

TRIAL RECORD

Smith v. Silva, City of Fieldcrest Wilmington County, State of New Maine

The jury has been selected, and attorneys have presented their opening statements. After a short recess, the Court is back in session.

CLERK: All rise.

JUDGE: You may be seated. Counselor, you may call your first witness.

PL. ATTY: Thank you, Your Honor. We will call Plaintiff, Christopher Smith.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

SMITH: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

SMITH: Christopher Smith, S-M-I-T-H.

PL. ATTY: Mr. Smith, what is your profession?

SMITH: I work in a sporting goods store.

PL. ATTY: Where do you live?

SMITH: 53 North Street in Fieldcrest.

PL. ATTY: In Wilmington County?

SMITH: Yes.

PL. ATTY: Are you married?

SMITH: No, divorced. I've been divorced since March of 2002.

PL. ATTY: Do you have any children?

SMITH: Yeah, two.

PL. ATTY: What are their names?

SMITH: My son is Zach and my daughter is Emily.

PL. ATTY: Do they live with you?

SMITH: No, they don't.

PL. ATTY: Did they live with you in June of 2004?

SMITH: Yes; they did. My ex-wife and I had joint custody and our kids lived with me two days a week.

PL. ATTY: How old were they in June of 2004?

SMITH: Um, Zach was around nine years old and Emily was seven.

PL. ATTY: Was there anyone else living on the premises with you in June of 2004?

SMITH: No.

PL. ATTY: Do you have any pets?

SMITH: Not any more.

PL. ATTY: Did you have pets in June of 2004?

SMITH: Yeah, we had two dogs, Jack and Dilbert.

PL. ATTY: Please tell the jury about them.

SMITH: Jack was a Labrador retriever with a beautiful shiny, black coat. He was pretty big, around 80 pounds; a little overweight, I guess, because he sure loved to eat. And, he was a big baby. Dilbert was a terrier; he weighed about 15 pounds and had long, shaggy fur. He was always excited about something and ran all over the house, but he was really sweet and would never hurt a flea.

PL. ATTY: How old were they in June of 2004?

SMITH: Jack was eight and Dilbert was almost two years old.

PL. ATTY: Where did you get Jack?

SMITH: When my ex-wife and I were still together, we purchased him as a pup from a local breeder.

PL. ATTY: How much did you pay for him?

SMITH: I think it was around \$500.

PL. ATTY: Where did you get Dilbert?

SMITH: From the pound. I thought Jack needed a playmate, but I didn't have the cash to go out and buy another dog, so a friend suggested that I go to the pound. Dilbert ran right up to me in his cage and it was like he was saying: "Hey buddy, I'm the dog for you; take me home!"

PL. ATTY: When was this?

SMITH: In January 2004.

PL. ATTY: Did you bond with Dilbert right away?

SMITH: Oh, yeah. We all did. From the moment I brought Dilbert home, the kids and Jack and Dilbert all started playing in the backyard. Dilbert always followed Jack around the house. Wherever Jack went, Dilbert went. They were the best of friends.

PL. ATTY: Were Jack and Dilbert indoor dogs?

SMITH: They were inside when I was home and at night. When I was at work, they would go into the garage, where I had a couch for them to sleep on and there was a doggie door in the garage, so they could go out to the backyard whenever they wanted.

PL. ATTY: Was the backyard fenced?

SMITH: Yes.

PL. ATTY: Where did they sleep at night?

SMITH: When the kids were with me, they slept in the kids' room. The rest of the time, they slept with me on my bed. Jack took up a lot of room, so I made him sleep at the foot of the bed. Dilbert liked to go under the covers; which was pretty funny.

PL. ATTY: What kind of food did they eat?

SMITH: A combination of dry and canned, but I bought them Evangers, not the cheap stuff.

PL. ATTY: Did they have collars with tags?

SMITH: Yeah, and they had them on all the time.

PL. ATTY: Did you take them to the veterinarian on a regular basis?

SMITH: Well; when they needed it, but, they were current on all of their shots.

PL. ATTY: Did Dilbert or Jack ever bite anyone?

SMITH: No, never.

