

COLORADO SUPREME COURT

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Colorado Court of Appeals Opinion: Judge Dailey
Participating Judges: Judge Gabriel and Judge Rothenberg
Case No.: 2012CA1112, Div. III

Douglas County District Court
Judge Mark D. Thompson
Case No.: 09CV1954

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Plaintiff-Appellant-Petitioner:

FABIAN SEBASTIAN

v.

Defendants-Appellees-Respondents:

DOUGLAS COUNTY, COLORADO
DOUGLAS COUNTY SHERIFF'S OFFICE
DAVID A. WEAVER, Douglas County Sheriff; and
GREG A. BLACK, Douglas County Sheriff's Deputy

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Case Number: 2013SC902

OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

XX It contains 4,327 words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

XX For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

XX I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

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s/ Matthew J. Cron _____

Matthew J. Cron

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I. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the government’s willful use of a police dog that turned and attacked a nearby non-resisting untargeted suspect was a “seizure” achieved “through means intentionally applied.”

II. STATEMENT OF THE CASE

A. Nature of the Case

Petitioner Fabian Sebastian appeals from the Court of Appeals opinion holding that he was not seized under the Fourth Amendment to the U.S. Constitution. Mr. Sebastian was attacked by a K-9 intentionally deployed by a sheriff’s deputy to chase two persons who had fled from the vehicle in which Mr. Sebastian was seated and who had jumped a nearby fence. The Court of Appeals affirmed the district court’s denial of Mr. Sebastian’s C.R.C.P. 60(b)(1) motion because he had failed to show the presence of a meritorious claim. No. 12CA1112, 2013 WL 4874140 (Colo. App. Sept. 12, 2013) (“COA Op.”), App’x 17-18.

B. Course of Proceedings and Lower Court Disposition

Mr. Sebastian sued Douglas County Sheriff’s Deputy Greg A. Black in Douglas County District Court under 42 U.S.C. § 1983 and the Fourth Amendment to the U.S. Constitution for unlawful seizure and excessive force. Am. Compl. ¶¶ 22-24, App’x 1-18. Mr. Sebastian alleged in his amended complaint that Deputy

Black deployed a police dog to chase and subdue fleeing suspects, but that instead of jumping over a fence, the K-9 attacked Mr. Sebastian, who was seated in the back seat of a car ten feet away. Am. Compl. ¶¶ 13-17, App'x 20-21. Pursuant to C.R.C.P. 121 § 1-15(3), the district court granted Defendants' motion to dismiss the amended complaint, after Mr. Sebastian filed a late response to the motion. App'x 25.¹

Mr. Sebastian filed a motion to set aside the judgment of dismissal under C.R.C.P. 60(b)(1), App'x 26-34, which the district court denied. App'x 35. A division of the Court of Appeals vacated the district court's order on the basis that it should have considered not only (1) whether the neglect resulting in the entry of judgment was excusable, but also (2) whether the moving party had alleged a meritorious claim or defense, and (3) whether relief from the challenged judgment would be consistent with considerations of equity. *See* No. 10CA0660, slip op. at 6-11 (Colo. App. Apr. 14, 2011), App'x 44-49 (citing *Goodman Assocs., LLC v. WP Mountain Props. LLC*, 222 P.3d 310 (Colo. 2010)).

On remand, the district court again denied Mr. Sebastian's C.R.C.P. 60(b)(1) motion. App'x 50-54. As to the second *Goodman* factor, which is the subject of

¹ In his late response, Mr. Sebastian confessed the motion to dismiss with respect to his § 1983 claims against the other Defendants and his common law tort claims against Defendant Black.

this appeal, the district court found that Mr. Sebastian did not plead a meritorious claim for relief under 42 U.S.C. § 1983 because he was not seized within the meaning of the Fourth Amendment. App'x 53. Mr. Sebastian appealed again, App'x 55-86, but a different division of the Court of Appeals affirmed the district court's denial of his C.R.C.P. 60(b)(1) motion. COA Op., App'x 1-18.

