the homeowner's backyard. The homeowner did not tell officers he'd seen anyone in his yard. Neither Deputy Orcutt's official report, BPD Officer Tiner's official report, nor BPD Officer Martinez' official report reported that either of the two thermal-equipped drones being used showed indicators that someone was in the homeowner's yard.

Finally, before Deputy Orcutt unleashed Django, he didn't tell officers he was unleashing him because of hazards or for their increased safety, which would have been appropriate. Orcutt told the officers, "I'm going to kick him off for a little bit, kinda see what he does." (BWC X6039C35C, 23:17:18)

Ada County's Policy 7.5.05 K9 Apprehension Guidelines allow use of the K9 if: The handler reasonably believes the individual has either committed, is committing, or threatening to commit any serious offense and if any of the following conditions exist:

- o There is a reasonable belief the suspect poses an imminent threat of violence of serious harm to the public, any officer or the handler.
- o The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonable [sic] appears to be necessary to overcome such resistance.
- o The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of the officers or the public.

In paragraph 2 of section 7.5.05, the policy states, "Absent a change in circumstances that present an imminent threat to officers, the canine or the public, such canine use should be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual.

While Deputy Orcutt may have believed the subject who fled was the Suspect and he had committed or was committing a serious offense, a second requirement of the policy section was not met. Deputy Orcutt had no reasonable belief the subject posed an imminent threat.

Ada County Sheriff's Office Policy Manual section 2C.4 describe imminent threat as not meaning immediate or instantaneous, but that a danger may exist if a deputy reasonably believes the person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the deputy or another or the person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

There was no reasonable belief that the suspect posed an imminent threat of violence or harm since there was no credible or specific information the unidentified subject was in the homeowner's yard when Django was sent unleashed. There was no evidence or information that the subject was physically resisting or threatening to resist arrest where the K9 would be necessary to overcome the resistance. Finally, there was no information the subject was concealed in the homeowner's backyard or other area where entry by other than the K9 would pose a threat to the safety of officers or the public. As a matter of fact, the weight of evidence suggested the subject was not in the homeowner's yard. Deputy Orcutt's deposition statement

(p. 52, lines 22-25 & p. 53, lines 1-2) that trees, bushes, and backyards present an imminent threat due to the possibility of ambush is perplexing since officers had searched two other yards with trees and bushes, but he didn't unleash Django.

Deputy Orcutt's deposition testimony that the previous yards had no trees or bushes (ambush elements) is inexplicable (p. 54, lines 3-10). BWC video shows many potential ambush points in the yards previously searched, typical of most residential neighborhoods. Furthermore, Deputy Orcutt's contention that a long line wrapped around an object causes a loss of control is absurd unless the K9 handler's verbal control is lacking. Even if a K9 long line were to be tangled, a proficient handler with a properly trained and functioning K9 partner will be able to stop/down or recall the dog to the closest point possible.

The off-leash decision in a homeowner-present yard without specific information the suspect/threat is present deviates from the policy's intent to balance apprehension with safety.

#### **B. Deputy Orcutt failed to personally warn the homeowner.**

The rationale for this opinion can be reasoned from the Ada County Sheriff's Office

Policy Manual. Relevant sections include:

##### **7.5.03 – Request for K9 Assistance From Other Agencies**

- o The handler has the ultimate authority to decide whether the canine should be used for any specific assignment.

- o It shall be the responsibility of the canine handler to coordinate operations with agency personnel to minimize the risk of unintended injury

##### **7.5.06 - Preparation for K9 Deployment**

Prior to the use of a canine to search for or apprehend any suspect, the [canine handler and/or the supervisor on-scene should carefully consider all pertinent information reasonably available at the time](#). The information should include, but is not limited to:

- o The nature and seriousness of suspected offense. [previously addressed]
- o Whether violence or weapons were used or are anticipated. [none used or reported]
- o The degree of resistance or threatened resistance, if any, the suspect has shown. [none]
- o The suspect's known or perceived age. [N/A]
- o The potential for injury to officers or the public caused by the suspect if the canine is not utilized. [Based on known information at time of K9 release probability weighed against suspect being in the homeowner's yard. Minimal]

- o Any potential danger to the public and/or other officers at the scene if the canine is released. [Based on known information at time of K9 release probability weighed against suspect being in the homeowner's yard. Minimal]

- o The potential for the suspect to escape or flee if the canine is not utilized. [Based on known information at time of K9 release probability weighed against suspect being in the homeowner's yard. Minimal]

As circumstances permit, the canine handler should make every reasonable effort to communicate and coordinate with other involved employees to minimize the risk of unintended injury. It is the canine handler's responsibility to evaluate each situation and determine whether the use of a canine is appropriate and reasonable. The canine handler shall have the authority to decline the use of the canine whenever he/she deems deployment is unsuitable. A supervisor who is sufficiently apprised of the situation may prohibit deploying the canine. Unless otherwise directed by a supervisor, assisting employees should take direction from the handler to minimize interference with the canine.