PL. ATTY: Ever bite or attack another animal?

SMITH: Well; some years back, a neighbor's cat jumped the fence and came into our backyard. Jack chased him and chewed him up pretty bad, but he never hurt any other animals and never went after a human.

PL. ATTY: Did Dilbert or Jack ever cause any trouble?

SMITH: Nope.

PL. ATTY: Were they trained in any way?

SMITH: Jack had basic obedience training.

PL. ATTY: Do you recognize this picture?

SMITH: I do.

PL. ATTY: Did you take this picture?

SMITH: I did.

PL. ATTY: Can you please tell the jury what this picture is of?

SMITH: This is a picture of Jack; he always looked so proud.

PL. ATTY: Plaintiff would like to offer this picture as plaintiff's exhibit number one.

JUDGE: Any objections?

D. ATTY: No, Your Honor.

JUDGE: The picture will be admitted as plaintiff's exhibit number one.

PL. ATTY: Thank you, Your Honor.

PL. ATTY: Can you please tell the jury what this picture is of?

SMITH: This is a picture of Dilbert that I took just a few weeks before he died. As you can see, he was always on the move.

PL. ATTY: Plaintiff would like to offer this picture as plaintiff's exhibit number two.

JUDGE: Any objections?

D. ATTY: No, Your Honor.

JUDGE: The picture will be admitted as plaintiff's exhibit number two.

PL. ATTY: Thank you, Your Honor.

PL. ATTY: Mr. Smith, can you tell the jury what happened on the afternoon of June 24, 2004?

SMITH: Well, at around 3:45 p.m., we were at home, Zach and Emily, and the dogs and me. I had just come downstairs from Emily's room and was at the foot of the stairs, near the front door. I heard a knock on the door, so I answered it. It was two police officers in uniform.

PL. ATTY: Where were the dogs at this time?

SMITH: They were upstairs; I think they were sleeping on my bed.

PL. ATTY: Where were Zach and Emily at this time?

SMITH: They were coming down the stairs.

PL. ATTY: What happened then?

SMITH: One of the officers identified himself.

PL. ATTY: Can you point out that officer to the jury?

SMITH: Yeah; he's sitting over there in a blue suit. He has grey hair and is balding.

PL. ATTY: Let the record show that the Plaintiff has pointed to Detective Michael Rodriguez. Did he say anything to you?

SMITH: He told me that he had a search warrant and showed me a piece of paper.

PL. ATTY: What did you do?

SMITH: I immediately called to the kids and told them to go back upstairs. I told the officers that my kids and dogs were in the house with me.

PL. ATTY: Then what happened?

SMITH: Well; it all happened so fast. My dogs started barking and I could hear them running down the stairs. They were barking frantically and carrying on, the way they often did when strangers arrived at our house.

PL. ATTY: What did you do next?

SMITH: I turned around toward the stairs and started to yell at them to stop barking. I turned back to the police officers and told them that the dogs were harmless and just give me minute to put them into a room. I saw that one of the cops already had his gun out and was pointing it at my dogs.

PL. ATTY: Can you identify that police officer?

SMITH: He's sitting over there wearing a grey suit; he has black hair and a mole on his forehead.

PL. ATTY: Let the record show that the plaintiff has pointed to Defendant, Daniel Silva. Then what happened, Mr. Smith?

SMITH: I yelled: "No," just as I heard two shots and then, my dogs were lying on the floor, yelping and crying and there was blood all over the place. I heard Emily crying on the stairs. Zach was screaming: "Daddy; they shot the dogs; Daddy, stop them!" I turned back to the police officers and said: "Why the hell did you do that?" I was really mad that they did that; it was so unnecessary. My dogs weren't gonna hurt anyone.

PL. ATTY: What happened next?

SMITH: Officer Rodriguez pushed me face down on the floor and handcuffed me behind my back. I heard Officer Silva fire more shots and when I looked up, my dogs weren't moving any more. Dilbert's face was blown off; it was awful and it looked as if he had tried to hide behind Jack. Jack was all covered in blood; his stomach was blown wide open and his front leg looked mangled; it was sort of hanging at a weird angle. I figured that they were dead; they weren't making any sound and weren't moving. All I could hear was my kids crying and the police officers yelling orders.