The Court of Appeals held that Mr. Sebastian was not seized because he was not the intended target when Deputy Black's deployed Axel. The court found that Axel spontaneously deviated from Deputy Black's directive. The court reasoned that because "the dog had to turn to see Sebastian in the car," it was "apparent that the car . . . was not located in the direction to which Black had released the dog." *Id.* at 12, App'x 13. Accordingly, "Sebastian was not in the direction (or 'space') to which the dog had been released" and thus not "within a class of people Black would expect the dog to encounter and bite." *Id.* at 13, App'x 14. On November 8, 2013, Mr. Sebastian petitioned this Court for certiorari review. App'x 87-98. The Court granted certiorari on August 18, 2014. App'x 99.

C. Statement of the Facts Relevant to the Issues Presented for Review

On June 24, 2008, Mr. Sebastian, then sixteen years old, was a passenger in the back seat of a vehicle that was stopped by Douglas County Sheriff's deputies,

who had stepped in front of the car. Am. Compl. ¶¶ 10-12, App'x 20. The driver pulled to the right curb, and all five passengers were directed to keep their hands in view. *Id.* ¶ 13, App'x 20. Everyone in the vehicle raised their hands before two of the passengers then ran from the car. *Id.* The two fleeing passengers escaped over a privacy fence that was located ten feet to the right of the automobile. *Id.*

As the second fleeing suspect cleared the fence, Deputy Black, without providing any preliminary warning, ordered his police dog “Axel” to give chase.² *Id.* ¶ 16, App'x 21. Axel was a “find and bite” K-9, trained to search for and secure a suspect by biting the suspect. *Id.* ¶ 13 & n.1, App'x 20. Axel ran to the fence but stopped and made no effort to get over it. *Id.* ¶ 16, App'x 21. Axel then turned and attacked Mr. Sebastian, who remained seated in the rear of the vehicle ten feet away with his hands up. *Id.* ¶¶ 16-17, App'x 21. Axel continued to assault Mr. Sebastian until Deputy Black and two other deputies dragged the dog off Mr. Sebastian. *Id.* ¶ 18, App'x 21.

As a result of the attack, Mr. Sebastian suffered serious and permanent injuries to his upper left arm, elbow, and forearm. *Id.* ¶ 19, App'x 21. Mr. Sebastian was a star basketball player, but after the attack he was unable to attend

² Axel's name was not mentioned in the Amended Complaint but is used herein for convenience. It is not a material fact.

invitation-only camps at colleges that were recruiting him, and his promising career as a student-athlete was jeopardized. *Id.* ¶¶ 10, 20, App’x 20-21.

D. Preservation of the Issue for Appeal

In affirming the district court’s denial of Mr. Sebastian’s C.R.C.P. 60(b)(1) motion to set aside the dismissal of his case, the Court of Appeals analyzed primarily the *Goodman* factor of whether Mr. Sebastian had alleged a meritorious claim. *See* COA Op. 3, 7-14, App’x 4, 8-15. In doing so, the court held that Mr. Sebastian had not been seized under the Fourth Amendment. The court then noted that “if the circumstances were different – in particular, if Sebastian had asserted a meritorious claim – we might well have been inclined to reverse the district court’[s] order and allow him his day in court.” *Id.* at 16, App’x 17. Mr. Sebastian had properly raised this issue as part of his appeal from the trial court decision. *See* Pl.’s Appeal Br. 1, 18-28, App’x 60, 75-85. Accordingly, the issue presented to this Court has been preserved for appeal.

III. SUMMARY OF ARGUMENT

Mr. Sebastian was seized within the meaning of the Fourth Amendment when he was attacked by a police dog intentionally released by Deputy Black to seize nearby fleeing suspects. Courts, including the Court of Appeals in this matter, have recognized the idiosyncratic nature of police dog cases, which stems

from a K-9's inability to distinguish between suspects and innocent bystanders, and its training to seize whomever it ultimately encounters. Accordingly, courts have found that a law enforcement officer who intentionally deploys a dog to effect a seizure intends to seize anyone in the space where the dog is released. In this case, Deputy Black intentionally released Axel in order to terminate the movement of the two suspects. Thus, Deputy Black intended to seize anyone in the vicinity, including Mr. Sebastian, who was sitting in an automobile a mere ten feet from the fence over which the suspects had fled.

