



DATE: November 15, 2016

TO: Colorado Springs City Council

FROM: Office of the City Attorney

SUBJECT: *Ryan Brown; Benjamin Brown v. Colorado Springs, Colorado; David Nelson; Allison Detweiler; Steven Biscaro, Case No. 16-cv-2540-MJW, 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

Plaintiffs, brothers Ryan and Benjamin Brown, filed an action in the United States District Court for the District of Colorado alleging that Colorado Springs Police Officers David Nelson, Allison Detweiler and Sgt. Steven Biscaro conducted a "suspicionless traffic stop-and-frisk" motivated by race.

Plaintiffs are African-American males. On March 25, 2015, at approximately 11:10 a.m., Plaintiffs were driving close to home in what they allege is a predominantly white neighborhood. Officer Nelson spotted their vehicle—a black Chevy Cavalier with heavily tinted windows, a modified exhaust, a cracked windshield and a front license plate tucked into the dashboard. Officer Nelson had seen the same vehicle driving suspiciously slowly in a nearby high-crime area earlier in his shift that same day.

Officer Nelson activated the lights on his patrol vehicle and radioed to Officer Detweiler, who was in the area, to cover him on the stop. Plaintiffs pulled their vehicle over. Officer Nelson approached the driver's side window; Officer Detweiler, the passenger side. Officer Nelson asked Benjamin, the driver, for his license. Ryan, the passenger, instructed Benjamin not to give or tell Officer Nelson anything. Benjamin said his license was at his house. Ryan, the passenger, began placing his hands between his legs. Officer Nelson ordered both men to put their hands where he could see them. Benjamin complied, but Ryan did not.

Officer Nelson asked Benjamin for his information—name, etc. Ryan instructed Benjamin not to tell him. Officer Nelson asked Ryan for his identification; Ryan refused to provide it. Ryan continued to place his hands where the officers could not see them, despite Officer Nelson’s repeated orders to keep them in view. Officer Nelson began to fear for the officers’ safety. He asked dispatch to send another officer to the scene.

Officer Nelson ordered Benjamin from the car. Ryan instructed Benjamin not to get out. Benjamin did not move. Officer Nelson asked Benjamin to exit the vehicle a second time. Ryan again instructed Benjamin to stay in the car, and he put his hand across Benjamin’s chest. Officer Nelson then unholstered his taser and turned it on. At that point, Officer Detweiler pulled her service weapon, providing cover, because she did not know what Officer Nelson had witnessed in the car. She asked Ryan a number of times to put his hands where she could see them, although the heavily tinted windows made it difficult to see inside the vehicle. Benjamin exited the vehicle. At this point, Ryan began filming the incident on his cell phone. Officer Nelson continued to ask Ryan for his identification; Ryan refused to provide it. Officer Nelson patted Benjamin down for weapons, handcuffed him and walked him to his cruiser, where he seated Benjamin in the backseat.

Officer Nelson then approached the passenger side door of Plaintiffs’ vehicle. As he approached, Ryan locked the passenger side door. He then unlocked it. Officer Detweiler opened the passenger side door. Because Ryan did not move, Officer Nelson undid Ryan’s seatbelt. Ryan asked, “Am I under arrest?” Officers Detweiler and Nelson explained, “You’re not under arrest. We just want to check you for weapons.” Officer Nelson held Ryan by the right wrist, inviting him to exit the car. Ryan did not move and pulled away from Officer Nelson. Officer Nelson guided Ryan from the vehicle, put him on the ground, tossed Ryan’s phone to the side, handcuffed Ryan, and then stood him up. Ryan was patted down for weapons and then walked to Officer Detweiler’s cruiser, where he was seated in the backseat. Neither Plaintiff complained of or displayed any injuries.

Sgt. Biscaro arrived on scene after both Plaintiffs were secured in the police cruisers. He spoke to the officers and the Plaintiffs. Officer Detweiler cited Ryan with Resisting, Interference with Public Official (City Code § 9.3.101). Officer Nelson cited Benjamin with Obstruction of View or Driving Mechanism (City Code § 10.23.101). Both Plaintiffs were served and released from the scene. The entire incident was over in 30 to 40 minutes.

Benjamin pled guilty to the Obstruction of View charge. The prosecutor dropped the charge against Ryan.

Plaintiffs assert the following claims under 42 U.S.C. § 1983 against Officers Nelson, Detweiler, and Biscaro:

- Equal protection, alleging that race was a motivating factor in the decisions to stop, detain, threaten with weapons, search and charge Plaintiffs;
- Unlawful seizure, alleging that both the initial stop and the arrests of Plaintiffs were unlawful;
- Unlawful search, alleging that the searches of the Plaintiffs were unlawful; and
- Excessive force, alleging that Ryan was “slammed” to the ground and held at gunpoint and in handcuffs and that Benjamin was threatened with a taser and held in handcuffs.

Plaintiffs assert these same four claims against the City, alleging that the City has an informal custom of conducting “suspicionless traffic stop-and-frisks” on minorities, that Sgt. Biscaro—a purported “final policymaker” for the City—ratified the Officers’ conduct, and that the City failed to properly train or supervise these officers.

Ryan Brown also asserts a Section 1983 claim against Officers Nelson and Detweiler for First Amendment retaliation, alleging that they used force, searched, and arrested Ryan in retaliation for his protected expressive activity. Ryan Brown also asserts a Section 1983 malicious prosecution claim against Officers Nelson, Biscaro and Detweiler, alleging that they charged him without probable cause.

Plaintiffs are seeking an unspecified amount of money to include damages for emotional distress, loss of reputation, humiliation, loss of enjoyment of life, and other pain and suffering; economic damages; punitive damages; attorney fees and costs; and pre- and post-judgment interest.

RECOMMENDATION

The Civil Action Investigation Committee met on November 15, 2016, 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 to not pay any award of punitive damages.