PL. ATTY: About how many shots did you hear the second time he fired his gun?

SMITH: Three, I think.

PL. ATTY: Did you say anything?

SMITH: Yeah; I said: “You killed my dogs. How could you do that?” I kept saying that, over and over. Later, my next door neighbor, Lisa, told me that...

D. ATTY: Objection.

JUDGE: Sustained.

PL. ATTY: Have the deaths of your dogs impacted you?

SMITH: Yeah.

PL. ATTY: Can you explain how?

SMITH: I keep seeing them the way they were after they were shot; all the blood, and the sound of them crying in pain and terror. That plays over and over in my head. It kills me that I couldn’t stop the police from killing them, that there was nothing I could do to save them.

PL. ATTY: How is your life different now, without them?

TRUDY: It’s lonely. I miss how Dilbert had all that energy and was so happy all the time, running all around the house. I miss how Jack would sleep with me on the couch and lay his head on my lap. I miss how he snored and twitched when he slept. I miss watching them play with each other and taking walks with them. I get pretty depressed about it.

PL. ATTY: Thank you, I have no further questions.

JUDGE: Counselor, your witness.

D. ATTY: Thank you, Your Honor.

Mr. Smith, you stated that the police came to your house with a search warrant. Were you charged with a crime as a result of that search?

PL. ATTY: Objection.

JUDGE: Overruled. Please answer the question, Mr. Smith.

SMITH: Yes.

D. ATTY: And, you were convicted of that crime, were you not?

SMITH: Yes.

D. ATTY: What crime were you convicted of?

SMITH: I uh, downloaded some songs and programs from the Internet.

D. ATTY: In fact, you were charged with and convicted of illegally downloading and then redistributing over 55,000 songs, isn’t that correct? And that in addition to being convicted, you were required to pay nearly \$100,000 in restitution to the record labels?

SMITH: Yes.

D. ATTY: Thank you; I have no further questions.

JUDGE: Any redirect?

PL. ATTY: No, Your Honor.

JUDGE: Thank you Mr. Smith, you are dismissed.
Next witness?

PL. ATTY: Plaintiff calls Lisa Tobert.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

TOBERT: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

TOBERT: Lisa Tobert, T-O-B-E-R-T.

PL. ATTY: Ms. Tobert, what is your relationship, if any, with Mr. Smith?

TOBERT: We are next door neighbors.

PL. ATTY: Are you friends?

TOBERT: We don't spend much time together, but we have always been polite and friendly. Sometimes his kids would come over to my house to play with my kids and sometimes, my kids went over to his house. They're around the same age.

PL. ATTY: Before the incident on June 24, 2004, did you ever knock on Mr. Smith's door?

TOBERT: Oh yes, lots of times; I'd go over there to tell my kids that it was time to come home.

PL. ATTY: And, when you knocked on Mr. Smith's door, what would happen?

TOBERT: Jack and Dilbert would be the first ones to hear me. I called them "the early warning system." They'd come running up to the door, barking and making a fuss. Dilbert would jump around in circles and Jack would wag his tail and try to jump up and lick me.

PL. ATTY: Were you afraid of Mr. Smith's dogs?

TOBERT: Heavens, no. They were noisy, but they didn't mean no harm. They just wanted some attention.

PL. ATTY: Where were you on June 24, 2004 at approximately 3:45 p.m.?

TOBERT: I was in my front yard when I saw a couple of police officers at Chris's front door.

PL. ATTY: Are you referring to Mr. Smith?

TOBERT: Yes. I could see that the door was open and they were talking to Mr. Smith. I could hear the dogs barking and then, I heard a series of gun shots. Then, there was a lot of screaming and yelling. Mr. Smith was yelling, the police were yelling and I could hear

dogs yelping. I couldn't see what was going on, but I could hear Zach Smith screaming. After a short time, maybe about 20 seconds, I heard more gun shots. My kids started to cry and I ran into my house to calm them down. I was pretty shaken up and stayed inside with my kids.