In holding that Mr. Sebastian was not seized, the Court of Appeals strayed from this well-accepted rule recognized in analogous case law and injected an ill-conceived directional requirement. This novel requirement that a dog must be deployed in the direction of the plaintiff is unsupported by case law and logic. In electing to use this autonomous and unpredictable instrumentality, a law enforcement officer knows that a dog will not simply travel in the direction to which it is pointed, and may in fact turn to attack other nearby humans whom it has been trained to bite. Finally, even if it was proper to inject this directional requirement, the Court of Appeals erroneously concluded that the car in which Mr. Sebastian was sitting was not located in the direction to which Deputy Black had released Axel, simply based on the fact that Axel "turned and saw" Mr. Sebastian

after not jumping over the fence. Viewed in the light most favorable to Mr. Sebastian, the amended complaint alleges that Axel was released in the general direction of Mr. Sebastian.

IV. ARGUMENT

A. Standard of Appellate Review

“This Court defers to the trial court’s findings of fact if they are supported by competent evidence in the record.” *People v. Webb*, 325 P.3d 566, 569 (Colo. 2014) (citing *People v. Gothard*, 185 P.3d 180, 183 (Colo. 2008)). The trial court’s legal conclusions are reviewed de novo. *Id.*

B. Mr. Sebastian Was Seized Within the Meaning of the Fourth Amendment When Deputy Black Intentionally Deployed His Police Dog for the Purpose of Effecting a Seizure

A seizure under the Fourth Amendment to the U.S. Constitution occurs “when there is a governmental termination of freedom of movement **through means intentionally applied.**” *Brower v. Cnty. of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original). Notably, “[a] seizure occurs even when an unintended person or thing is the object of the detention or taking.” *Id.* at 596; *see also Youngblood v. City of Bakersfield*, No. 1:12-cv-1150, 2014 WL 1386392, at *19 (E.D. Cal. Apr. 8, 2014) (“the term ‘intentionally applied’ does not refer to the identity of the person seized, it refers to the use of means that are intended to seize

an individual.”) (emphasis in original). Thus, “the test to determine intent is an objective test in which it is ‘enough for a seizure that a person be stopped by the very instrumentality set in motion or put in place in order to achieve that result.’” *Garcia v. City of Sacramento*, No. 10-cv-00826, 2010 WL 3521954, at *2 (E.D. Cal. Sept. 8, 2010) (quoting *Brower*, 489 U.S. at 599).³

Courts applying *Brower* have uniformly held that law enforcement officials who intentionally deploy police canines for the purpose of seizing a person act with sufficient intent to seize any person in the vicinity, regardless of whether that person is the intended target. *See, e.g., Rodriguez v. City of Fresno*, 819 F. Supp. 2d 937, 947 (E.D. Cal. 2011) (“[W]hen officers intentionally deploy a dog . . . the officers effectively intend to seize anyone in the space where the dog was deployed.”); *Youngblood*, 2014 WL 1386392, at *7 (officers who “deployed a ‘find and bite’ police dog intend[ed] that the dog would find and bite any human it located as it was trained to do.”). These cases recognize that police canine cases “require a special breed of analysis.” *Gangstee v. Cnty. of Sacramento*, Civil No.

³ If a plaintiff can show that he or she was seized, the inquiry in an excessive force claim, like the one asserted by Mr. Sebastian here, then turns to whether the force used by governmental officials was “excessive,” which is analyzed under the reasonableness standard set forth in *Graham v. Connor*, 490 U.S. 386, 395-97 (1989). Because the lower courts found that there was no seizure, they did not address the reasonableness of the force used. “[T]he reasonableness of the use of force is usually a question for a finder of fact, rather than a question of law.” *Youngblood*, 2014 WL 1386392, at *8.

