



DATE: November 17, 2023

TO: City Council

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

SUBJECT: *Jacqueline Armendariz and Chinook Center v. City of Colorado Springs, Daniel Summey, B.K. Steckler, Jason S. Otero, Roy A. Ditzler, Federal Bureau of Investigation, No. 23-cv-01951-CNS-MDB, 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 Lt. Roy Ditzler, Sgt. Jason Otero, and Ofc. Steckler.

NATURE OF THE CASE

Plaintiffs' complaint arises out of the search and seizure of Jacqueline Armendariz's digital devices (her computers, phones, and external storage devices) and of the Chinook Center's Facebook page pursuant to search warrants.

The Chinook Center organized, and Ms. Armendariz participated in, a housing rights march in Colorado Springs on July 31, 2021. Because the marchers walked in the middle of the street, rather than on the sidewalks as repeatedly ordered, CSPD officers began arresting the march leaders. Ms. Armendariz was recorded on video throwing her bicycle at a CSPD officer who was approaching the crowd to assist with arrests.

Following the march, FBI Task Force Officer ("FTO") Daniel Summey authored, and Lt. Ditzler approved, a 15-page affidavit demonstrating probable cause to believe that Ms. Armendariz committed attempted assault on a peace officer. FTO Summey attached the affidavit to an arrest warrant for Ms. Armendariz and a search warrant for Ms. Armendariz's apartment. The search warrant sought to seize the attire she was seen wearing on the day of the march, the bicycle she was seen throwing at the officer, and "[d]igital media storage devices, to include phones, computers, tablets, thumb drives, and external hard drives." FTO Summey sought the digital devices based on his knowledge that "people who engage in illegal protest activity frequently carry their phones with them to take photos of their activity and message others who are also participating in illegal protest activity," and that such people download such data to computers and digital storage devices. A Colorado State Court Judge issued both the arrest and the search warrant.

Many digital devices were seized from Ms. Armendariz's apartment. Accordingly, FTO Summey applied for another search warrant to search those devices for photos, videos, messages, emails, and location data between June 5, 2021 and August 7, 2021 for evidence of "any planning leading up to the crime, the period when the crime took place, and the subsequent taking of credit for committing a violent act against a police officer." The warrant also specified search terms to run on the devices to capture evidence relevant to the investigation. A Colorado State Court Judge again issued the search warrant authorizing the search of Ms. Armendariz's digital devices.

FTO Summey reviewed the evidence collected from Ms. Armendariz's digital devices and found several items that were relevant to her case. For example, on the day of the march, Ms. Armendariz sent a text message admitting that she deliberately threw her "bike to trip a cop." Ultimately, Ms. Armendariz pled guilty or no contest to obstruction of a peace officer.

Separately, Detective Bradley Steckler prepared a search warrant affidavit for the subscriber information, posts, Messenger chats, and events on the Chinook Center's Facebook page between July 27, 2021 and August 2, 2021. In it, Det. Steckler averred that in his "experience people involved in illegal demonstrations use social media to organize planned events," that he believed the Chinook Center organized the march, and that he believed information from its Facebook page would be material evidence in a subsequent criminal prosecution. Sgt. Otero allegedly reviewed and approved Det. Steckler's search warrant affidavit. Again, a Colorado State Court Judge agreed and issued the warrant.

In their complaint, Plaintiffs allege that CSPD targeted them because of disagreement with their social justice message. They contend that the warrants were unsupported by probable cause and failed to identify with particularity the information to search for and seize. In other words, Plaintiffs contend that CSPD sought unlimited general warrants that authorized them to rummage through Plaintiffs' personal belongings and information.

Plaintiffs sue Lt. Ditzler, Sgt. Otero, and Det. Steckler alleging violations of their free speech rights and for unreasonable searches and seizures under the First and Fourth Amendments to the United States Constitution and, pursuant to C.R.S. § 13-21-131, the corresponding sections of the Colorado Constitution. The Chinook Center also sues Sgt. Otero and Det. Steckler for allegedly violating the Stored Communications Act. Plaintiffs seek compensatory and punitive damages.

FTO Summey is being represented by the U.S. Attorney's Office.

RECOMMENDATION

The Civil Action Investigation Committee has met and recommends that the City represent Lt. Ditzler, Sgt. Otero, and Det. Steckler as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. They all 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.