PL. ATTY: Did you see or hear anything else?

TOBERT: I saw the police take Chris Smith away in the squad car. He was handcuffed.

PL. ATTY: Have you ever spoken with Mr. Smith about the events of that day?

TOBERT: Well; I told him that I was real sorry for what the police did to his dogs. Those dogs always carried on like that when someone came to his door, and I felt badly that they were killed because of that.

PL. ATTY: Did Mr. Smith respond?

TOBERT: He said that he tried to tell the police that his dogs wouldn't hurt them, but they didn't listen. He said that he has trouble sleeping at night and is depressed and that he will never live with another dog, because what happened to those dogs just broke his heart.

PL. ATTY: Thank you, Ms. Tobert.

JUDGE: Your witness for cross-examination.

D. ATTY: I have no questions for this witness.

JUDGE: Thank you Ms. Tobert; you are dismissed.

You may call your next witness.

PL. ATTY: Plaintiff calls Holly Flood.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

FLOOD: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

FLOOD: Holly Flood, F-L-O-O-D.

PL. ATTY: Thank you, Ms. Flood.

What is your relationship to the Plaintiff, Mr. Smith?

FLOOD: I am his ex-wife.

PL. ATTY: And, what involvement did you have with the incident that occurred on June 24, 2004?

FLOOD: Chris Smith and I had joint custody of our children, Zach and Emily. The morning of the incident, Chris called me, which was unusual, because we rarely talked, and he said that he was going to send me the child support he owed, because his illegal downloading and

redistributing business was doing so well. He told me he was going to start having the kids help him.

PL. ATTY: So, what did you do?

FLOOD: I didn't want him getting my kids involved in his crimes. The first thing I could think of was to call the police. I identified myself and provided a description of Chris, along with his address and phone number. I told them that I was concerned that Chris was involved in a very profitable illegal downloading business, and that he was going to get my children involved. I asked them to investigate the situation as soon as they could. I explained to them which days the children were with me and asked them not to go to Chris's house when the children were there. I didn't want my children to see their father getting arrested, if it came to that. I also told the police that Chris had two dogs, and that the dogs bark a lot, but are friendly and don't bite. They assured me that they would investigate.

PL. ATTY: What happened next?

FLOOD: A few hours later, I received a call from the police that my children were at the police station and their father had been arrested and I should come to the police station to pick up my children. When I got to the police station, Zach and Emily were crying hysterically.

PL. ATTY: Were you on good terms with your ex-husband?

FLOOD: No; we barely talked.

PL. ATTY: Had you made previous efforts to get sole custody of the children?

FLOOD: Yes; I had and the judge had given us joint custody.

PL. ATTY: Were you satisfied with the arrangement?

FLOOD: It was hard on all of us.

PL. ATTY: How has this incident affected your children?

FLOOD: Zach used to be very outgoing and since this incident, he has become very withdrawn. He doesn't talk much to me; he doesn't hang out with his friends anymore. I've hired a therapist to meet with him, but so far, nothing seems to have helped him. Emily still has nightmares; she'll wake up screaming about guns going off and blood all over. She's afraid to go anywhere at night and cannot be left alone, day or night. What the police did was very unfair to my children.

PL. ATTY: Thank you, I have no more questions.

JUDGE: Your witness for cross-examination.

D. ATTY: When you called the police, were you using that as a ploy to get sole custody of your children?

FLOOD: Absolutely not.

D. ATTY: I have no further questions for this witness.

JUDGE: Any redirect?

PL. ATTY: No, Your Honor.

JUDGE: Thank you Ms. Flood; you are dismissed.
You may call your next witness.

PL. ATTY: The Plaintiff calls Eric Peters.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

PETERS: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

PETERS: Eric Peters, P-E-T-E-R-S.

PL. ATTY: Thank you, Mr. Peters.
What is your profession?

PETERS: I'm a consultant to police departments in the State of New Maine. I specialize in training police officers to use non-lethal force in dealing with dogs. I have been doing this work for the past eight years. Prior to that, I was a sergeant with the Bloomington Police Department for ten years.