Deputy Orcutt was the ultimate authority on the use of the K9 in this incident. He acknowledged this in his deposition (Orcutt Deposition, p. 38, line 2). BPD officers were subordinate to him in terms of tactics and safety because of the unique nature, training, and knowledge of the K9 handler. This authority conferred responsibility in these areas.

Deputy Orcutt had the responsibility to coordinate operations to minimize the risk of unintended injury, not just to agency personnel, but to the public as well. He abandoned his responsibility in this area by improperly delegating (or allowing) untrained BPD personnel to provide crucial direction, specific to K9 use and safety, to the homeowner.

Deputy Orcutt had a duty to carefully consider all pertinent information reasonably available at the time. Each bullet point is addressed above in brackets. Deputy Orcutt should have made every reasonable effort to communicate and coordinate with other involved employees to minimize the risk of unintended injury. He agreed with this in his deposition (p. 60, lines 14-24).

Furthermore, the K9 handler (Orcutt) has a duty to make similar efforts to members of the public to minimize the risk of injury to them. In this incident, Deputy Orcutt failed to make any effort to communicate with the homeowner. He acknowledged that an important step in notifying a homeowner is an explicit direction to stay out of the search area, and he acknowledged he wasn't there for that. In his deposition, Deputy Orcutt said, "I just, I wasn't there for that conversation so I couldn't tell you what was said." (p. 41. Lines 16-24) Deputy Orcutt remained in the homeowner's driveway as BPD officers contacted him at his front door.

According to Orcutt's BWC, he did not provide specific information to BPD they should relay to the homeowner about the use of the K9, and he was positioned so that he was unable to see

or hear exactly what the homeowner's was told. However, Deputy Orcutt admitted in his deposition that, "I think, yeah, he should have been told to stay inside, don't go outside, we're going to be using a dog to search your yard" (p. 95, lines 24-25, p. 96, lines 1-4).

Deputy Orcutt agreed that, as the handler, he was responsible for everything that related to the deployment of the K9, including minimizing the risk of unintended injury (Orcutt deposition, p. 43, lines 2-9).

Additionally, Deputy Orcutt agreed that, as a handler, it was his responsibility to ensure a warning that included "don't go into your backyard because we're going to be releasing this dog into the backyard" was given to a homeowner (Orcutt deposition, p. 43, lines 10-19).

Inexplicably, while Deputy Orcutt identifies the type of warning that the homeowner should have received, an example of the warning that Orcutt would himself have provided, and the language he would have used, he defends his failure to ensure an explicit warning was given. In his deposition, Deputy Orcutt acknowledged he is responsible for all matters related to the deployment of the K9. A key component of that is ensuring explicit warnings be given to members of the public. Yet, Deputy Orcutt did not give an explicit warning to the homeowner to stay inside. He did not ensure another officer gave the warning, he couldn't hear what was said to the homeowner, nor did he verify whether the warning was given. Remarkably, contradicting his previous statements, Deputy Orcutt later said BPD Officer Martinez' warning at the homeowner's door was sufficient (Deputy Orcutt deposition, p. 124, lines 15-25, p. 125, lines 1-7).

Deputy Orcutt's actions violate the law of non-contradiction. He cannot affirm responsibility for a critical safety step and simultaneously disclaims knowledge or involvement in ensuring that step occurred. By neither delivering the warning himself nor confirming it was properly conveyed by others, Orcutt appears to assume that a BPD officer would fulfill that function. However, Deputy Orcutt failed to provide BPD officers with the specific content of the warning (content that he knew and would have used), he did not confirm it was delivered before sending Django into the residential yard, and he failed to monitor the conversation to ensure it met safety expectations. It does not logically follow that another officer, who is not a K9 handler, would give the warning properly in the absence of direction, confirmation, or observation.

As the person responsible for ensuring the warning is issued, Orcutt had a positive epistemic duty: not only to act, but to ensure that knowledge critical to the homeowner's safety (i.e., the warning) was both delivered and understood. Deputy Orcutt's claim that he did nothing (wrong) that led to the homeowner's injury (Orcutt deposition, p. 111, lines 5-8) is incomprehensible.

By claiming, “I wasn’t there for that conversation so I couldn’t tell you what was said,” Deputy Orcutt acknowledges a knowledge gap that is unacceptable for someone in his position. This isn’t just a lack of knowledge—it is epistemic negligence: a failure to take necessary steps to ensure that the knowledge critical to preventing harm was created, conveyed, and verified. His use of distancing language (e.g., “I wasn’t there for that conversation”) seeks to minimize perceived accountability through passive voice and omission of agency. This rhetorical strategy subtly implies that the failure was procedural or situational, not personal, which conflicts with his stated responsibility.