S-10-1004, 2012 WL 112650, at *5 (E.D. Cal. Jan. 12, 2012). Unlike other instrumentalities of force used by law enforcement, a police dog, once deployed, is “unable to discriminate between suspects and innocent parties and is generally trained to seize whomever the dog ultimately does encounter.” *Id.*; *see also Vathekan v. Prince George’s Cnty.*, 154 F.3d 173, 178 (4th Cir. 1988) (“a police dog cannot discriminate between a criminal and an innocent person.”). Thus, the analysis in these dog bite cases turns on whether a law enforcement officer intentionally released a police dog to chase a person.⁴

The allegations in this case fit comfortably within the rule that an officer who intentionally deploys a police dog for the purpose of effecting a seizure

⁴ The analysis used by courts differs depending on the instrumentality used by law enforcement. For example, in a police shooting case, a court considers whether the victim was the intended target. *See, e.g., Claybrook v. Birchwell*, 199 F.3d 350, 359 (6th Cir. 2000) (no seizure when an innocent bystander was not the “intended object” of the seizure). Thus, in a police shooting case, a plaintiff must show that the officer had (1) the subjective intent to shoot the plaintiff for the purpose of effecting a seizure; (2) that the officer understood when he shot that the bullet would indiscriminately hit anyone in the area; or (3) that the officer intended to seize anyone in the vicinity and was indifferent as to whom the bullet actually struck. *See Rodriguez*, 819 F. Supp. 2d at 947-48. Because of the unpredictable nature of police canines, dog bite cases are analogous to the second category, where an officer understands that his bullet could indiscriminately hit anyone in the area. *Id.* at 948.

intends to seize any nearby person.⁵ Deputy Black intentionally released Axel, a “find and bite” K-9 trained to secure suspects by biting them, for the purpose of seizing the two fleeing suspects who had jumped over a fence. *See Brown v. Whitman*, 651 F. Supp. 2d 1216, 1225 (D. Colo. 2009) (“The evidence before the Court shows that police dogs employed by the Denver Police Department respond by biting and apprehending any moving person when they are deployed to search”). Rather than attempting to jump the fence, Axel attacked Mr. Sebastian, who was only ten feet away. Deputy Black cannot claim there was no seizure when “when the dog he set in motion behaved exactly as it was trained to do.” *Melgar*, 593 F.3d at 355.

Cases with analogous facts are consistent in finding that law enforcement effected a seizure. For example, in *Garcia*, the police used a K-9 to pursue a suspect who had failed to stop for a taillight violation. 2010 WL 3521954, at *1. Instead of finding the suspect, the police dog attacked the plaintiff, who was in a neighbor’s backyard within the residential area where the dog was deployed. *Id.*

⁵ Some courts have extended this principle further to cover situations where a law enforcement officer intended to deploy a police dog but not for the purpose of effecting a seizure. *See Melgar v. Greene*, 593 F.3d 348, 354 (4th Cir. 2010) (finding a seizure where officer deployed police dog to search for missing adolescent); *Cooper v. Ernst*, No. 1:10-cv-271, 2011 WL 1897441, at *8 (S.D. Ohio Apr. 13, 2011) (finding a seizure where an officer deployed a police dog to search for a missing firearm, but the dog instead attacked nearby persons who were in the process of complying with the officer’s command to go inside their home).

The court found that the plaintiff had been seized because the police “had sufficient intent to use [the dog] as a force to terminate freedom of movement.” *Id.* at *2. In *Youngblood*, law enforcement officials used a police dog to search for illicit drugs or stolen property in a residence. Finding no human presence, the dog “turned a corner in the hallway and went out of sight.” 2014 WL 1386392, at *2. Soon after, the officers heard screaming, ran through the house, and saw the dog biting the plaintiff. *Id.* The court found that the plaintiff “was subject to a seizure within the meaning of the Fourth Amendment when [the officer] intentionally released [the dog] with the expectation that it would locate, and could bite and hold any person it encountered in the residence.” *Id.* at *21; *see also Brown*, 651 F. Supp. 2d at 1225 (finding a seizure where plaintiff was attacked by police dog during search for suspected carjackers, even though the plaintiff was not the intended target); *Vathekan*, 154 F.3d at 178 (“By giving [the dog] the command ‘Find him!’, [the officer] intended the dog to find anyone in the house. It is undisputed that once that command was given, the dog would bite **anyone** it found.”) (emphasis in original); *McKay v. City of Hayward*, 949 F. Supp. 2d 971, 979 (N.D. Cal. 2013) (finding a seizure where police hoisted a K-9 over a fence into a backyard and the K-9 attacked an eighty-nine-year-old person who was not the intended target).

