

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO**

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO

**Civil Action No. 1:18-cv-03112-RBJ-STV  
Slatton v. Hopkins et al  
6/14/2019**

2019 JUN 14 PM 4:40

JEFFREY P. COLWELL  
CLERK

BY \_\_\_\_\_ DEP. CLK

**PRO SE PLAINTIFF’S RESPONSE TO FORT COLLINS CITY ATTORNEY’S MOTION/  
PENDING MOTION TO “STAY PENDING DISCOVERY”, MOTION TO QUASH AND  
REQUEST FOR REVIEW AND DISCLOSURE OF CERTAIN FORT COLLINS POLICE  
SERVICES RECORDS**

**BACKGROUND:**

SLATTON was wrongfully arrested on December 3rd, 2016, wrongfully imprisoned, and excessive amounts of force was used. The asserted charges were Third Degree Criminal Trespass, Obstructing a Peace Officer, and Resisting Arrest, C.R.S. §§ 18-4-504(1), 18-8- 104(1)(a) and 18-8-103(1)(b), respectively. All of the charges were dismissed before SLATTON’s defense trial began.

I interpret the motion the Attorneys are seeking as a challenge to my subpoena. In April, Plaintiff SLATTON submitted a records request to the Fort Collins Police Department. Receipt of the request was given yet a response with materials or any potential release was never given. Since the City Attorney is the one who could now produce the requested materials but is now actively trying to keep the Plaintiff from accessing them, the Plaintiff hereby motions the court to order that the records subpoenaed by Plaintiff SLATTON be released.

1.) Mr. Slatton moves this court to deny the Motion to “*Stay Pending*” and order that the records subpoenaed by his counsel be produced to the court as required by the subpoena *duces tecum (hereinafter SDT)* for *in camera* review and disclosure to the Plaintiff as appropriate under the law.

2.) Regarding Officer Hopkins, SLATTON has requested any and all material and information in FCPD possession concerning the Defendants—including, but not limited to that contained in personnel, Internal Affairs, and Performance Standards Unit files—related to (1) use of force and other acts of aggression or violence; (2) noncompliance with FCPD rules, regulations and policies or the law and (3); untruthfulness or other acts indicative of dishonesty. (ESSENTIAL: body camera footage, incident reports, and surveillance camera footage from Lincoln Event Center from the night of the incident.)

- 1) Use of Force and Other Acts of Aggression or Violence: The Fort Collins Police Services Policy Manual effective as of July 2014 (*hereinafter* FCPD Manual) and available at <http://www.fcgov.com/policy/pdf/policy-manual-7-14.pdf>, provides that both the use of a police baton and the use of OC spray are “Type 1” uses of force. FCPD Manual § 301.2.2. The manual also requires that whenever Type 1 force is used, the involved employees are to complete an Early Intervention System (*hereinafter* EIS) incident report. FCPD Manual §1021.5.1. Officer Hopkins used both a police baton and OC spray against [SLATTON] during the events preceding the charging of [SLATTON] in the matter at bar.
- 2) Noncompliance with FCPD Rules, Regulations and Policies or the Law: FCPD Manual § 308.2 authorizes officers to use control devices such as police batons and OC spray “to control subjects who are violent or who demonstrate the intent to be violent.” Section 308.7 explicitly states that OC Spray “shou[ld] not [] be used against individuals . . . who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.” FCPD Manual § 388.2 provides that off-duty officers may take reasonable action to minimize “an imminent threat of serious bodily injury or death or significant property damage.”

damage.” *See also* FCPD Manual § 420.2.1. Section 388.5 provides that, when reasonably possible, an officer “shall notify and receive approval of an agency supervisor” before taking any off-duty enforcement action. *See also* FCPD Manual § 420.2.1. C.R.S. §§ 18-1-707 and 18-8-804 provide for the use of reasonable force by peace officers according to adopted departmental policies. C.R.S. § 18-8-804 and FCPD Manual § 106.1 require all FCPD employees to comply with the departmental policies in the manual. The force used against SLATTON in this matter violated all of the foregoing provisions of the FCPD Policy Manual and Colorado law (not to mention the SLATTON’s rights under the U.S. and Colorado constitutions). Further, FCPD Manual § 106.2.1 provides that violations of the manual form the basis for administrative action and § 1020.8 shows that administrative action records are kept on file by the FCPD. Accordingly, it is reasonably likely that there exists material and information related to Officer Hopkins’ noncompliance with FCPD rules, regulations and policies or the law.