If Deputy Orcutt is indeed the officer responsible for issuing or ensuring the homeowner warning was delivered, his failure to do so—or to verify that it was done— represents a clear breakdown in logical consistency, operational reasoning, and epistemic responsibility. He cannot coherently claim both to bear full responsibility for a critical safety measure and simultaneously disclaim involvement in that measure’s execution.

This inconsistency is not merely rhetorical or procedural—it is a substantive failure of logical and professional integrity, particularly in a context where citizen safety was directly affected by the omission. Deputy Orcutt’s approach reflects a misalignment between language and duty and undermines the credibility of his account.

The public is typically unaware of how a K9 works, what their limitations are, what the real dangers are, or what is required of them to increase their safety when a K9 is used to search for a wanted subject. It is the K9 handler’s duty to explicitly communicate this information to a citizen who may be in harm’s way because of a K9 deployment. Deputy

Orcutt’s intentional indifference to the potential injury of a citizen by suggesting the homeowner should have somehow known danger existed because he saw a police dog is in contradiction to the oath he took on March 12, 2019 (Ex 1 Orcutt 022125). His duties and responsibilities are meant to minimize accidents, unintended bites, and contamination of a scene. Since Deputy Orcutt had “ultimate authority” in using the K9, and he had a responsibility to make a reasonable effort to communicate and coordinate to minimize the risk of unintended injury, he personally should have provided explicit directions to the homeowner.

Deputy Orcutt’s K9 training at Ada County Sheriff’s Office is concerning. He does not provide a description of what his training consisted of or how long his training with Django was. He said he was trained in Ada County’s policies and procedures, but has no record of that training, or what the training consisted of, how it was provided, who provided it, or whether he was assessed on his knowledge after the training. Further, when asked what training he received regarding canine policies at Ada County, Deputy Orcutt provided a circumlocutionary response that they go through training in building searches, scenario-based training, and the sergeant



reviews general K9 policy. According to Deputy Orcutt, that training is then reviewed with the supervisor and trainer, but a sergeant is a supervisor.

This answer was unclear. Deputy Orcutt was asked whether that training was documented, but he didn't provide an answer to that question. He did say that it was impossible to "line item every single thing discussed (Deputy Orcutt deposition, p. 29, lines 23-25, p. 30 lines 1-15). This is a strawman response that suggests discussion-based training cannot be documented.

However, Deputy Orcutt should know this is false since a large portion of his California Peace Officer Standards and Training (POST) training involved this type of discussion-based training where important topics are documented as Received Instruction (discussion) or Competency Demonstrated (practical).

Both of Deputy Orcutt's answers seemed to evade the specific question as to the training he might have received from Ada County on K9 policies. In other areas of his deposition (p. 31, lines 10-25, p. 32, lines 1-25) Deputy Orcutt could not specify the month of training or whether it was documented, he recalled a change in the policy language but couldn't recall what it was. Deputy Orcutt couldn't confirm whether K9 policies are included in yearly policy reviews, and he wasn't certain they were documented (p. 33, lines 1-25, p. 34, lines 1-10).

For an experienced, veteran officer, who is assigned to a high liability specialized detail, he demonstrates a concerning lack of familiarity with Ada County's policies and procedures related to K9 deployment. He demonstrated a lack of certainty about training dates, training content, and training documentation. He was inconsistent between his interpretation of Ada County K9 policy and the plain text of the policy, and he demonstrated a lack of clarity on the annual review process and whether K9 policy is consistently addressed. These are consistent with his failure to recall key deployment decisions even after reviewing BWC video.

When cross-referenced with his California POST Training and Ada County training in policies and procedures, Deputy Orcutt's responses and actions suggest a potential gap in policy understanding or practical application, both potentially from inadequate training.

### **C. Deputy Orcutt failed to control K9 Django.**

Deputy Orcutt's decision to send Django into the yard is discussed in Section A, but it is relevant here as well since there was a greater probability the Suspect was not in the homeowner's yard. Furthermore, Deputy Orcutt knew he didn't provide the homeowner with information that would ensure his safety, and he did not know what other officers had told him. Despite these known factors, Deputy Orcutt decided against an on-leash search where he would have more control on Django, and sent Django off-leash to, "...kinda see what he does." (BWC X6039C35C, 23:17:18)

Despite having no direct information or evidence the Suspect was in the homeowner's back yard, having direct source information that the unidentified suspect who hadn't been identified as the Suspect was moving west (away from the homeowner's yard), and knowing he hadn't provided the homeowner with safety information as a homeowner, Deputy Orcutt decided to send Django off-leash. Other related decision-making inconsistencies are provided in Sections A & B.