As these cases demonstrate, and contrary to the Court of Appeals' analysis, it is of no consequence that Mr. Sebastian was not the intended target. What is of consequence is that Deputy Black intentionally released Axel knowing "that the dog would find and bite any human it located as it was trained to do."

Youngblood, 2014 WL 1386392, at *7. Axel effected Deputy Black's intentional seizure by attacking Mr. Sebastian, who was ten feet away from the fence over which the two suspects had escaped.

C. Courts Finding No Seizure Have Also Focused on the Officer's Intent in Deploying the K-9, Lending Further Support to the Conclusion That a Seizure Occurred in This Case

The police canine cases in which courts have found no seizure further demonstrate that the determinative factor in the Fourth Amendment analysis is whether the officer released the K-9 with the intent to seize a person. Contrary to the Court of Appeals' erroneous analysis, the common thread in cases finding no seizure on the basis of a "spontaneous deviation" is that the officer did not intentionally deploy the K-9, or did so for purposes other than effecting a seizure. *See Dunigan v. Noble*, 390 F.3d 486, 492-93 (6th Cir. 2004) (finding no seizure where dog's biting of plaintiff during melee was "a spontaneous response to Plaintiff's 'threatening' movement into the dog's defensive perimeter," there was no evidence to suggest that dog was introduced into home with intention to seize

person, and officer “was exercising control over” the dog); *Neal v. Melton*, 453 F. App’x 572 (6th Cir. 2011) (finding no seizure where dog was used to sniff around car stopped for traffic violation, was put back in police car, and then got out jumped into the stopped car while the deputies were involved elsewhere); *Gangstee*, 2012 WL 112650, at *7 (the plaintiff’s “own witnesses declare that [the officer] did not give any commands to [the dog] prior to his running after her; this fact undermines an inference of intentional deployment.”); *Dennis v. Town of New Loudon*, No. 11-cv-302, 2012 WL 4324932, at *4-5 (D.N.H. Sept. 20, 2012) (finding no seizure where dog attacked the plaintiff while tracking the scent of a suspect).

The court’s analysis in *Dennis* is illustrative of the application of the rule in cases finding no seizure:

Even when viewed in the light most favorable to Dennis, **the evidence fails to establish that [Officer] Ferry’s use of Gusta [the dog] was a “seizure” subject to the Fourth Amendment, because Ferry did not deploy Gusta with the intention of gaining control of Dennis or anyone else.** To the contrary, it is undisputed that Ferry was using Gusta to track the scent of the partygoer who had fled into the woods, and not to acquire physical control of that person. He accordingly kept Gusta on five- to six-foot lead while conducting the search, rather than releasing the dog to run free in the woods, and commanded the dog to track, not to bite or hold. . . . For this reason, the cases upon which Dennis relies are inapposite. **In those cases, the police released a dog with the intention that it pursue and subdue someone suspected of a crime (or, at the very least, with the**

knowledge that the dog was inadequately trained and likely to bite, which is not what the evidence here shows).

Dennis, 2012 WL 4324932, at *5 (emphasis added). Unlike in *Dennis*, Axel was a “find and bite” dog that was not on a leash, and was intentionally deployed to pursue and subdue suspects, not merely to track their scent. Thus, the cases cited by the Court of Appeals reinforce the conclusion that Mr. Sebastian was seized because they also focus on the officer’s intent to effect a seizure on a person. *See McKay*, 949 F. Supp. 2d at 979 (“What creates the seizure is the government’s . . . intentional deployment of a police dog trained to track and bite **a person.**”) (emphasis added).

D. The Court of Appeals Erred by Creating an Overly Narrow Rule and Then Misapplying That Rule

The Court of Appeals formulated an overly narrow rule that was inconsistent with the principles derived from the relevant case law, and then compounded the error by misapplying its own rule. The court held that Mr. Sebastian was not seized because he was not “within a class of people [Officer] Black would expect the dog to encounter and bite,” as he was not “in the direction (or ‘space’) to which the dog had been released” COA Op. 13, App’x 14. The court found it dispositive that Mr. Sebastian “was not located in the direction to which Black had

released the dog because, according to the complaint, the dog had to turn to see Sebastian in the car.” *Id.* at 12, App’x 13.

