



FOURTH CIRCUIT GRANTS IMMUNITY TO K9 OFFICER FOR BITE TO SUICIDAL SUBJECT

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On April 19, 2023, the Fourth Circuit Court of Appeals decided *Putman v. Harris*ⁱ, in which the court examined whether it was reasonable for a K9 officer to order his dog to bite a man that had recently threatened suicide by use of a handgun. The relevant facts of *Putman* are as follows:

In May 2019, Dillard Putman sent several texts to his wife, Kandi, threatening self-harm and suicide. One message read that Putman had "a gun in [his] mouth," and warned Kandi to not "come to the house[.] I'd rather some one else find me." J.A. 48-50. She went anyway, but Putman wasn't home. Kandi called 911 and told the operator about Putman's disturbing texts.

Officers arrived soon after. Kandi met them in the driveway and showed them Putman's messages. She also mentioned that Putman regularly drank alcohol and that he owned several firearms, though she couldn't say if Putman had a gun with him. She consented to a search of the property.

Officers didn't find Putman in the house, though they did find a rifle. Because the property was surrounded by woods, the officers used a K-9 unit, led by Corporal Quentin Harris, to search it. Sergeant Travis Hayton, armed with a rifle and taser, accompanied Harris. Both were told that Putman had threatened suicide and claimed to have put a gun in his mouth.

The dog quickly caught Putman's scent. The officers found Putman laying in a shallow ditch next to an uprooted tree. They didn't see any weapons in Putman's hands or near him. But they did smell alcohol and reportedly saw empty beer cans around Putman, though no cans are visible on the bodycam footage.

The encounter escalated quickly, with Hayton pointing his rifle at Putman while ordering him to stand and get his hands up. Harris stood to the side, tightly gripping his dog's leash as it barked repeatedly.

Putman initially refused Hayton's commands, arguing, "Hands up for what? This is my property! I'm not getting up. I live here." Bodycam Footage at 4:16. The officers continued to order Putman to get up, with Harris asking, "Do you want to get dog bit?" *Id.* at 4:23.

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Putman soon rose but refused the officers' orders that he "face away." *Id.* at 4:33. He instead demanded that the officers leave.

The argument went on for about two minutes. Hayton lowered his rifle, instead pointing his taser at Putman. Harris warned Putman that the dog would bite him if he didn't comply. Putman replied that if that happened, he would "fucking sue." *Id.* at 4:45. He demanded to see a warrant. Harris informed Putman they didn't need one. Putman replied, "The fuck you don't," and reiterated his intention to sue if the dog bit him. *Id.* at 5:00.

Hayton repeated his order that Putman turn around, to which Putman challenged, "For what? What have I done wrong?" *Id.* at 5:13. Hayton asked, "Did you say you're gonna kill yourself?" *Id.* at 5:20. Putman responded, "No," to which Hayton replied, "Yeah you did." *Id.* Putman countered, "Where's the gun? Show me the fucking gun," while lifting his shirt to show he had nothing in his waistband, although the officers couldn't see his back. *Id.* at 5:24. Hayton moved closer and told Putman to turn around, but he refused and repeated his demand to see a warrant.

The officers explained they didn't need a warrant since Kandi gave them permission to be on the property. Putman replied that it was his property, telling the officers to "get the fuck off of it." *Id.* at 5:45.

The officers again ordered Putman to turn around and put his hands behind his back. He answered, "I'm not," again lifting his shirt, but only showing the front and sides of his body. *Id.* at 5:51.

Harris then warned, "You gonna get dog bit." *Id.* at 5:58. Putman threw his hands out, exclaiming, "For what? For what?" *Id.* at 6:05. At this moment, Harris released the dog. It lunged at Putman's arm but missed, instead latching onto his shirt.

Putman fell to the ground and Hayton jumped on top of him. Harris pulled the dog away and stood to the side. Hayton tried to cuff Putman, but Putman resisted. Hayton then tased Putman, causing him to fall back on the ground. At the same moment, Harris again released the dog, which bit into Putman's upper arm. Putman screamed, "You got me!" *Id.* at 6:22. Hayton cuffed Putman while the dog remained latched. Once Putman was secured, Harris commanded the dog to release. The bite lasted for around 30 seconds.

