

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made by and among Ryan Brown and Benjamin Brown (collectively "Plaintiffs") and the City of Colorado Springs. Plaintiffs and the City of Colorado Springs shall be referred to collectively as the "Parties", except where otherwise specified.

RECITALS

A. On March 25, 2015, Plaintiffs were driving in Colorado Springs, Colorado. City of Colorado Springs police officers conducted a traffic stop of Plaintiffs' vehicle (the "Incident").

B. On October 12, 2016, Plaintiffs filed a Complaint in the United States District Court for the District of Colorado against the police officers and the City of Colorado Springs, at civil action number 16-cv-02540-WYD-MJW (the "Lawsuit"). The Lawsuit arose out of the Incident.

C. The Parties deem it to be in their best interest to reach a complete resolution of any and all claims (the "Claims") that Plaintiffs may have against the City of Colorado Springs and any of its current or former entities, elected officials, officers, employers, successors, assigns, attorneys, employees, agents and servants occurring up to the date of this Agreement on the terms set forth herein.

AGREEMENT AND RELEASE

Release, Covenant Not to Sue, Hold Harmless, Indemnification and Dismissal of Lawsuit

1. Plaintiffs agree irrevocably and unconditionally to release and forever discharge the City of Colorado Springs, the Colorado Springs Police Department, and any of their current or former entities, elected officials, officers, employers, successors, assigns, attorneys, employees, agents and servants (collectively and hereinafter, the "City") from any and all claims pursuant to any federal or state statute, constitution, common law, contract or otherwise, or in equity, known and unknown, foreseen and unforeseen related to the Claims.

2. Plaintiffs represent and warrant that, other than that which is set forth in the Recitals to this Agreement, they have not filed or caused to be filed or asserted the Claims with any court or agency and agree that they will not file against City the Claims in or with any court or agency. Plaintiffs hereby declare and represent that, with the exception set out herein, no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the Claims, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed. In the event City is subjected to further demands related to the Claims by any person, firm, or corporation under any actual or purported lien or right of substitution, including any lien for medical expenses, attorney fees or costs, Plaintiffs will hold City harmless from any such claims or demands and indemnify and defend City from any judgment obtained by reason of such purported lien or right of substitution.

3. Plaintiffs understand and agree that they are solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided pursuant to it. Plaintiffs agree that City has provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or its tax reporting or payment obligations for the monetary consideration set out herein.

4. Plaintiffs further warrant that they fully realize that they may have sustained unknown and unforeseen losses; fees; costs; or expenses and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by Plaintiffs, which resulted or may or will result from the above-mentioned Claims and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this Agreement was executed without reliance upon any statement or representation by City, and Plaintiffs are legally competent to execute this Agreement. Plaintiffs accept full responsibility and assume the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, known or unknown, and all matters incident and related thereto applicable to the Claims and any potential claims Plaintiffs have or may have against the City.

5. As part of the consideration for this Agreement, Plaintiffs have authorized and instructed their attorneys to execute and file a stipulated motion to dismiss the Lawsuit with prejudice. Upon receipt of the payment set forth in paragraph 6, Plaintiffs will dismiss the Lawsuit with prejudice within fifteen (15) days. Plaintiffs understand and agree that this Agreement prevents any appeal of any of the dismissals, stipulated or otherwise, against any of the Parties or for any of the Claims made in the Lawsuit.

Consideration

6. Within fifteen (15) days of the execution of this Agreement, the City of Colorado Springs agrees to pay the total amount of TWO HUNDRED TWELVE THOUSAND DOLLARS (\$212,000.00) (the "Settlement Sum"). The City will tender three checks in the following amounts made payable as listed below:

- a. A check made payable to the ACLU Foundation of Colorado in the amount of \$58,707.40;
- b. A check made payable to Ryan Brown in the amount of \$76,646.30; and
- c. A check made payable to Benjamin Brown in the amount of \$76,646.30.

7. By July 1, 2017, the City of Colorado Springs will implement Colorado Springs Police Department General Orders 743, 755 and 1551 in the form of **Attachment A**.

8. By July 1, 2017, the City of Colorado Springs will make the following Colorado Springs Police Department General Orders publicly available at <https://cspd.coloradosprings.gov/>:

705 Use of Force
710 Reporting Use of Force
743 Search Warrants
755 Field Interviews
1301 Treatment of the Public
1303 Bias Based Profiling Prohibited
1551 Recording of Police Activity
1650 Employee Conduct
1655 Police Officer Conduct

9. Within sixty (60) days of the execution of this Agreement, the Colorado Springs Chief of Police will meet with Plaintiffs for up to an hour at a time convenient to the Parties. An attorney for each of the Parties may attend the meeting.

10. It is agreed that consideration for this Agreement as set forth herein, shall be full and final payment for all Claims released herein and all claims that might have been asserted for the actual physical, emotional and economic injuries suffered by Plaintiffs in any state or federal judicial or administrative forum up to the date of execution of this Agreement, including any claims for attorney fees and costs.