Accordingly, the Court of Appeals injected a novel requirement that prevents courts from finding seizures when dogs change directions from their initial deployment. Such a requirement contradicts case law and logic. *See, e.g., Youngblood*, 2014 WL 1386392, at *2 (finding seizure where K-9 attacked plaintiff after it sensed “no human presence in the rooms in the officers’ immediate presence, turned a corner in the hallway and went out of sight.”). Officers who train dogs to chase down suspects must contemplate that the dog may turn in order to effect a seizure. The more accurate rule is rather, as the Court of Appeals earlier acknowledged, that “when officers intentionally deploy a dog . . . the officers intend to seize anyone in the space where the dog was deployed.” COA Op. 11, App’x 12 (quoting *Rodriguez*, 819 F. Supp. 2d at 947). The court even included in its rule “the . . . ‘space’[in]to which the dog had been released” *Id.* at 12, App’x 13.

Although the court initially appeared to identify the relevant principles in its case law analysis, it failed to correctly apply those principles. Mr. Sebastian was within the space where Axel was deployed, because he was only ten feet from the wall to which Axel was directed. Therefore, Mr. Sebastian was “within the class

of persons” whom Deputy Black could expect Axel to bite. Courts have found that seizures were effected on unintended targets in houses, *Youngblood*, 2014 WL 1386392, at *2, 7; *Vathekan*, 154 F.3d at 178, backyards, *Brown*, 651 F. Supp. 2d at 1225; *McKay*, 949 F. Supp. 2d at 979; *Rogers v. City of Kennewick*, 205 F. App’x 491, 492 (9th Cir. 2006), and residential neighborhoods, *Garcia*, 2010 WL 3521954, at *1-2. Thus, any spatial requirement would undoubtedly encompass the ten feet between a car and a fence.

Furthermore, even if it was not error to focus on the direction in which the K-9 was released, the Court of Appeals nevertheless erred by inferring that “the car in which Sebastian was sitting was not located in the direction to which Black had released the dog,” from the allegation that Axel had to turn to see Sebastian in the vehicle. COA Op. 12, App’x 13. The amended complaint alleged that uniformed deputies were in front of the vehicle in which Mr. Sebastian was riding, and that the fence to which Axel was directed was ten feet to the right of the vehicle. Am. Compl. ¶¶ 12-13, App’x 20. Had the court resolved doubts and inferences in Mr. Sebastian’s favor, as required by C.R.C.P. 12 and 60, it would have concluded that Axel was deployed in the general direction of Mr. Sebastian’s car. *See Melat, Pressman & Higbie, L.L.P. v. Hannon Law Firm, L.L.C.*, 287 P.3d 842, 846-47 (Colo. 2012) (holding that in reviewing a motion to dismiss, the Court “accept[s]

all allegations in the complaint as true and view[s] them in the light most favorable to the plaintiff”); COA Op. 6, App’x 7 (“Because the resolution of disputes on their merits is favored, the *Goodman* factors should be ‘liberally construed in favor of the movant, especially when the motion is promptly made.’” (quoting *Goodman*, 222 P.3d at 320)). Instead, the court drew the inferences against Mr. Sebastian.

As the Court of Appeals acknowledged, “the deployment of a K-9 dog carries with it the risk of seriously injuring others. Consequently, officers should not lightly deploy one.” COA Op. 14, App’x 15. Deputy Black did not demonstrate this level of care in deploying his K-9, which was unable to discriminate between suspects and innocent parties, to chase individuals who had already jumped a fence a few feet away, when Mr. Sebastian was in a vulnerable position in a nearby car. As a result of the attack, Mr. Sebastian, an innocent bystander, suffered severe, permanent injuries that jeopardized a once-promising career as a student-athlete. Am. Compl. ¶¶ 19-20, App’x 21. Such dire consequences should have been avoided through proper use of a police dog, in compliance with the Fourth Amendment to the U.S. Constitution.

V. CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff Fabian Sebastian respectfully requests that this Court reverse the Court of Appeals and hold that he was seized through “means intentionally applied.”

Respectfully submitted this 10th day of December 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2014, a true and correct copy of the foregoing **Opening Brief** was served via ICCES and/or by depositing the same in the U.S. Mail, postage prepaid, upon the following:

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