



DATE: August 25, 2023

TO: City Council

FROM: Office of the City Attorney

SUBJECT: *Lawrence T. Johnson v. Brian Kelly, Colorado Springs Police Department, Officer Walker and K-9 Dog, Case No. 23-cv-01031-DDD-MEH, United States District Court, District of Colorado*

This memorandum addresses the facts alleged in the above-referenced case as you consider the claims made against the involved City employees.

NATURE OF THE CASE

Plaintiff, Lawrence Johnson, alleges, on March 21, 2023, Colorado Springs Police Department (“CSPD”) officers and a police K-9 dog used excessive force while taking him into custody. He claims he was sleeping in a truck when unknown officers crashed a SWAT vehicle into his truck. Plaintiff claims Officer Michael Walker “fired several 40 mm non-lethal rounds into Plaintiff’s immobilized truck” shattering the truck window and striking him in the upper back. Additionally, he alleges other unknown officers fired “pepper spray balls” into the truck.

Plaintiff alleges excessive force was used when CSPD K-9 Officer Brian Kelly directed his police K-9 to bite the Plaintiff causing injury to his leg. Plaintiff further claims all Defendants violated his 4th and 14th amendment rights by arresting him without probable cause and in an “overly aggressive manner.” Plaintiff brought this pro se civil action against CSPD and Officers Kelly and Walker, and the K-9 dog. Plaintiff seeks \$20,000,000 in damages and a permanent restraining order against all Defendants.

Police reports, drone footage and body worn camera video show that the CSPD Tactical Enforcement Unit (“TEU”) was asked by the Colorado Department of Corrections (“CDOC”) Parole Fugitive Unit to assist in arresting Plaintiff. Plaintiff had a warrant for his arrest for Felony Eluding and felony parole violations. CDOC Parole Officers informed CSPD TEU that Plaintiff was a known escape risk and may be armed with a pistol and hunting knife. CDOC Parole Officers conducted surveillance and located Plaintiff’s truck in the parking area of a storage facility. CSPD TEU Officers, in four unmarked trucks/SVUs, activated their emergency lights and initiated a pre-approved contact block on Plaintiff’s truck to prevent a vehicle pursuit. Multiple loud-speaker announcements were made throughout the encounter advising Plaintiff that he was under arrest, he

needed to surrender peacefully, and if he did not, a police K-9 present on scene would be deployed and Plaintiff's safety could not be guaranteed unless he immediately surrendered.

Plaintiff refused to surrender and attempted to flee in his vehicle by spinning his tires for approximately 11 minutes. When Plaintiff would not surrender, TEU Officers introduced chemical munitions and less lethal direct impact munitions that struck Plaintiff. This caused Plaintiff to exit his truck and run onto the roof of one of the TEU vehicles. Plaintiff then attempted to climb on top of an awning attached to the storage facility. Officer Brian Kelly deployed the K-9 who contacted Plaintiff on the roof of the TEU vehicle and bit him. Plaintiff eventually surrendered and was transported to the hospital for treatment of his injuries. For his actions during this incident, Plaintiff was charged with Felony Vehicular Eluding, Felony Criminal Mischief, DUI, and Resisting Arrest. He plead guilty to Felony Vehicular Eluding and was sentenced to 3 years in the Colorado Department of Corrections. He is currently serving that sentence.

RECOMMENDATION

The Civil Action Investigation Committee has met and recommends that the City represent Officers Brian Kelly and Michael Walker as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. Officers Kelly and Walker were acting in the course and scope of their employment and not in a willful and wanton manner. As usual, City Council should reserve the right not to pay any award of punitive damages.