PL. ATTY: How did you gain expertise in your current profession, Mr. Peters?

PETERS: As a police officer, I had been trained that when I entered an alleged crime scene or was going after a perpetrator, and if there was a dog on the premises, that dog posed a threat to the safety of officers and our ability to make an arrest. Therefore, the threat had to be eliminated, in other words, I was taught to shoot the dog. In my own mind, I questioned this training, and so, on my own time, began to talk to dog behaviorists, animal control officers, humane officers and humane society personnel. Through them, I learned that there are numerous nonlethal methods to subdue dogs, so that the officers are safe and the investigation can continue without delay. I also took an intensive one year course with the National Society for the Prevention of Cruelty to Animals and graduated with certification as a Dog Behaviorist. Based on what I learned, I decided to offer myself as a consultant to police departments and teach them to deal with dogs in a more realistic and humane manner.

PL. ATTY: How does one judge your rate of success?

PETERS: There are several factors that determine whether my methods are successful: first, are the officers able to conduct their investigation or arrest without undue delay or interruption; second, are they able to remain safe and unharmed by the dog; third, is the police department experiencing fewer civilian complaints about police killing dogs? I have experienced great success with the police departments that have worked with me over the past eight years.

PL. ATTY: Have you reviewed the record in this case?

PETERS: Yes; I have.

PL. ATTY: In your expert opinion, was the force used by Officer Silva reasonable?

PETERS: It was not.

PL. ATTY: Please explain how you reached this opinion.

PETERS: The officers knew before they entered the premises that there were dogs in the house. They had been told, by the informant, that the dogs were friendly. They could have restrained the dogs by a variety of means, other than shooting them. Further, in the time that it took for the officers to obtain the search warrant, they had time to prepare for non-lethal precautions, so that Detective Silva would not have to use lethal force against these dogs. They failed to do so.

PL. ATTY: Thank you, Mr. Peters. I have no further questions.

JUDGE: Your witness for cross-examination.

D. ATTY: Mr. Peters. Do any universities or colleges offer courses or degrees to develop the expertise that you claim to have?

PETERS: No, they don't. This is a relatively new field.

D. ATTY: So, do you view yourself as Dr. Dolittle or the Dog Whisperer?

PL. ATTY: Objection.

D. ATTY: I withdraw the question. No further questions for this witness.

JUDGE: Any redirect?

PL. ATTY: No, Your Honor.

JUDGE: Thank you Mr. Peters; you are dismissed.

You may call your next witness.

PL. ATTY: Plaintiff rests, Your Honor.

JUDGE: Counselor, you may call your first witness.

D. ATTY: Thank you, Your Honor. We call Detective Michael Rodriguez.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

RODRIGUEZ: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

RODRIGUEZ: Michael Rodriguez, R-O-D-R-I-G-U-E-Z.

D. ATTY: Thank you, Detective Rodriguez.

What is your profession?

RODRIGUEZ: I have been a police officer for twenty years and am a detective with the Fieldcrest Police Department.

D. ATTY: Detective Rodriguez, please explain to the jury why you went to the home of Christopher Smith on June 24, 2004.

RODRIGUEZ: Detective Danny Silva had received a call from Mr. Smith's wife...

PL. ATTY: Objection; hearsay.

JUDGE: Sustained.

D. ATTY: Can you tell us what your assignment was on the afternoon of June 24?

RODRIGUEZ: We were assigned to go to the residence of Christopher Smith. We had a warrant to search the premises.

D. ATTY: What were you looking for?

RODRIGUEZ: We were looking for evidence of criminal activity.

D. ATTY: And, did you find such evidence?

PL. ATTY: Objection.

JUDGE: Overruled, please answer the question.

RODRIGUEZ: Yes; we did.

D. ATTY: Did you know in advance that there would be children on the premises?

RODRIGUEZ: No; I did not. We thought the kids were with their mother.

D. ATTY: Did you know in advance that there were dogs on the premises?

RODRIGUEZ: Yes, I did, but we had been told that they were friendly.

