



**DATE:** June 8, 2021

**TO:** Colorado Springs City Council

**FROM:** Office of the City Attorney

**SUBJECT:** *John Mullins v. The City of Colorado Springs, Brian Kelly, Christopher Mace, Mark Neuenfeldt and John Does (1-5) 21-CV-00589*

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

### **NATURE OF THE CASE**

Plaintiff, John Mullins, by and through his attorney, brought this claim, in U.S. District Court, District of Colorado, alleging that Officers Kelly, Mace, and Neuenfeldt and the City of Colorado Springs violated his rights pursuant to the Fourth Amendment of United States Constitution. Specifically, Plaintiff claims that officers used excessive force when a police canine bit him as he exited the shower of his home. Plaintiff also claims the Colorado Springs Police Department, ("CSPD") failed to train its officers with respect to the use of canines and the Fourth Amendment.

Plaintiff alleges that on February 27, 2019, a team of CSPD officers gathered outside of his home to arrest him and search his house. He claims that he was in the shower and did not hear any warnings or know that the officers were there until after the canine found and bit him. According to Plaintiff, the canine was allowed to continue biting him after it was clear he did not pose a threat to officers. He alleges that it was unnecessary and excessive to use the canine under the circumstances. He further claims that the officers involved were acting in accordance with their training and an unofficial custom or policy at CSPD that condones officers using excessive force in situations like this one. Plaintiff is asking for compensatory, economic, consequential, and punitive damages as well as fees and costs.

According to reports, on February 27, 2019, at about 10:05 a.m., CSPD Officers, including Defendant Officers and canine ("Broc"), gathered outside of 2940 Mirage Drive with a search warrant for the residence and an arrest warrant for Plaintiff. Officers based their decision to utilize a canine in part due to Plaintiff's violent criminal history

and his history of fighting with or running from police officers. Detective Mace knocked on the door and spoke with Plaintiff's roommate who was escorted from the house without incident. Detective Mace then began calling into the house for Plaintiff and his mother to come to the door. Plaintiff's mother complied and was also escorted from the residence. Detective Mace continued to shout commands for Plaintiff to come to the door. However, Plaintiff did not respond. K9 Officer Kelly then gave four loud warnings indicating that if Plaintiff did not come out, he would release Broc. Officer Kelly warned Plaintiff that if released, Broc would find and bite him. With no response from Plaintiff, Officer Kelly released Broc. Broc found Plaintiff in the upstairs bathroom and bit and held him there until officers arrived moments later. Once Officer Kelly determined that Plaintiff was not a threat, he ordered Broc to release Plaintiff. However, because Plaintiff was struggling with Broc he did not immediately let go. Broc did let go when Plaintiff released him. Officers applied first aid until paramedics arrived and took Plaintiff to the hospital. Plaintiff was later arrested on the charges contained in the warrant.

### **RECOMMENDATION**

The Civil Action Investigation Committee has recommended that the City represent the above-named 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 were acting in good faith. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.