



DATE: October 13, 2014

TO: Colorado Springs City Council

FROM: Office of the City Attorney

SUBJECT: *Joshua Bryan Palmer v. City of Colorado Springs, Anthony Carey, Trever Gardner, and Jordan Swanberg*; Case No. 2014CV32868 pending before the El Paso County District Court, which has been removed to the U.S.D.C. for the District of Colorado as Case No. 14-CV-2659

This memorandum is to apprise you of the facts alleged in the above-reference case as you consider the claims made against the City and the officers involved.

NATURE OF THE CASE

Plaintiff, Joshua B. Palmer, brings this action in El Paso County District Court, Colorado alleging violations of 42 U.S.C. § 1983 (based on Fourth Amendment claims arising from alleged unreasonable search and seizure); Intentional Infliction of Emotional Distress; Invasion of Privacy; Trespass; Civil Conspiracy; Civil Theft; and Conversion.

Mr. Palmer alleges that on September 15, 2013, the defendant police officers responded to a burglary call at 1340 Michelle Court, Unit J, Colorado Springs, Colorado. The responding officers entered his residence through a broken window and conducted a search of the premises. Mr. Palmer was in the master bedroom laying on the bed with a handgun in his possession. He was ordered to release the weapon and subsequently placed in handcuffs. The officers conducted an investigation and, according to Mr. Palmer, quickly determined he was the lawful resident of the apartment. Mr. Palmer further alleges that despite learning he was the lawful resident, the officers continued to search his apartment seizing several guns. The officers then arrested Mr. Palmer, charging him with Assault in the First Degree; Menacing; and Prohibited Use of a Weapon.

Subsequently, Mr. Palmer filed this lawsuit alleging the officers abused their power and, with no facts pled, conspired to cover up their actions. Mr. Palmer seeks compensatory damages for the alleged harm he suffered, punitive damages, costs, and attorney's fees.

Mr. Palmer's version of the events, however, is significantly different than what the responding officers' observed. Specifically, Officers Swanberg and Gardner responded to a burglary in progress call at 1340 Michelle Court, Apartment J. They were advised that a person broke the glass out of a window and entered the apartment. Upon arrival a neighbor directed them to Mr. Palmer's apartment and told them the person was still inside. The officers identified themselves multiple times by shouting through the broken window. They received no response and, therefore, decided to enter the apartment. As the two officers entered, they continued to loudly announce themselves as police officers. The officers made their way to the master bedroom where they encountered Mr. Palmer laying on the bed with his back facing them. When they identified themselves again Mr. Palmer turned to face them and at the same time pointed his handgun at Officer Swanberg.

Both officers retreated down the hallway to take up a better tactical position. For several minutes they continued to identify themselves as police officers and Officer Swanberg continued to advise Mr. Palmer of the reason for their presence in the apartment. After several minutes, Mr. Palmer emerged from the bedroom and complied with the officer's orders.

Mr. Palmer was immediately handcuffed and taken to the police car for identification and further investigation. Shortly after he was placed in handcuffs, the officers discovered he was intoxicated. Additionally, as soon as Mr. Palmer was placed in the police car he became belligerent and combative. Thus, the officers had not yet determined whether he was lawfully in the home or not. By this time other officers arrived to conduct a "sweep" of the apartment to ensure there were no other suspects inside and to ensure no one inside was injured. While the officers were clearing the apartment, they discovered multiple guns in different areas of the apartment, all of which were in plain sight.

Upon further investigation the officers concluded that, although Mr. Palmer was intoxicated, he had the mental faculties to understand everything that had been occurring. Accordingly, they filed an affidavit of probable cause to arrest Mr. Palmer for assault and menacing because the officers loudly identified themselves multiple times before entering the home. And, most significantly, while inside and just a few feet from Mr. Palmer, they loudly identified themselves, but instead of complying with police orders, he looked at the officers and pointed his gun at them.

RECOMMENDATION

The Civil Action Investigation Committee met on September 29, 2014, and is recommending that the City represent Officers Carey, Gardner, and Swanberg 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 in good

faith during the alleged incident. As usual, it is recommended that the City reserve the right to not pay any award of punitive damages.

Very truly yours,

Michael K. Gendill
Senior Attorney, Litigation Department