



DATE: September 8, 2015

TO: Colorado Springs City Counsel

FROM: City Attorney's Office

SUBJECT: *Alexis Marie Acker v. City of Colorado Springs, et al.*
Case No. 15-cv-01582-RPM

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the city employees involved.

NATURE OF THE CASE

Plaintiff, Alexis Marie Acker, has filed this action in the United States District Court for the District of Colorado against Officer Tyler Walker asserting claims for excessive force, assault and battery, and intentional infliction of emotional distress. Plaintiff also advances a claim alleging constitutionally deficient policies, practices and customs, and a failure to train or supervise against the City of Colorado Springs and Police Chief Peter Carey in his official capacity.

Plaintiff's claims stem from an incident on November 21, 2013 where, according to police reports, officers, including Officer Walker, with the Colorado Springs Police Department ("CSPD") responded to a reported disturbance involving a firearm at a residence. Shortly after arrival, officers contacted Plaintiff, who was intoxicated, uncooperative, and argumentative, outside the residence. While speaking with Plaintiff, officers noticed that there were other individuals still inside the residence. Inside, officers contacted several people including an individual who identified himself as James Tanks ("Tanks"). After Tanks provided inadequate answers regarding his identity, officers handcuffed him. This caused Plaintiff to become highly emotional. In order to calm Plaintiff, officers allowed her to hug Tanks, however, she refused to let go of him and officers had to pull her off of Tanks. Plaintiff then attempted to jerk her arms free from officers and began making threats to officers. Plaintiff's actions forced Officer Walker and another officer to escort her over to a nearby couch and place her face down. There, officers, again, tried to calm Plaintiff down. Instead, Plaintiff continued to scream threats and started kicking both Officer Walker and the other officer. At that point, the two officers handcuffed Plaintiff and pinned her legs. Officers eventually rolled Plaintiff over to a sitting position on the couch. Once seated, Plaintiff tried to kick the officers again. It was only then that officers decided to take Plaintiff to jail.

Officers then walked Plaintiff, while she continued to make verbal threats, outside. At the cruiser, Plaintiff refused to sit in the vehicle and officers had to force her to sit down. Seated

with her legs outside the cruiser, Plaintiff attempted, once again, to kick Officer Walker. Officer Walker, at this point, corralled Plaintiff's feet and closed the rear door. Officer Walker then turned his attention to Tanks who had become uncooperative with officers near another patrol car. As this was happening, Plaintiff turned her body towards the other cruiser and began shouting. This prompted Officer Walker to drive the cruiser holding Plaintiff away from the area.

Officer Walker proceeded to take Plaintiff to Memorial Hospital since the Criminal Justice Center would not accept Plaintiff in her intoxicated state. On the drive to Memorial, Plaintiff continued to verbally abuse Officer Walker.

At Memorial, Officer Walker escorted Plaintiff to the assigned care unit where a nurse placed a chair in the hallway for Plaintiff while hospital staff prepared a room. Officer Walker and Plaintiff approached the chair and, despite Officer Walker's orders to do so, Plaintiff refused to sit down. Officer Walker repeated his order and Plaintiff, again, refused to comply. Officer Walker then pushed Plaintiff at the waist which caused her to sit down in the chair. Plaintiff then immediately leaned back and kicked Officer Walker. In response, Officer Walker grabbed Plaintiff and took her to the ground.

Plaintiff claims that as a result of the incident, she suffered injury to her teeth. Additionally, Plaintiff complains of headaches, dizziness, nausea, and soreness in her neck and upper back.

Plaintiff is seeking declaratory relief, economic losses, compensatory, consequential and punitive damages, plus costs, interest and attorney fees.

RECOMMENDATION

The Civil Action Investigation Committee met on August 20, 2015, and has recommended representation for Officer Tyler Walker and City representation for Police Chief Peter Carey as required by the Colorado Governmental Immunity Act and the Liability of Peace Officers Act. Officer Walker was acting within the course and scope of his employment during the incident. It is recommended that the City reserve the right not to pay any judgments or settlements which arose from willful and wanton conduct, any award of punitive damages, or any judgments against Officer Walker in excess of one hundred thousand dollars as limited by the Liability of Peace Officers Act. It is also recommended that the City reserve the right not to pay for representation of Officer Walker if it is found that the alleged injuries arose from willful and wanton conduct.

Sincerely,

FOR THE CITY ATTORNEY



W. Erik Lamphere, Senior Attorney