

Sheriff's deputy faces suit after K-9 attacked another officer

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A police dog mistakenly bit a police officer instead of subduing a fleeing suspect. The dog's handler moved to dismiss the resulting lawsuit against him, but the U.S. District Court recently denied the motion.

The case, *Daniel Irish v. Keith McNamara*, arose out of an incident in March 2022, when a man was stopped by police. He failed a sobriety test and fled. A high-speed chase ensued, with the suspect eventually losing control of his vehicle. The man proceeded to flee on foot into a cemetery.

Two officers in separate squads responded. Daniel Irish responded from the Champlin Police Department, and Keith McNamara responded from the Hennepin County Sheriff's Office.

McNamara arrived at the cemetery about 30 seconds after the man hopped the fence. He lifted his canine partner, Thor, over the fence and then climbed over himself. McNamara pointed down a paved path, began running, and commanded Thor to "get him."

A few seconds later, Irish arrived. He saw McNamara pointing west and started heading in that direction. Once Irish turned onto the path, Thor sprinted toward Irish's car. Irish spotted the suspect, opened his car door, and began commanding the suspect to stop. At that moment, Thor attacked Irish. Irish was bitten for about half a minute before McNamara was able to physically remove Thor from Irish's left arm. He had wounds on his forearm, legs, and buttocks.

Irish developed a deep skin infection from the wounds inflicted by Thor. The antibiotics that were given to treat the infection ended up causing a bowel infection. The bowel infection ultimately resulted in irritable bowel syndrome, a condition that Irish continues to have. Irish also asserts that he still has emotional distress and insomnia due to the incident.

The Hennepin County Sheriff's Office requires canine handlers to issue a "clearly audible warning" that a canine will be released prior to its release. McNamara wrote on the police report that he did not warn about Thor because the sirens were loud and that he tried to radio that the dog was off-leash but there was too much air traffic. Irish maintains that McNamara had time to give the warning because McNamara held his squad radio for approximately 30 seconds prior to releasing Thor.

Irish claimed that McNamara failed to issue a reasonable warning when he let Thor off his leash and that those actions violated Irish's Fourth Amendment right to be free from excessive force and

unreasonable seizure. On March 14, 2023, Irish filed suit against McNamara.

“Deputy McNamara’s failures ensured that Thor would attack the first human being it encountered around the cemetery and apartment building,” stated Irish’s lawyer, Andrew Noel, a partner at Robins Kaplan. “The die was cast when McNamara released Thor off-leash and without giving the required K-9 warning.”

“Officer Irish did not forfeit his Fourth Amendment right to be free from excessive force when he put his uniform on that day,” Noel continued.

In July of 2023, the court heard oral argument regarding McNamara’s motion to dismiss. McNamara argued that Irish filed to state a claim, maintaining that the complaint did not plausibly allege that Irish was seized under the Fourth Amendment and that, even if he was seized, that the use of force was objectively reasonable. McNamara also asserted qualified immunity.

McNamara argued Irish was not seized, and that the case of Irish being bitten by Thor was analogous to when an innocent bystander was struck by an errant bullet.

The court disagreed. “[T]his is not a case where force was aimed at a visible object and the forced missed the intended target,” the court asserted. “Rather, the force here — the canine — was aimed at whomever the dog encountered first, and that person was Irish.”

The court also found that the seizure was unreasonable.

“McNamara released the canine off-leash in a public cemetery in the middle of the day to pursue an unseen target, while knowing that fellow officers were arriving at the cemetery,” the court wrote. “Additionally, the dog ignored at least eight commands by McNamara to halt the attack, and only stopped biting Irish after McNamara physically removed the dog from Irish’s arm.”

Nor did the court agree that McNamara was entitled to qualified immunity, finding that he violated a constitutional right that was established at the time of the dog attack.

“[A] reasonable officer would have understood that the failure to give an effective audible warning violated clearly established law,” the court concluded.

“The court’s order allows us to put Deputy McNamara under oath to best explore what all went wrong that day,” Noel noted.

McNamara’s counsel and Hennepin County did not return request for comment.