Deputy Orcutt sent Django blindly into the homeowner's yard. His only field of view was the homeowner's eastern side yard. Although he did provide required K9 warnings, the side yard could have been cleared visually (and by Django) and Deputy Orcutt could have moved forward to provide a greater view of the yard and Django. He did not. Greater visibility would have provided Deputy Orcutt greater control over Django as he could have seen the homeowner's backdoor open and the homeowner expose himself to Django. According to Deputy Orcutt, he could then have verbally recalled him prior to or sooner into the bite (Orcutt Deposition, p. 68, lines 10-24; Ada County 000853-1285. Django and Orcutt Training Records). However, this wasn't possible from his position at the gate.

Once Deputy Orcutt heard Django on the bite with the homeowner's, he moved from the gate to the corner of the house and then moved towards the homeowner's backdoor. Despite Deputy Orcutt's assertion he had control over Django at all times while they were in the back yard, he did not attempt a verbal call out (where Django would disengage from a distance). Deputy Orcutt conceded Django was capable of this (Orcutt Deposition, p. 68, lines 10-24) and Orcutt's and Django's training records show (Ada County 000853-1285) this was possible. Rather than using or attempting a verbal call out and getting Django off the bite earlier, Deputy Orcutt left Django on the bite as he jogged to the homeowner's location and physically choked and lifted Django off the bite. If Deputy Orcutt was in control of Django, then he purposefully left Django on the bite longer than necessary. Ada County Sheriff's Office Policy Manual section 2C.4 - Use of Force states, "Deputies shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose." It is difficult to imagine the legitimate law enforcement purpose of leaving Django biting the homeowner's arm rather than verbally commanding him to release.

Deputy Orcutt could have maintained control over Django as he was an experienced handler, successfully passed K9 handler training, and he and Django were both certified (Ada County 000848-000852). This would demonstrate his ability to control and direct Django, and Django's ability to be controlled. Yet, if viewed in the light most favorable to Deputy Orcutt, he failed to adequately control Django during this incident. In the worst light, he intentionally

subjected the homeowner's to increased pain and injury. Sections A & B provide some rationale for Deputy Orcutt's lack of control that significantly increased the risk to the homeowner.

### **Safety Briefing**

Although Deputy Orcutt reported he conducted a safety briefing with other officers (Orcutt Narrative Report, Ada County 000010, lines 21-22), there is no evidence of this taking place. He did not report this to Sgt. Servatius, or the sergeant didn't include this in his report. This seems curious since this incident involved increased liability and that briefing would be relevant information. Additionally, no BPD officers included being present at a safety briefing in their reports, and BWC footage refutes Deputy Orcutt assertion this took place.

A safety briefing would have been appropriate, desirable, and tactically sound for this incident. Deputy Orcutt was working outside of his own agency and with officers he may not have known or worked with in the past. Even if he had worked with any of the officers on prior occasions, safety briefings would still be tactically sound.

A proper safety briefing for the circumstances Deputy Orcutt and BPD officers faced would have included instructions to not pet or distract the dog, where to position around the handler, why it's important to announce your presence if approaching the K9 team, not to run near the dog, allowing the dog to work the scene first, how to respond if a bite occurs, instructions to citizens and homeowners, etc. This incident was not time restrained since the suspect was not moving or actively engaged in physically resisting officers.

### **BPD Statements to the homeowner's**

During Deputy Orcutt's deposition, he justified the apparent inaccuracy in his official report by using a semantic defense: that the statement "BPD officers... advised the homeowner... not to go into the backyard" is not inaccurate because it was not presented as a direct quote (Orcutt deposition, p. 129, lines 1-6). He repeatedly clarifies that he did not use quotation marks and therefore was not attributing a specific verbal directive. This explanation presents multiple logical and epistemological issues.

From a logical consistency standpoint, Orcutt affirms that report writing is a core part of his duty and that accuracy is essential (Orcutt deposition, p. 129, lines 14-24). Yet, when confronted with evidence (video footage) demonstrating that Officer Martinez did not instruct the homeowner not to enter the backyard, Orcutt falls back on the generic term "advise" to justify his report's language (Orcutt deposition, p. 129, line 25 - 133, line 10).

This defense strains the principle of non-contradiction: one cannot simultaneously assert the importance of accurate documentation and defend vague or materially misleading phrasing when specific knowledge was absent.

Epistemologically, Deputy Orcutt's defense reveals a retrospective rationalization. He did not witness or hear the full conversation between Officer Martinez and the homeowner, yet his report conveys a level of certainty that implies complete knowledge.