The officers then led Putman back to the house. They searched him and found a pocketknife and a small flashlight, but no firearm.

Emergency medical services transported Putman to a local hospital, but he had to be airlifted to a larger facility for emergency surgery. The dog bite caused severe damage to Putman's brachial artery, requiring the surgeon to harvest a vein from Putman's leg to repair it.ⁱⁱ

Putman sued Sergeant Hayton and K9 Officer Harris for excessive force under the Fourth Amendment for ordering his dog to bite him. He also filed state law claims, which were not part of this case. The district court granted summary judgment to Sergeant Hayton. However, the district court denied

qualified immunity to Officer Harris for the dog bite because it stated that the video is unclear whether Harris could reasonably believe that Putman was armed, and as such, a jury should decide if the officer acted reasonably.

The court of appeals first examined the legal principles relevant to the issue of whether a reasonable officer in Officer Harris's position could have believed that Putman was armed and posed an immediate threat to the officer's safety.

First, the court noted that

Although Putman wasn't a criminal suspect, officers may seize a person for an "emergency mental health evaluation," so long as they have probable cause. [Barrett v. Pae Gov't Servs., Inc.](#), 975 F.3d 416, 429 (4th Cir. 2020). Such probable cause exists when officers know reliable facts "sufficient to warrant a prudent man to believe that the person poses a danger to himself or others." *Id.*ⁱⁱⁱ

Thus, Officer Harris had the legal authority to take Putman into custody.

The court also noted that, even though Officer Harris had the legal right to detain Putman, he still had to do so using reasonable force. Specifically, the court stated

Still, officers can't use excessive force to carry out a seizure. To determine whether the force used was excessive, we apply a "standard of objective reasonableness." [Clem v. Corbeau](#), 284 F.3d 543, 550 (4th Cir. 2002). This is a question of law, which we judge "from the perspective of a reasonable officer on the scene." [Graham](#), 490 U.S. at 396.^{iv}

Lastly, the court of appeals noted that officers may only use significant force **when they reasonably believe the suspect poses an**

immediate safety risk [which is] reasonably likely to be cured by" using the dog, . . . [Armstrong v. Vill. Of Pinehurst](#), 810 F.3d 892, 909 (4th Cir. 2016); cf. [Zuress v. City of Newark](#), 815 F. App'x 1, 5 (6th Cir. 2020) (dog bite on a criminal suspect who may have been armed and was "not complying with the officers' commands [but instead] arguing, waving her hands around, turning to face the officers, and even reach[ing] for her waistband where a weapon could have been" wasn't excessive force).^v

The court then set out to examine the facts of Putman's case in light of the legal principles above. First, the court of appeals noted that district court held that the body camera video did not make it clear that Harris could reasonably believe that Putman had a gun. However, the court of appeals noted that the totality of the circumstances does make it clear that a reasonable officer could believe that Putman may have a gun. Particularly, Officer Harris was informed of a text message Putman sent to his wife threatening suicide and telling her he had a gun in his mouth. Additionally, while Putman raised his shirt to show the front of his waistband and his sides, he refused to turn around so the officers could observe the back of his waistband. Rather, he cursed at the officers, ordered them to leave his property,

waved his arms erratically and refused to turn around as instructed. The court stated that it was reasonable for Harris to fear that Putman could pull a hidden gun. The court of appeals then stated

Even viewed in the light most favorable to Putman, we conclude a reasonable officer could have believed Putman was armed and thus posed an immediate threat.

Harris's belief that Putman had a firearm that he could have unexpectedly wielded was objectively reasonable. Thus, the dog bite was justified.^{vi}

Thus, the court of appeals reversed the decision of the district court and remanded the case to the district court to grant qualified immunity to Officer Harris.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

ⁱ No. 22-1360 (4th Cir. Decided April 19, 2023)

ⁱⁱ Id. 2-6

ⁱⁱⁱ Id. at 7 (emphasis added)

^{iv} Id. at 7-8 (emphasis added)

^v Id. at 11-12 (emphasis added)

^{vi} Id. at 11, 13