

Press-Enterprise
Riverside, CA

Dog-as-deadly-weapon charge unusual but not unheard of

10:00 PM PST on Thursday, February 14, 2008

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The Press-Enterprise

A gun. A car. Even a pin stuck in an apple.

Under the law, the definition of a deadly weapon is broad, but prosecutors reviewing the case against 17-year-old Paul Hicklin III still faced a question.

Could turning a pit bull loose on two neighborhood children result in a felony assault charge against the dog's owner?

Two weeks after an 8-year-old boy was mauled in a Fontana cul-de-sac, the San Bernardino County district attorney's office decided the answer was yes.

Hicklin was charged as an adult and pleaded not guilty Wednesday to two counts of assault by a means likely to produce great bodily injury, part of California's assault with a deadly weapon law.

Legal experts said such a prosecution has been tested before.

"The challenge is getting people to believe that a dog can be a deadly weapon," said Laurie Levenson, a Loyola Law School professor and former federal prosecutor who writes about criminal law. "But (a dog) certainly can be."

Levenson said a 1991 decision by the appellate division of Los Angeles County Superior Court upheld the assault with a deadly weapon conviction against a man who ordered his pit bull to attack.

In *People v. Nealis*, the owner's command for the dog to attack made it a weapon, just like a knife or a pair of brass knuckles, the court wrote.

Since then, at least two fatal dog maulings in California have resulted in felony convictions for the dogs' owners. In neither case was the dog ordered to attack.

"The challenge with a dog, unlike an inanimate object, is jurors might think that the dog has responsibility, not the owner," Levenson said. "So the challenge for prosecutors is to really make it clear that the dog should have been under control of the owner."

Fontana Case

Last month in Fontana, 8-year-old Dakota Mitchell and 9-year-old Dallas Mitchell walked to Hicklin's home at the end of Loma Vista Court looking for a playmate.

Hicklin told the boys if they didn't leave his yard, he would release his family's 65-pound pit bull, said Fontana police Sgt. Jeff Decker. As the boys were walking away, Hicklin told the dog to "sic him" or "get him," Decker said.

Dakota's face was chewed down to the jawbone. He finally broke free after Dallas fought the dog with his skateboard or scooter, said Decker.

Officers fatally shot the dog after it charged them a short time later.

Investigators initially couldn't locate Hicklin, but he was arrested Feb. 8, when he was found near a friend's home in Bloomington.

His father, Paul D. Hicklin, was cited for having a dog running at large, confinement of a vicious animal and the public nuisance of having an unlicensed dog, according to San Bernardino County Superior Court records.

Hicklin's parents did not respond to a message seeking comment left at their home this week. His grandparents in South Carolina did not return a telephone call.

Dakota will require multiple reconstructive facial surgeries, Decker said. His mother, Barbara Mitchell, moved the family from their rented home on Loma Vista Court days after the attack and could not be reached for comment this week.

The prosecutor who reviewed the case said similar cases have happened locally. Supervising Deputy District Attorney Clark Hansen cited a Fontana case last year in which a man was charged with attempted assault after police said he unleashed his dog on an officer.

Dogs as Weapons

Hansen said pit bulls' physical strength and breeding can lead to them being considered weapons.

Kenneth Phillips agrees. The Beverly Hills attorney is an expert on dog bite law and has helped states rewrite their statutes regarding dog owners' liability.

"Throughout the country, there are dog owners that face criminal charges for their actions almost every day," Phillips said. "But it is distressing that it is not happening more often."

There often are many options for prosecutors in dog bite cases. Owners can be charged with anything from negligence to mayhem, Phillips said.

Holding more pit bull owners criminally liable in bite cases might begin to create a safer environment, said a local animal control official.

"The problem comes down to the pet owners," said San Bernardino Animal Control Director Ken Childress.

He said pit bulls account for 20 percent of his shelter's dogs.

"They get the dog, they don't neuter it, they don't license it, they don't train it, they chain it up and it becomes aggressive," Childress said. "It's not socialized, and now you've got a recipe for disaster, once somebody lets the dog out."

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ASSAULT DEFINED

Prosecutors used this section of the California Penal Code to charge 17-year-old Paul Hicklin III:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be

punished by imprisonment in the state prison for two, three or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.