His use of the phrase "advise the homeowner... not to go into the backyard" presents itself as a summary of fact, not as an inference or uncertainty. This violates the epistemic duty of clarity—especially critical in law enforcement documentation, where others rely on reported knowledge for downstream decision-making.

Furthermore, when challenged on the accuracy of the account, Deputy Orcutt pivots to the fact that he didn't place the words in quotes—thereby distancing himself from factual commitment. This maneuver constitutes epistemic deflection: it evades accountability by shifting the focus from the content of the statement to its form. His claim that the statement was "advisory" rather than directive does not resolve the problem that the homeowner was not told to stay out of the yard—a materially significant omission in the context of K9 deployment. The reliance on "bits and pieces" he recalled hearing, paired with his use of passive phrasing ("advise"), masks the absence of firsthand verification.

In sum, Orcutt's explanation reflects both logical inconsistency and epistemological irresponsibility. He conflates implication with confirmation and defends a conclusory statement without adequate basis. His own account affirms that he lacked full access to the conversation yet proceeded to report a summary as though it were verified. This undermines the integrity of his report and fails to meet the standard of "more likely than not" that the statement was accurate at the time it was made.

### **Drone Indicators**

Despite a policy that instructs officers to include all relevant information in official reports, Deputy Orcutt made no mention of drone indicators in his official report; and during his deposition, he said he was told "by someone" the yards couldn't be cleared by drone and they couldn't say 100% that nobody was there (P. 77, lines 13-21). This directly contradicts Servatius' official report where he wrote, "Deputy Orcutt stated the drone had detected a few heat signatures coming from the back yard and they intended to clear it." (Servatius' Supplemental Report, ADA County 000019, para. 1, lines 6-7).

### **Principle of Non-Contradiction**

This foundational law of classical logic holds that a proposition and its direct negation cannot both be true in the same sense and at the same time. Applied here, two statements attributed to Deputy Orcutt appear to violate this principle:

o According to Sgt. Servatius' report, Deputy Orcutt stated the drone had detected a few heat signatures in the backyard and that the team intended to clear it. This constitutes a positive claim—an assertion of factual sensory input justifying action.

o In contrast, during his deposition, Deputy Orcutt stated that the area could not be cleared by drone and that they could not be 100% certain that no one was present—effectively characterizing the drone as inconclusive or incapable of detection.

These two propositions are logically incompatible unless further differentiated in time, circumstance, or referent. No such differentiating factors are indicated, and both accounts appear to describe the same operational moment. Therefore, under the law of noncontradiction, at least one of these statements must be false or inaccurately conveyed.

### **Appeal to Anonymous Authority**

Deputy Orcutt's claim that he was told "by someone" that the drone could not confirm the area was clear constitutes an appeal to vague or anonymous authority, a well-established logical weakness. The absence of an identifiable source prevents evaluation of credibility, expertise, or relevance, and renders the claim logically unsupported. As a result, it fails to meet the minimum threshold for a justified inference or for explaining omission of drone data in an official report.

### **Epistemic Status of the Claim**

Sgt. Servatius' report presents Deputy Orcutt's initial statement as a knowledge claim—namely, that heat signatures were detected and interpreted as operationally relevant. In epistemological terms, this constitutes a justified belief based on apparent data, presumably derived from drone thermal imaging. If taken as accurate, this statement implies that Deputy Orcutt possessed, or claimed to possess, actionable knowledge about potential human presence in the backyard.

Conversely, Deputy Orcutt's later statement introduces epistemic uncertainty, asserting that the drone could not conclusively clear the area. While a recognition of uncertainty is not inherently problematic, its use here undermines the earlier knowledge claim without explanation, thereby producing a discontinuity in Deputy Orcutt's epistemic stance. This shift reduces the credibility and coherence of the knowledge framework used in the decision-making process and documentation.

### **Epistemic Omission**

Given agency policy and best practice requiring inclusion of all relevant information in official law enforcement reports, Deputy Orcutt's failure to document the drone indicators—despite having allegedly discussed them with Sgt. Servatius—represents a breakdown in epistemic duty. Law enforcement reports serve not only as legal instruments but as epistemic

artifacts—formal records of perceived facts and their justifications. Omission of such sensory data, especially when contemporaneous reporting attributes the information to Deputy Orcutt, undermines the integrity of the report and calls into question the thoroughness and reliability of the knowledge it conveys.

### **Epistemic Inconsistency and Post Hoc Reframing**

Finally, the contrast between the initial claim (asserting detection) and the later deposition (emphasizing uncertainty) reflects a shift in epistemic posture—likely post hoc reframing of the officer’s knowledge state at the time. This retroactive uncertainty raises the possibility of rationalization, wherein a knowledge claim is revised or diluted to align with an evolving narrative or strategy. In Sgt. Servatius’ report, Deputy Orcutt is providing justification for using the K9. In the absence of corroborating evidence or explanation, such reframing impairs the epistemological trustworthiness of the account.

