



DATE: April 12, 2023

TO: City Council

FROM: Office of the City Attorney and the Civil Action Investigation Committee

SUBJECT: *Michael Sexton and Jazzmen Lueders v. City of Colorado Springs, Colorado, Christine Somersalmi, and Eddie Nassar*, No. 23-cv-555-NYW-STV, United States District Court, District of Colorado

This memorandum apprises you of the facts alleged in the above-referenced case as you consider the claims made against Sgt. Somersalmi and Ofc. Nassar.

NATURE OF THE CASE

Plaintiffs' complaint arises out of Sgt. Somersalmi's and Ofc. Nassar's arrest of Michael Sexton and Jazzmen Lueders on April 2, 2021.

On that date, at about 1:30 AM, a private security guard for the Natural Grocers store at 1604 S. Nevada Avenue called CSPD to ask for help removing trespassers on the property. He reported that there was a hostile couple in a van parked in the dirt lot behind the store who were refusing to leave when asked.

Sgt. Somersalmi arrived, approached the van, and announced, "Police department. Come on out." A male (later determined to be Sexton) conversed with Sgt. Somersalmi through the van window. Sgt. Somersalmi informed Sexton that he was trespassing on private property; both the security guard and she had lawfully given him notice that he was trespassing. Sexton said that she would have to threaten him with arrest to get him to move. Thus, Sgt. Somersalmi told Sexton he would be arrested if he did not leave. Sexton then demanded to speak with her supervisor. Sgt. Somersalmi identified herself as a supervisor. Sexton requested her supervisor's contact information, and she agreed to give it to him. But in the meantime, he would have to exit the vehicle. Sexton then closed the van window.

Sgt. Somersalmi knocked on the van window again and told Sexton he would have to come out or she would break the window and pull him out. Sexton said she didn't have to do that. She gave another order for him to come out. Sexton opened the window, stated he was not coming out, told her to get her supervisor, and shut the window.

Sgt. Somersalmi again identified herself as a supervisor and told Sexton he was under arrest for obstruction. Sexton said, "No, the fuck I'm not." She again asked him to come out of the

van. Sexton asked, "Do you know who I am?" Sgt. Somersalmi responded, "I would love to know who you are." At approximately this time, Officer Nassar arrived on scene.

After more back and forth talking, including Sexton telling Sgt. Somersalmi that she was violating his rights at two o'clock in the morning, Sgt. Somersalmi ordered Sexton to exit the van and stated that if he didn't comply, the window would be broken, he would be pulled out, his vehicle would be impounded, and he would be arrested. Sexton asked, "For what?" Again, Sgt. Somersalmi told him for obstruction and trespassing, and she asked him to please step outside.

Sexton finally exited the van and swiftly approached Sgt. Somersalmi while filming with his phone. She backed up to create distance as he aggressively approached her. The female (later identified as Jazzmen Lueders) also came out of the van, swearing at Sgt. Somersalmi. Sexton told Sgt. Somersalmi to get away from his "fucking vehicle." Sgt. Somersalmi reached for Sexton's wrist to place him in handcuffs, and he immediately began screaming at her and backing away.

Sgt. Somersalmi advised Sexton that he was under arrest and grabbed his right wrist as he pulled away. She told Sexton not to fight and not to resist. Sgt. Somersalmi was pulled off balance as he tried to get away and told Sexton to get on the ground. With Officer Nassar, Sgt. Somersalmi pulled Sexton to the ground, where Sexton continued to resist by not allowing the officers to put his hands behind his back. The officers commanded Sexton to "stop resisting." Sgt. Somersalmi ultimately was able to bring his right arm behind his back; Officer Nassar restrained the left arm, and they handcuffed Sexton.

Meanwhile, Lueders was directly behind Sgt. Somersalmi during her struggle with Sexton, screaming at Sgt. Somersalmi, cursing, and filming. Sgt. Somersalmi ordered Lueders to stay back, but Lueders didn't comply. Sgt. Somersalmi told Lueders that she was under arrest and ordered her to face the van. Lueders stated, "No," and continued to scream at Sgt. Somersalmi to get off Sexton. Sgt. Somersalmi again told Lueders to move back or she would be pepper sprayed. Lueders then did back up some.

After Sexton was handcuffed, Sgt. Somersalmi approached Lueders and told her to turn around. Lueders said, "No," and began backing up. Sgt. Somersalmi secured Lueders' right arm and told her to put her arms behind her back. Lueders refused and began thrashing her arms, trying to pull away. Lueders was ordered to get on the ground, but Lueders braced herself and pulled away. Sgt. Somersalmi and Officer Nassar took Lueders to the ground, and after more struggling, ultimately got her handcuffed.

Medical did respond to the scene and both Sexton and Lueders were offered treatment. They both declined.

Sexton and Lueders were charged with third degree criminal trespass, obstruction of a peace officer, and resisting arrest. They were served with the summonses and released at the scene.

Later that same night, Sexton went to Penrose Hospital complaining of right shoulder pain. He was diagnosed with a fractured humerus (upper arm/shoulder bone).

Sexton and Lueders sued the officers and the City on March 1, 2023, asserting the following claims:

1. 42 U.S.C. § 1983 – First Amendment Free Speech
2. 42 U.S.C. § 1983 – First Amendment Retaliation
3. 42 U.S.C. § 1983 – Fourth Amendment Excessive Force
4. Colo. Rev. Stat. § 13-21-131 – Colorado Constitution Free Speech
5. Colo. Rev. Stat. § 13-21-131 – Colorado Constitution Excessive Force

They seek unspecified declaratory, equitable and injunctive relief; economic and non-economic damages; punitive damages; interest; and attorney's fees and costs.

RECOMMENDATION

The Civil Action Investigation Committee has met and recommends that the City represent Sgt. Somersalmi and Ofc. Nasser as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. They both were acting in the course and scope of their employment and not in a willful and wanton manner. As usual, City Council should reserve the right not to pay any award of punitive damages.