



**Request for City Council Committee Action
From the City Attorney's Office**

Date: April 28, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Larry Wells v. City of Minneapolis, et al.
File No. PI 04-001246

Recommendation: That the City Council approve the settlement of this case by payment of \$45,874.75 payable to Larry Wells and his attorney, Larry Reed, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: C. Lynne Fundingsland, Assistant City Attorney Phone: 673-3339

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

On March 20, 2002, at approximately 1:00 a.m., Minneapolis Police Officers Case and Suker were on routine patrol in the area of 39th and Oakland in Minneapolis when they observed a vehicle parked in front of 3828 Oakland Avenue South. The officers pulled up alongside this vehicle and asked the driver if he lived in the area. The driver stated that he was from Rosemount. Officer Case then told the driver that he should leave the area. At that point, the driver spontaneously said, "Thanks ... I am sure you know I was probably trying to buy crack at Larry's house."

After the driver made the comment about "Larry's house", the officers believed that he was talking about 3852 Oakland Avenue South, which is the residence of the Plaintiff. The officers had worked that area of Minneapolis for a period of time and were aware that there had been many complaints from neighbors regarding Plaintiff's residence. The officers had been advised that the Plaintiff allowed people to smoke crack in his house and that there were gang members at his house who sold crack. At that point, the officers decided to go to Plaintiff's address and speak with the Plaintiff. Because the officers knew that the possibility existed that there may be guns inside the house as well as many other people, they asked Squad 323, Officers Costello and Steberg, to assist them.

The officers went to the side door of the house and knocked on the door. A female came to the door and asked the officers what they wanted. The officers told her that they were looking for Larry Wells. The female opened the door further and turned around as if she were going to find the Plaintiff. When she did this, Officer Case could see in plain view scattered over the floor numerous crack pipes and clear plastic wrappers consistent with those used to package crack cocaine. At this time, as the female turned around, the Plaintiff stepped into view. When the Plaintiff saw the officers standing in his house he turned and ran into an adjacent room. Because the officers had many complaints about narcotics as well as guns in the house, they felt that the Plaintiff may be trying to destroy evidence and/or get a weapon. At that time, they ran after the Plaintiff. There was a box of silver bullets sitting on top of the stove, which were in reach of the Plaintiff as he passed.

Officer Suker, who had come in the door second behind Case, observed the Plaintiff run into the kitchen. Suker chased the Plaintiff, who went into the living room and reached into the front of his pants. Suker, believing that Plaintiff may be going for a gun, pushed the Plaintiff forward into a wall causing him to hit his head. Suker immediately ran to the Plaintiff, grabbed him, and threw him to the ground while ordering him to show his hands. Plaintiff pulled his hands under his chest where they could not be seen. Suker gave Plaintiff several blows with a fist to the right side rib area. He again ordered Plaintiff to put his hands behind his back but the Plaintiff refused to do so. At this time, Officer Costello began assisting Suker in trying to restrain Plaintiff. Plaintiff would not comply with the officers' verbal commands so Costello gave the Plaintiff two to three leg strikes in his midsection and upper torso. Plaintiff was finally subdued and arrested.

Plaintiff sustained broken ribs and 10 stitches to his head as a result of his altercation with the police. He brought suit, alleging false arrest, assault, battery, and a § 1983 action, including a Monell claim. Plaintiff claims the police broke his door in order to enter his house. Plaintiff denied the use of drugs, or that he resisted arrest.

In the criminal charges against Plaintiff, a Rasmussen Hearing was held June 19, 2002, before the Honorable Steven Z. Lange. Following the Rasmussen Hearing, Judge Lange found that the entry and the search was unlawful and suppressed the evidence against Plaintiff.

On April 18, 2005, the parties attended a court-ordered mediation session, conducted by retired Hennepin County District Court Judge Myron Greenburg. In attendance at the mediation session for the City were: Council Member Barbara Johnson; Inspector Donald Harris; Officers Case, Costello, and Suker, and Assistant City Attorney C. Lynne Fundingsland. At this mediation, the parties reached a proposed settlement in the amount of \$45,874.75 for full and complete resolution of this matter. All parties attending the mediation are in favor of this proposed settlement. While the City and its officers have certain defenses to this action, in light of the prior ruling and Plaintiff's injuries, a jury could find in his favor. A verdict for the Plaintiff would mean that the City could then be responsible for the payment of attorney's fees. For these reasons, we recommend this proposed settlement.