D. ATTY: Please describe the incident, Detective Rodriguez.

RODRIGUEZ: Detective Danny Silva and I approached the residence at 53 North Street in Fieldcrest and knocked on the door. Mr. Smith opened the door and was standing in the doorway.

D. ATTY: How did you know it was Mr. Smith?

RODRIGUEZ: From the description we received from his ex-wife, we knew to look for a tall, thin blond haired man, approximately 40 years old. Mr. Smith fit that description. I identified myself, asked him if he was Christopher Smith and he said he was. I read him the search warrant.

D. ATTY: Then, what happened?

RODRIGUEZ: Two dogs came charging down the stairs from inside the house. They were heading directly for Detective Silva and myself. One was very large, all black, with a very large pit bull type head. He was snarling, barking and showing a lot of teeth as he ran toward us. The other dog was smaller, but equally aggressive. It was absolute pandemonium and I believed that the dogs were coming toward us to attack us. Mr. Smith didn't seem to notice that his dogs were charging at us, as he did nothing to control them. I heard two shots and saw that Detective Silva had shot the dogs before they reached us.

D. ATTY: How far away from you were the dogs when Detective Silva shot them?

RODRIGUEZ: Approximately three feet.

D. ATTY: Then, what happened?

RODRIGUEZ: The larger dog was injured, but he got up and continued to charge at us, snarling and growling ferociously. At the same time, Mr. Smith tried to grab Detective Silva's gun from him; he was yelling obscenities and was threatening to kill us. I wrestled Mr. Smith to the ground and handcuffed him. I heard more shots and saw that Detective Silva had shot the dogs again; they were no longer moving and appeared to be dead.

D. ATTY: Did these dogs cause you to fear for your life and safety?

RODRIGUEZ: Yes; I was sure they would attack us.

D. ATTY: Thank you, Detective Rodriguez. No further questions.

JUDGE: Your witness for cross-examination.

PL. ATTY: Officer Rodriguez, when did you first see Zach and Emily Smith?

RODRIGUEZ: I didn't notice them until I had subdued Mr. Smith. When things quieted down, I looked up the stairs and saw them.

PL. ATTY: What were they doing?

RODRIGUEZ: They were standing on the stairs and crying. After we escorted Mr. Smith to the squad car, one of the other officers escorted the children to the police station and contacted their mother.

PL. ATTY: You are Detective Silva's direct supervisor, is that correct?

RODRIGUEZ: Yes; that's correct.

PL. ATTY: And, Detective Silva told you that there would be dogs on the premises, correct?

RODRIGUEZ: Yes.

PL. ATTY: Did you create a plan to deal with the dogs in a nonlethal manner?

RODRIGUEZ: We were told that they were friendly, so I didn't think we had to.

PL. ATTY: Thank you; no further questions.

JUDGE: Any redirect?

D. ATTY: No, Your Honor.

JUDGE: Thank you, Mr. Rodriguez; you are dismissed.
You may call your next witness.

D. ATTY: We call the Defendant, Detective Daniel Silva.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

SILVA: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

SILVA: Daniel Silva, S-I-L-V-A.

D. ATTY: Thank you, Detective Silva.
What is your profession?

SILVA: I am a detective with the Fieldcrest Police Department, where I have served with distinction for the past fifteen years.

D. ATTY: Detective Silva, did you receive a tip that a crime was allegedly taking place at 53 North Street in Fieldcrest?

SILVA: Yes; I did. Approximately 10:15 a.m. on June 24, 2004, I received a phone call from a woman who identified herself as Holly Flood. She stated that she was the ex-wife of Christopher Smith, the resident at 53 North Street. She provided a physical description of Mr. Smith, along with his address and phone number, her address and phone number and the names of their two children. She told me that she suspected that her ex-husband was involved in a large operation involving the illegal downloading and sale of tens of thousands of songs. Based on this tip, which I deemed to be reliable, I obtained a search warrant to search the premises. Based on our conversation, I believed the two children would be with their mother at her residence, so I was surprised when we arrived at Mr. Smith's residence and the children were there. At that point, it was too late.

