

# UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## Alexander Baxter v. Brad Bracey

No. 18-5102, United States Court of Appeals for the Sixth Circuit (November 8, 2018)

### SUMMARY

The Sixth Circuit held that officers were entitled to qualified immunity on an excessive-force claim arising from a canine apprehension, because the use of a well-trained police dog to bite and arrest a burglary suspect who had fled, ignored multiple warnings, and remained hidden did not violate clearly established Fourth Amendment law—even if the suspect raised his hands in surrender just before the dog was released. The court declined to decide the underlying constitutional question, finding the law not clearly established given the suspect's flight, the serious crime, the dog's training, and the lack of communication. The failure-to-intervene claim against the second officer also failed because no clearly established excessive force occurred.

### CASE DETAILS

|                       |                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Sixth Circuit                                                                                                                |
| WRITING FOR THE COURT | John K. Nalbandian; Thapar; Bush; Nalbandian                                                                                                                        |
| JURISDICTION          | Federal                                                                                                                                                             |
| DECIDED               | November 8, 2018                                                                                                                                                    |
| DOCKET                | 18-5102                                                                                                                                                             |
| DISPOSITION           | reversed                                                                                                                                                            |
| PROCEDURAL POSTURE    | Interlocutory appeal from the denial of summary judgment on qualified immunity grounds.                                                                             |
| STANDARD OF REVIEW    | Whether the undisputed facts or evidence viewed in the light most favorable to the plaintiff fail to establish a prima facie violation of clear constitutional law. |
| PRECEDENTIAL VALUE    | Unpublished                                                                                                                                                         |
| PARTIES               | Brad Bracey; Spencer R. Harris v. Alexander L. Baxter                                                                                                               |

### TOPICS

qualified immunity

summary judgment

fourth amendment

section 1983

appellate procedure

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Officer Harris's use of a canine to apprehend Baxter violated clearly established law under the Fourth Amendment.
2. Whether Officer Bracey can be held liable for failure to intervene in the absence of a clearly established excessive force violation.

## HOLDINGS

1. No, the officers are entitled to qualified immunity because the use of the canine did not violate clearly established law.
2. Yes, because there is no clearly established underlying excessive force, Bracey cannot have observed or had reason to know of excessive force.

## KEY QUOTATIONS

*“The Fourth Amendment’s prohibition against unreasonable seizures protects individuals from an officer’s use of excessive force while making an arrest.”*

*“In this circuit, for example, we have held that officers cannot ‘use[] an inadequately trained canine, without warning, to apprehend two suspects who were not fleeing.’”*

*“But just as clearly, we have upheld the use of a well-trained canine to apprehend a fleeing suspect in a dark and unfamiliar location.”*

*“Given all of this, we cannot say that Harris violated any clearly established law in using Iwo to apprehend Baxter.”*

*“Even if Baxter raised his hands, the other circumstances—undisputed in the record below—weigh against a finding that ‘every reasonable official would understand that what [Harris did] is unlawful.’”*

## FACTUAL BACKGROUND

Alexander Baxter was caught burglarizing a residence and fled upon hearing sirens. He hid in the basement of a house he had previously broken into. Officers Harris and Bracey of the canine unit entered with their dog Iwo, announced their presence, and warned that they would release the dog if Baxter did not surrender. Baxter remained silent, ignoring the warnings. Harris released Iwo, who found Baxter in the basement. Within five to ten seconds, Harris released Iwo again to apprehend Baxter, resulting in a single bite to Baxter's arm. Baxter claims he raised his hands in surrender before the second release, but the officers contend he never communicated surrender.

## PROCEDURAL HISTORY

Baxter sued Officers Bracey and Harris under 42 U.S.C. § 1983 for excessive force and failure to intervene. The district court denied the officers' motions for summary judgment based on qualified immunity. The officers took

this interlocutory appeal.

## DISPOSITION

reversed

## CASES CITED

- Plumhoff v. Rickard, 572 U.S. 765 (2014)
- Berryman v. Rieger, 150 F.3d 561 (6th Cir. 1998)
- Estate of Carter v. City of Detroit, 408 F.3d 305 (6th Cir. 2005)
- Johnson v. Jones, 515 U.S. 304 (1995)
- District of Columbia v. Wesby, 138 S. Ct. 577 (2018)
- Hunter v. Bryant, 502 U.S. 224 (1991)
- Malley v. Briggs, 475 U.S. 335 (1986)
- Ashcroft v. al-Kidd, 563 U.S. 731 (2011)
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Graham v. Connor, 490 U.S. 386 (1989)
- Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001)
- Campbell v. City of Springboro, 700 F.3d 779 (6th Cir. 2013)
- Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988)
- Ciminillo v. Streicher, 434 F.3d 461 (6th Cir. 2006)
- Turner v. Scott, 119 F.3d 425 (6th Cir. 1997)