

Dog-Bite Victim Gets Okay To Sue; Complaint Targets Police Canine Unit

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Author: Ruben Castaneda
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A Takoma Park woman whose face was severely bitten and mauled by a Prince George's County police dog that was brought into her home to look for a possible burglar can sue the police department and the officer who handled the dog, the 4th U.S. Circuit Court of Appeals has ruled.

The ruling allows Esther Vathekan, 50, to sue for alleged use of excessive force during the 1995 incident. The case is scheduled to go to trial in August in U.S. District Court in Baltimore, lawyers in the case said.

Vathekan is seeking \$3 million in compensatory damages, \$3 million in punitive damages, and \$42,000 for her medical expenses, which included plastic surgery for her face, said Terrell N. Roberts III, one of her attorneys.

"The dog attack had a devastating effect," Roberts said. The police dog, named Castro, attacked Vathekan while she slept in her bedroom and crushed several bones in her face, disfiguring her, Roberts said. Vathekan's tear ducts were damaged and she cannot control them, Roberts said.

"It was an unfortunate incident in which an innocent bystander was hurt," said Associate County Attorney John Anthony Bielec, who is defending the police department and the officer against the suit. The officer, Cpl. Jeffrey J. Simms, is a veteran police dog handler who handled the incident according to police regulations and did nothing wrong, Bielec said.

The 4th Circuit appellate panel overturned an August 1996 ruling by U.S. District Judge Frederic Smalkin, who granted summary judgment to the county and dismissed the case.

In addition to excessive force, Vathekan's lawsuit charges that her Fourth Amendment rights against unreasonable seizure were violated when the police dog, Castro, tore into her face. In seeking dismissal of the case, county attorneys had argued to Smalkin that Vathekan's Fourth Amendment rights against unreasonable seizure were not violated because she was not the intended target of the search.

The incident occurred about 2 p.m. Jan. 10, 1995, when Jonathan Lopez, a student who was renting the basement of the house Vathekan was renting, came home and saw that someone had broken into his back door, according to attorneys and court records.

Lopez called Takoma Park police, who, not knowing whether a burglar was still inside the home, called for help from the Prince George's police department's canine unit. (Takoma Park's force does not have police dogs).

Vathekan's lawsuit alleges that the police dog went into her home and attacked her without warning as she slept. Vathekan worked as a night-shift nurse at Washington Adventist Hospital and typically slept through the afternoon, Roberts said.

Bielec said Simms gave a loud verbal warning that police were surrounding the house and that anyone inside should come out or a police dog would come in. According to the police department's policy, such warnings are supposed to be given over the amplified public address system in squad cars.

Bielec said five Takoma Park officers have given depositions saying they heard Simms give the warning, and that Lopez, the basement tenant, originally told police he was not in a position to hear whether a warning was given. Sharon Weidenfeld, a private investigator working for Roberts, obtained a statement from Lopez in which he said he was across the street from the house and heard no warning before the officer and the police dog went into the house.

In a deposition, Simms said he took Castro up the stairs to a closed door leading to the second floor, at which point the dog began alerting the officer that someone was inside. Simms said that he began going downstairs with Castro, but the dog suddenly went upstairs, bit the knob and opened the door, and continued into Vathekan's bedroom, where the attack occurred.

"I guess it's a miracle dog," Roberts said, expressing skepticism at the account of the dog opening the door.

It turned out that Lopez's basement apartment had been burglarized, and some of his property, such as stereo equipment, had been stolen.

Credit: Washington Post Staff Writer

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