3) Untruthfulness or Other Acts Indicative of Dishonesty: Officer Hopkins made several statements in his report that were both malicious in nature were clearly contradicted by the footage from his own and Officer Barnes’ point of view (body worn) cameras.

Regarding Officer Barnes, SLATTON has requested any and all material and information in FCPD possession concerning the officer—including, but not limited to that contained in personnel, Internal Affairs and Performance Standards Unit files—related to use of force and other acts of aggression or violence. SLATTON incorporates by reference the FCPD Manual provisions detailed in ¶ 10.a.1), *supra*. Officer Hopkins used both a police baton and OC spray against SLATTON during the events preceding the charging of SLATTON in this matter; Officer Barnes was present and working together with Officer Hopkins at that time and was witness to Officer Hopkins’ use of force against SLATTON. Officer Barnes was therefore an employee involved in Type I use of force required to complete an EIS incident report per FCPD Manual § 1021.5.1. Officer Barnes was also involved with the shooting of a suspect by the FCPD in January of this year. *See* <http://kdvr.com/2017/01/21/police-shoot-burglary-suspect-in-ft-collins/>. Thus, there is a reasonable likelihood that material and information related to the use of force and other acts of aggression or violence by or otherwise involving Officer Barnes, exists.

SLATTON will limit his requested to material that goes to the issues of officer propensity for violence, officer propensity for misconduct and officer credibility. Given the assertions of excessive force, self-defense, failure to intervene, and untruthfulness, these issues are central to the SLATTON’s complaint evidence. SLATTON has laid out in the paragraphs above why the materials exist. They would assist his accountability and he has no other way to secure them. *See* ¶¶ 10.-13., *supra*. SLATTON is not asking for unfettered access to the FCPD’s files in the mere hope he might find something he could use for his defense. *See Neal* at \*3 (“without having seen the personnel files, the Court cannot imagine how Defendant could be more specific”). Further, compliance with his request would not unnecessarily impose on the FCPD, or Officers Hopkins, or Barnes, nor affect the ability of either the FCPD or the officers to perform their functions and duties, or otherwise be unreasonable or oppressive. *See Spykstra* at 664, 667; Crim. P. 17(c).

### CERTIFICATE OF SERVICE

On 6/14/2019 a copy of the foregoing document was sent via electronic service/email to all opposing counsel at:

[ratnerm@HallEvans.com](mailto:ratnerm@HallEvans.com) (Mark Ratner)

[MKloster@ndm-law.com](mailto:MKloster@ndm-law.com) (Marni Kloster)

[NPoppe@ndm-law.com](mailto:NPoppe@ndm-law.com) (Nicholas Poppe)

APPLICABLE LAW

(1.)

An SDT may be issued by counsel for the plaintiff commanding the person(s) to whom it is directed to “produce at that time and place such books, papers, documents, photographs or other objects as detailed therein. “

(2.)

- *People v. Spykstra* — When such a challenge is made, the plaintiff must demonstrate to the court that:
    - 1. there is a reasonable likelihood that the subpoenaed materials exist, by setting forth a specific factual basis;
    - 2. the materials are evidentiary and relevant;<sup>1</sup>
    - 3. the materials are not otherwise procurable reasonably in advance of trial by the exercise of due diligence;
    - 4. the [plaintiff] cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and
    - 5.. the application is made in good faith and is not intended as a general fishing expedition.
- Spykstra* at 669.