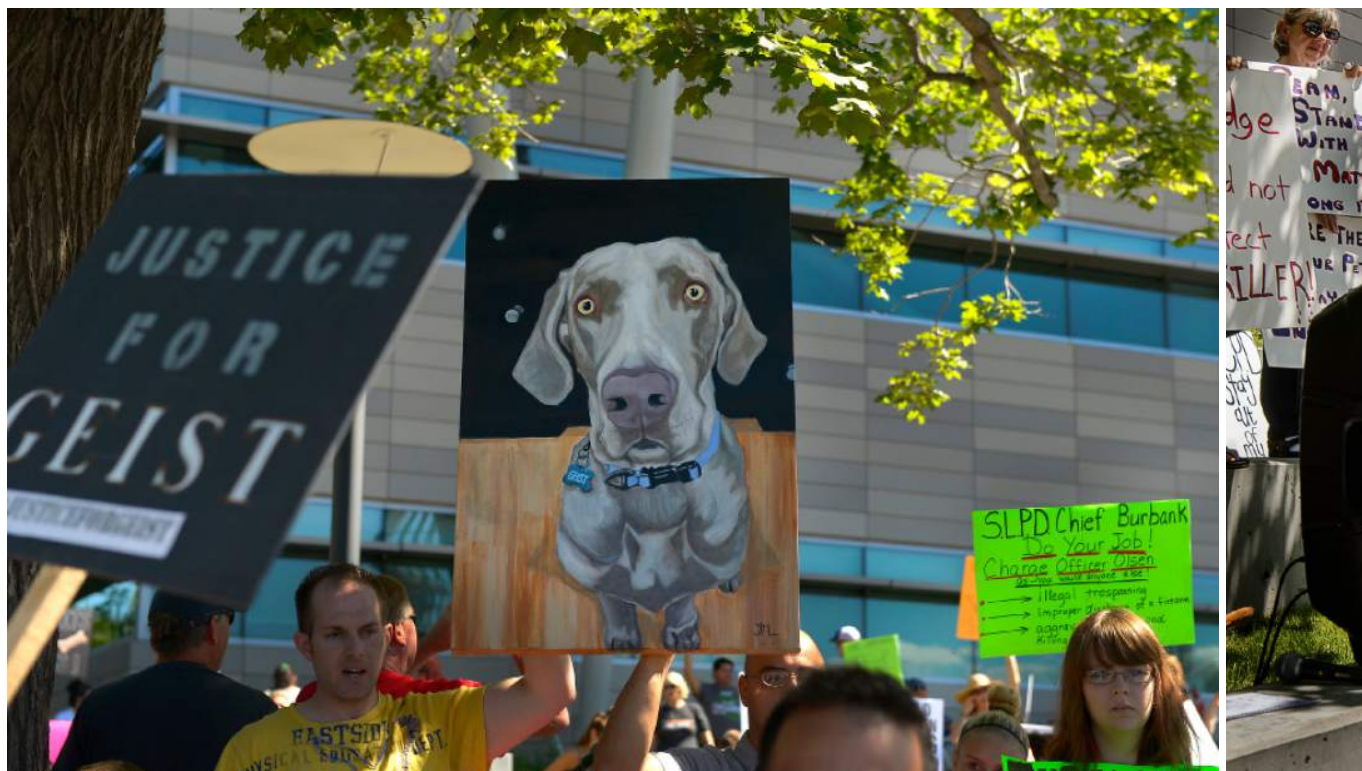


Utah judge weighing issues in lawsuit against officer who shot Geist the dog

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Courts • Judge makes preliminary finding in suit brought by dog's owner, pitting Fourth Amendment rights against imminent threat to a child's life.



Leah Hogsten | Tribune file photo Sean Kendall pets the dauschound of a fellow supporter at a protest rally in June as the sign

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By Taylor W. Anderson The Salt Lake Tribune

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A federal judge presiding over a lawsuit against a Salt Lake City police officer who entered a fenced backyard in search of a missing child and killed the barking dog he encountered said Tuesday he was inclined to rule in favor of the officer.

The case tests Fourth Amendment protections against searches and seizures without permission or a warrant when a child or other vulnerable person's life is believed to be in danger.

At the start of Tuesday's hearing on a motion for summary judgment, U.S. District Court Judge Robert Shelby said he was leaning in favor of the city's attorneys, who argued Officer Brett Olsen's actions were justified and that he was immune from the lawsuit.

"My view is that this is a search that is reasonable in manner and scope on the facts here presented," Shelby said before attorneys for the city and the dog's owner, Sean Kendall, gave oral arguments. "These views are just my preliminary views. I'm always here with an open heart and with an open mind."

In July 2014, Olsen and other officers were scouring a neighborhood in search of a 3-year-old boy whose parents reported as missing. They spread out from the boy's house, knocking on doors of neighbors.

When they came to Kendall's house, about a third of a mile away from where the boy lived, they found no one was home to grant permission, court documents state. Still, Olsen opened a gate and entered the backyard, believing the boy could have accessed the yard.

That is where he encountered Geist, a 2-year-old, 100-pound pure-bred Weimaraner, which gave an "angry" bark and charged at Olsen, according to a report by the city's Civilian Review Board, which exonerated Olsen on a complaint of excessive force.

Olsen, who has said he had no time to get out of the yard before finding out whether the dog was friendly or mean. He fired two gunshots, killing Geist.

The boy was later found sleeping in his parent's basement living room, hidden by clutter.

Samantha Slark, the city's attorney, said Tuesday that officers had reason to believe the boy could have walked down the street to Kendall's house, opened the gate to his yard and walked in, and Shelby said he was inclined to side with that argument given the facts in the case.

"Search warrants require time. I want you to consider a hypothetical," Shelby told Rocky Anderson, Kendall's attorney. "The three-year-old child is in a pool...face down in a pool, drowning. And every minute counts. We are not going to require officers to stop at every yard and obtain a search warrant from a court."

Anderson said courts have ruled in favor of the need for authorities to obtain a warrant in order to gain access to a property in similar cases.

If Shelby found officers could enter properties without any evidence a missing person might be on the property, what would stop them from searching a much larger area if they believed the boy was on a bike or in a car? Anderson asked.

"Over time, [the entire Intermountain West] would be without Fourth Amendment protection," Anderson said. "There really is no basis for saying, 'Look at how fast this little boy could have traveled.' There's absolutely zero authority for that."

Shelby took issue with Anderson's assertion that Kendall's constitutional rights were wiped away when Olsen entered the backyard.

It's not that the Fourth Amendment no longer applies, Shelby said, "It's that there can be a limited search."

"If it is a place where a child could have gone, the officer is going to have the opportunity under exigency, reasonable manner and scope, to search," Shelby said.

Anderson, who as former Salt Lake City mayor from 2000-2008 is in the unique position of representing Kendall in his bid against the city he governed, disagreed.

"This, your honor, would be the first case ever where the simple fact of somebody living in a certain area with a backyard where the latch may have been manipulated by a child, or if a back door was open, that the police were allowed under the Fourth Amendment carte blanche to go in, walk around and see what's happening," Anderson said.

"One of the reasons for that?" Anderson said, "look what happened here."

Kendall has asked for about \$2 million in compensation and punitive damages. Shelby said he would issue a written ruling.

The judge last week refused a request by the city to dismiss the lawsuit and force Kendall to accept a \$10,000 settlement, an amount the city said had been agreed upon.

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