### **Time as a Potential Mitigating Factor**

While the passage of time can, in general, affect memory and contribute to minor inconsistencies in recall, it does not credibly mitigate the omission of drone data from Deputy Orcutt’s official report. The failure to include relevant sensory information— particularly data suggesting heat signatures in a potential threat area—occurred contemporaneously with the event, not as a result of long-term memory decay.

Furthermore, in his later deposition, Deputy Orcutt did not express uncertainty or lack of recollection; rather, he introduced a new explanatory claim that contradicted a contemporaneous report from another officer. This contradiction is logically and epistemologically significant and cannot be reasonably attributed to mere forgetfulness. Deputy Orcutt’s 20+ years of law enforcement experience and expertise as a K9 handler elevate expectations regarding his observational reliability and reporting discipline. His professional background suggests a high level of familiarity with interpreting and acting upon sensor-based intelligence such as drone detections. Given this context, the inconsistency between his on-scene actions, his official reporting, and his deposition testimony is more likely the result of a shift in epistemic stance than of cognitive failure due to time. Therefore, time does not serve as a credible mitigating factor for the omission or the contradictory claims, and the issues raised remain logically and epistemologically consequential.

Stated plainly, considering the circumstances, the inconsistency between Deputy Orcutt’s actions, his written report, and his later deposition is more likely due to a shift in how he framed or understood the information rather than memory loss over time. His change in explanation appears to reflect a revision in how he characterized what he knew, not simply a lapse in recall. This is evident in the way he initially, according to a Sgt. Servatius’ report, described the drone

detecting heat signatures—suggesting actionable knowledge—but later stated that the drone could not confirm anything with certainty and that someone else had told him that. That shift suggests he may have reframed the situation after the fact to emphasize uncertainty rather than presence. Therefore, the passage of time does not serve as a strong justification for the omission or contradiction. These issues remain significant because they raise questions about the reliability and consistency of his account.

## **Conclusion**

Based on the evidence examined, it is more likely than not that Deputy Orcutt's statements regarding drone surveillance contain unresolved logical contradictions and exhibit a breakdown in epistemic consistency. The shift from an affirmative knowledge claim (as recorded by Sgt. Servatius) to an uncertain, anonymously sourced explanation in deposition creates a discontinuity that cannot be reconciled under standard principles of logic or epistemology without assuming omission, error, or retroactive revision. These issues materially impact the reliability of the reporting and the credibility of decision making under scrutiny.

### **E. Deputy Orcutt's decision to deploy K9 Django off-leash into a residential backyard, without confirmed suspect presence, and without real-time control, was objectively unreasonable when viewed considering *Graham v. Connor*.**

This incident was a use of force and should be judged by that standard. Sending a K9 that is trained to "find and bite" will most likely end in a bite and an injury if a person is within the search area. This would be similar to firing a less-lethal bean bag into a dark room. That person injured need not be the suspect being sought but can be a bystander, police officer, homeowner, or anyone who might be in that area. Deputy Orcutt recognized the off-leash send as a use of force and an on-leash use as a "force option" (Deputy Orcutt deposition, p. 85, lines 8-25, p. 86, lines 1-18).

*Graham v. Connor* (1989) requires consideration of:

1. The severity of the crime,
2. Whether the suspect poses an immediate threat to the safety of the officers or others,
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The totality of the circumstances must be assessed from the perspective of a reasonable officer on the scene, without the benefit of hindsight, and recognizing that officers are often forced to make split-second decisions in tense, uncertain, and rapidly evolving situations. However, in this incident, the factor of having to make a split-second decision in uncertain and rapidly evolving situations is less significant.

## **Incident Overview**

Deputy Orcutt responded to assist Boise Police Department in locating the Suspect, a suspect with a history of domestic violence and an active no-contact order violation. Orcutt deployed K9 Django into the backyard of the homeowner that evening — off-leash—after receiving consent from homeowner that evening for a K9 search. Despite verbal warnings, Django rounded a blind corner and bit the homeowner, a cooperative and uninvolved third party. There was no visual confirmation of the suspect’s presence in the yard, and video and audio evidence fail to identify unique officer safety concerns or terrain hazards justifying an off-leash deployment. See Section A for a more detailed analysis.

## **Weighing the Graham Factors**

### **1. Severity of the Crime**

The underlying offense—violation of a no-contact order involving a suspect with prior strangulation charges—may constitute a serious and potentially violent offense, if the subject fleeing was in fact the Suspect. The use of a police K9 in principle would be appropriate given the seriousness of the suspected crime.