D. ATTY: Please describe what happened after you arrived at the Smith residence.

SILVA: Detective Rodriguez knocked on the door. Mr. Smith opened the door and identified himself. Detective Rodriguez identified himself and served Mr. Smith with the search warrant. I identified myself. At that moment, all hell broke loose. Two dogs came charging down the stairs, heading directly for us. One was a large, black dog and the other dog was smaller. We had very little time to react and protect ourselves from attack. Mr. Smith seemed unconcerned that his dogs were about to attack us and he did nothing to stop them. I raised my gun and fired two shots, hitting each of the dogs. The larger dog was hit in the leg, but he kept coming at Detective Rodriguez, snarling and charging, so I fired a second round of shots at the dogs, killing them.

D. ATTY: What was your motive in shooting these dogs?

SILVA: My motive was to protect Detective Rodriguez and myself from imminent harm, as the dogs were vicious, charging directly at us and about to attack.

D. ATTY: Thank you, Detective Silva. No further questions.

JUDGE: Your witness for cross-examination.

PL. ATTY: Did you notice if the dogs were wearing collars and tags?

SILVA: I did not. All I could see was teeth and fangs coming at us.

PL. ATTY: Didn't Ms. Flood tell you that these dogs were friendly?

SILVA: She said that the dogs were friendly. But, there was nothing friendly about these dogs. They would have attacked us if I didn't shoot them.

PL. ATTY: Are you trained to shoot dogs on sight when you are engaged in an investigation?

SILVA: I shot these dogs because I reasonably believed that they would attack us if I didn't shoot them.

PL. ATTY: Please answer my question: when you are investigating, are you trained to shoot dogs in order to get them out of the way?

SILVA: We are taught to shoot dogs when we believe that they are going to attack a police officer imminently.

PL. ATTY: You claimed the larger dog continued to act aggressively toward Detective Rodriguez. What was the smaller dog doing?

SILVA: The smaller dog appeared to be in a great deal of pain, so I put him out of his misery, as it seemed like the most humane thing to do.

PL. ATTY: No further questions, Your Honor.

JUDGE: Any redirect?

D. ATTY: Detective Silva, after you fired the first round at the dogs, did at least one of the dogs continue to act in a menacing manner, such that you believed you would be attacked?

SILVA: Yes, the large dog continued to charge us and I shot him in order to avoid physical harm happening to an officer.

D. ATTY: No further questions of this witness.

JUDGE: Thank you Mr. Silva; you are dismissed.
You may call your next witness.

D. ATTY: We call Sergeant Rayna Swift.

CLERK: Please approach the witness stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

SWIFT: I do.

CLERK: Thank you. Please be seated, state your name, and spell your last name for the record.

SWIFT: Rayna Swift, S-W-I-F-T.

D. ATTY: What is your profession, Ms. Swift?

SWIFT: I am a police officer with Fieldcrest Police Department. I specialize in field training of the officers and have ten years of expertise in this specialty.

D. ATTY: Officer Swift, are you familiar with the facts of this case?

SWIFT: Yes, I am.

D. ATTY: In your expert opinion, was the use of force reasonable under these circumstances?

SWIFT: Yes; it was entirely reasonable. Officer Silva had been misled by the informant, Ms. Flood, who told him that the dogs in the home were friendly, thus he did not know or expect that the dogs would try to attack the officers. Instead of friendly dogs, the officers were faced with two dogs that were extremely aggressive and vicious. The officers had to react in a split second, in order to protect themselves from grave bodily harm. The dogs presented not only a clear physical danger to the officers, but they also interfered with the important law enforcement function of investigating a crime. Once it became obvious that the dogs would attack them, the officer had no choice but to shoot the dogs.

D. ATTY: No further questions.

JUDGE: Your witness for cross-examination.

PL. ATTY: Does the City of Fieldcrest provide training to its officers on the subject of nonlethal measures to deal with dogs.

SWIFT: No; we don't currently have the funding for such a program.

PL. ATTY: No further questions of this witness.

JUDGE: Redirect?

D. ATTY: No, Your Honor.

Defendant rests.

JUDGE: Thank you, everyone. We will adjourn for the day and will continue with closing arguments in the morning.