



DATE: April 8, 2019

TO: Colorado Springs City Council

FROM: Office of the City Attorney

SUBJECT: *Thomas Villanueva v. El Paso County; Bill Elder; The Estate of Micah Flick; Scott Stone; Jacob Abendschan; John Watts; Tremaine White; Stephanie Criss; Michael Boggs; The City of Colorado Springs, Colorado; Peter Carey; Kevin Miyakusu; Marcus Yanez; John Reindollar; and Chad Hunt, Case No. 19-cv-00295-PAB-KMT, U.S. District Court for the District of Colorado*

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the Officers involved, and the recommendation of the Civil Action Investigation Committee.

NATURE OF THE CASE

Plaintiff Thomas Villanueva filed an action in the United States District Court for the District of Colorado alleging that Colorado Springs Police Sergeant Kevin Miyakusu and Officer Marcus Yanez, along with all of the named defendants, are responsible for the injuries he suffered at the hands of Manuel Zetina.

The Colorado State Patrol leads a multijurisdictional team called Beat Auto Theft Through Law Enforcement ("BATTLE"). Colorado Springs Police Department ("CSPD") is a participating agency in BATTLE. On February 5, 2018, ten law enforcement officers were assigned to the BATTLE team, including two CSPD officers (Sgt. Miyakusu and Officer Yanez). One of the officers had spotted a stolen vehicle that morning. The team's objective was to apprehend the thief.

The team members, split into four unmarked vehicles, ultimately followed the driver of the stolen vehicle (later determined to be Mr. Zetina) to the Murray Hill Apartments at Galley Road and Murray Boulevard. The officers, all in plain clothes, set up to potentially arrest Mr. Zetina. Sgt. Miyakusu positioned himself on the other side of the apartment building, opposite the parking lot, in case Mr. Zetina fled in that direction. But from his

position, Sgt. Miyakusu could not see the parking lot. Officer Yanez was the passenger in an undercover vehicle that was the last to drive into and park in the parking lot.

A sheriff's deputy with eyes on Mr. Zetina communicated to the team that it was a good time to make an arrest. Sgt. Miyakusu approved the decision. Two sheriff's deputies approached Mr. Zetina, who was standing in the parking lot. A deputy grabbed Mr. Zetina in a bear hug and shouted, "Police!" Mr. Zetina shot that deputy in the hip. The other deputy wrestled Mr. Zetina to the ground for control of his gun. Mr. Zetina shot that deputy, killing him. Mr. Zetina then began to spray the parking lot with gunfire. As Officer Yanez approached, Mr. Zetina shot Officer Yanez in the groin. Officer Yanez then shot Mr. Zetina, as did another deputy, killing Mr. Zetina.

Plaintiff, a 28-year-old civilian, was walking through the parking lot during the incident. A bullet from Mr. Zetina's gun hit Plaintiff in the back, paralyzing him from the waist down.

Plaintiff asserts the following claims against Sgt. Miyakusu and Officer Yanez:

- Substantive Due Process violation under 42 U.S.C. § 1983, based on a state-created danger theory, alleging that Sgt. Miyakusu "gave the go-ahead" for the takedown that precipitated the shooting of Plaintiff, and that Officer Yanez allegedly saw Plaintiff inside the "operational perimeter" before Mr. Zetina was apprehended and allowed Plaintiff to continue walking toward the takedown.
- Willful and wanton conduct under Colorado state law.

Plaintiff is seeking "several tens of millions of dollars" for past and future medical expenses, lost earnings, physical impairment, physical and mental pain and suffering, inconvenience, emotional distress, impairment of quality of life, disability, physical disfigurement.

RECOMMENDATION

The Civil Action Investigation Committee met on March 19, 2019, and has recommended that the City represent the Officers as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. The Officers were acting in the course and scope of their employment and not in a willful and wanton manner. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.