*In alignment with Graham*

### **2. Immediate Threat to Officers or Others**

At the time of K9 deployment, there was no confirmation that the suspect was located within the yard at the innocent homeowner that evening. There were no signs of forced entry, no heat signatures, no motion, and no visual confirmation by drone or personnel. The deployment occurred more than 80 minutes after the initial flight, without real-time evidence of a continuing threat. In my opinion, the perceived threat was speculative, not immediate or verifiable.

*Deviates from Graham*

### **3. Active Resistance or Flight**

While the suspect had previously fled from officers, there was no active resistance or flight in progress during the K9 deployment. The homeowner was not the suspect, and his behavior was not confrontational or evasive. There was no resistance, or threat of resistance occurring at the time of the bite.

*Deviates from Graham*



#### 4. Totality of the Circumstances

The totality of circumstances includes:

- o The presence of a known, cooperative homeowner,
- o The lack of any verified threat,
- o The absence of a real-time suspect location,
- o The decision to send the K9 around a blind corner off-leash without visual control,
- o No attempt to verbally recall the K9 after it left the handler's line of sight.

These elements collectively fail to support the necessity of off-leash deployment under the Graham standard. A reasonable officer would have maintained leash control or visually cleared the yard before using such a high level of force. Furthermore, the officer's decision to terminate K9 use immediately after the bite, without a change in threat level, undermines the argument that the off-leash deployment was justified by exigency or immediate danger.

Deputy Orcutt released K9 Django off-leash into a residential backyard without visual confirmation of the suspect's presence, absent real-time intelligence suggesting danger or flight, and without maintaining line-of-sight control. The stated or implied justification for deploying the K9 in this manner must therefore rely on a belief that an immediate threat to officer or public safety warranted a higher level of force and forfeiture of direct control. However, this justification is substantially undermined by Deputy Orcutt's own subsequent decision to terminate the K9 search immediately after Django bit the homeowner, without any indication that the threat environment had changed or been resolved.

This termination is logically and operationally inconsistent with the initial rationale for off-leash deployment. If the justification for a high-risk, off-leash deployment rested on the belief that a dangerous suspect could be hiding in the area, then that belief would—absent any intervening discovery—still be operative immediately after the bite. The suspect had not been located, no updated intelligence had been received, and no changes occurred to the environment or terrain. By discontinuing the search immediately following the bite, the officer's actions suggest that either (a) the perceived level of threat was not sufficiently high to justify the use of significant force in the first place, or (b) the threat was overstated or speculative. In either case, the officer's conduct calls into question whether the off-leash deployment met the Graham threshold of objective reasonableness at the time it was initiated.

This issue is critical because Graham requires that force be judged in light of the threat perceived at the time, not with the benefit of hindsight. Yet in this instance, Orcutt's post-incident behavior reflects a tacit acknowledgment that the circumstances did not warrant

continued use of force, which retroactively weakens the claim that high-risk force was needed moments earlier. If the officer believed the area still posed a credible threat, one would expect continued search efforts. The decision to disengage without further inquiry—despite the absence of any resolution—reveals a disconnect between the officer’s asserted justification for the use of force and the actual threat assessment driving subsequent actions.

This discontinuity undermines the credibility of the exigency claim. In constitutional terms, it raises serious doubt about whether a reasonable officer in the same position, with the same knowledge and tools, would have found it necessary to deploy a police dog off-leash into an uncontrolled residential space with potential civilian presence. The failure to maintain consistency in force rationale throughout the incident weighs heavily against the deployment’s justification under *Graham v. Connor*.

*Deviates from Graham*

### **Conclusion**

Based on my review of all available materials and applying the *Graham v. Connor* standard, it is my professional opinion that:

Deputy Orcutt’s decision to deploy K9 Django off-leash into a residential backyard, without confirmed suspect presence, and without real-time control, was objectively unreasonable.

Although the general use of a K9 may have been justified based on the severity of the crime, the manner of deployment—off-leash, in a blind environment, with a known civilian potentially present who Deputy Orcutt failed to properly inform or direct—created an unjustified risk of serious injury. The resultant bite to the homeowner, a third-party homeowner uninvolved in the crime, was a foreseeable consequence of this decision and not proportionate to the threat at hand.

Accordingly, Deputy Orcutt’s actions deviated materially from accepted standards of police practice and the constitutional principles articulated in *Graham v. Connor*. These actions also diverged from Ada County Sheriff’s Office policies.

## **CONCLUSIONS**

### **A. Deputy Orcutt lacked justification for the off-leash deployment of the K9.**

Deputy Orcutt’s off-leash deployment of K9 Django into a residential backyard lacked objective justification under agency guidelines, which require a reasonable belief not only that a serious offense has occurred, but that an imminent threat exists, that the suspect is resisting arrest, or that the environment poses a danger to officers that would warrant canine entry over other means. At the time of deployment, there was no confirmation that the suspect was in the

yard, no observed resistance, no signs of forced entry, and no indication from two thermal-equipped drones that anyone was present. Officers on scene expressed uncertainty about the suspect's identity and direction of travel, stating he had likely gone west—opposite from the homeowner's yard. There were no unique terrain hazards necessitating an off-leash release, and no evidence the area posed greater risk than others that were searched on-leash. Despite this, Orcutt stated he unleashed Django to “see what he does,” a rationale inconsistent with the policy's emphasis on balancing apprehension with public safety. These facts collectively fail to satisfy the policy's criteria for off-leash deployment and do not support the level of force used in this instance.

#### **B. Deputy Orcutt failed to personally warn the homeowner.**

Deputy Orcutt had the ultimate authority over the use of K9 Django and was explicitly responsible for coordinating with involved personnel and minimizing the risk of unintended injury to both officers and civilians. Despite this, he failed to provide a direct warning to the homeowner prior to deploying Django into the yard, failed to instruct BPD officers on what to communicate to the homeowner, and did not confirm whether a proper warning was delivered. Orcutt admitted he did not hear the conversation at the homeowner's door and later stated he “wasn't there” for it—despite standing nearby. He acknowledged in his deposition that the homeowner should have been told to stay inside and that it was his responsibility to ensure such a warning was given. Yet, he neither acted on that responsibility nor verified its fulfillment before releasing a patrol dog into a potentially civilian-occupied yard. These facts demonstrate a clear failure to carry out a critical safety obligation, contradicting both his stated understanding of his duties and the policy's requirement that handlers communicate effectively to prevent harm to the public.

#### **C. Deputy Orcutt failed to maintain control of the K9 Django.**

Deputy Orcutt failed to maintain adequate control over K9 Django during a critical phase of the deployment. Despite having no verified suspect presence in the yard, no updated intelligence, and no safety information conveyed to the homeowner, he released Django off-leash with limited visibility, stating only that he wanted to “see what he does.” From his position, Orcutt could not observe Django's movement into the yard or the homeowner's emergence from the home. Although Django was trained to disengage on verbal command and Orcutt had the ability to issue such a command earlier in the encounter, he did not do so. Instead, he allowed Django to remain on the bite until he physically intervened—despite acknowledging the feasibility of an earlier verbal recall. These actions are inconsistent with the reasonable use of force, which requires deploying only the amount necessary to accomplish a legitimate law enforcement purpose. Given his experience and Django's training, Orcutt had the

means to exercise control but failed to apply it, resulting in prolonged and preventable injury to a non-threatening civilian.

#### **D. Deputy Orcutt's written report was refuted by his actions.**

Deputy Orcutt's official report is undermined by multiple contradictions between what he documented and what actually occurred, as shown through body-worn camera footage, other officers' reports, and his own deposition. He reported that a safety briefing took place, but there is no corroborating evidence it occurred, and no other officer reported attending one—despite the heightened risks and need for coordination with unfamiliar personnel. He also claimed BPD officers advised the homeowner not to go into the backyard, yet admitted he neither heard the conversation nor ensured the warning was given, later defending the statement on the basis that it wasn't written as a quote. This defense reflects epistemic deflection and lacks credibility, especially given his stated responsibility to ensure public safety communications were accurate. Further, he failed to document drone heat signatures that Sgt. Servatius recorded him reporting, later claiming that someone told him the area couldn't be cleared. This shift from claiming specific sensor-based information to vague uncertainty—without any intervening change in conditions—constitutes a post hoc reframing of his knowledge. These discrepancies reflect not just clerical error but a breakdown in logical coherence, epistemic accountability, and the integrity of the report as a formal representation of operational facts.

#### **E. Deputy Orcutt's decision to deploy K9 Django off-leash into a residential backyard, without confirmed suspect presence, and without real-time control, was objectively unreasonable when viewed considering Graham v. Connor.**

Deputy Orcutt's off-leash deployment of K9 Django fails the standard of objective reasonableness under *Graham v. Connor*, which requires that force be evaluated based on the severity of the crime, the immediacy of the threat, and the level of resistance or flight. While the suspected offense was serious, there was no verified suspect presence in the yard, no signs of resistance, and no specific or immediate threat to officers or others at the time of the deployment. The decision to release the dog off-leash—without visual control and in the absence of real-time intelligence—was disproportionate to the known circumstances. Compounding this, Orcutt terminated the K9 deployment immediately after Django bit an uninvolved civilian, despite no change in the tactical environment. This undermines the credibility of any exigency-based justification and suggests that the original rationale for using elevated force was either overstated or unfounded. In totality, these actions are inconsistent with what a reasonable officer would have done under similar conditions, and therefore deviate materially from the *Graham* standard.