Voluntariness, Denial of Liability, Entire Agreement

11. Plaintiffs have carefully read the above and foregoing Agreement and know the contents thereof and have signed the same as their free and voluntary act and after having the opportunity to have the same explained by counsel. Plaintiffs expressly state that they have been advised of their right to consult additional professionals of their choice, including lawyers and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, which Plaintiffs may have or will incur, whether suspected or unsuspected. Plaintiffs further expressly understand and agree that the signing of this Agreement shall be forever binding and no rescission, modification, or release of Plaintiffs from the terms of this Agreement will be made for any mistake.

12. It is expressly understood and agreed that the acceptance of the above-mentioned consideration is in full accord and satisfaction of disputed claims and is not to be construed in any way as an admission of liability on the part of City, but, to the contrary, City specifically asserts that no wrongdoing, misconduct, or liability on account of the Incident or any matters related or incidental thereto, or otherwise, occurred or was established in a court of law, and it is further understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and that the terms of this Agreement are contractual and not mere recitals.

13. This Agreement is not intended to be an admission of any fact or issue alleged by any party relating to the Claims and, with the exception of a claim related to breach or enforcement of this Agreement, this Agreement is not intended to be evidence in any other matter.

14. This Agreement, once executed, including the Recitals and all attachments to this Agreement, contain the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties.

15. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument representing this Agreement of the Parties to this Agreement.

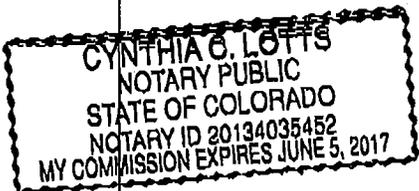
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16. Plaintiffs certify that they have fully read and understand the foregoing Agreement and hereby affix their signatures this 24 day of March, 2017, as their own free and voluntary acts.

[Signature]
RYAN BROWN

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

SWORN TO AND SUBSCRIBED by Ryan Brown this 24th day of March, 2017. WITNESS my hand and official seal.

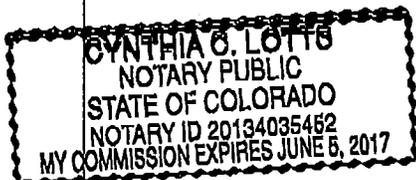


Cynthia C. Lotts
Notary Public

[Signature]
BENJAMIN BROWN

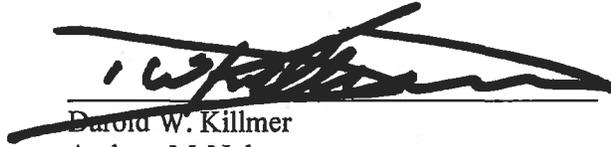
STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

SWORN TO AND SUBSCRIBED by Benjamin Brown this 24th day of March, 2017. WITNESS my hand and official seal.



Cynthia C. Lotts
Notary Public

I, David W. Killmer, as attorney for Ryan Brown and Benjamin Brown, have reviewed the within Settlement Agreement and Release with my clients and have fully explained each and every term, condition, limitation, and obligation set forth herein to Ryan Brown and Benjamin Brown and believe that they are competent and understand the same, and I further signify my approval of the within Settlement Agreement and Release by my signature below.



Date signed: 3/24/17

David W. Killmer
Andrew McNulty
Killmer, Lane & Newman LLP
1543 Champa Street, Suite 400
Denver, Colorado 80202

Mark Silverstein
Rebecca T. Wallace
Sara R. Neel
American Civil Liberties Union Foundation of Colorado
303 East 17th Avenue, Suite 350
Denver, Colorado 80218

The City of Colorado Springs



John W. Suthers
Mayor

Date signed: 4/17/2017

Approved as to form:



Anne H. Turner, Esq.
Senior Attorney



**Colorado Springs Police Department
General Order 743**

Section 7: Search Warrants -- Force, Detention, and Arrest

Active Date: 1/9/2013
Supersedes Date: 3/12/2001

Approved
Peter Carey
General Order

.1 Purpose

To specify procedures for obtaining and executing search warrants.

.2 Cross Reference

GO 740, Determining Probable Cause

GO 330, Damage to Non-Police Property

GO 880, Deconfliction

GO 1330, Ride-Along Program

SOP P1-166, Search Warrant Checklist

SOP M1-33, Raid Procedures

SOP M1-02, Handling of Affidavits for 41.1 Orders: Search and Arrest Warrants

SOP M1-16, Electronic Warrants

SOP I2-02, Handling of Affidavits for 41.1 Orders Search and Arrest Warrants

SOP II-17, Fax Warrants

.3 Discussion

The nucleus of the Fourth Amendment is the warrant requirement and the essence of the warrant requirement is probable cause. A search warrant must be obtained to search areas where a person has a reasonable expectation of privacy (e.g. a home) unless a recognized exception to the warrant requirement exists.

Note: Colorado law pertaining to arrests, searches, and seizures is contained in Article 3, Title 16, of the Colorado Revised Statutes. The present General Order provides guidance for implementing its provisions concerning searches, but familiarity with the applicable statutes is essential. Every sworn member of the Department, regardless of present assignment, is expected to know the provisions of that Article thoroughly.

.4 Policy

The Colorado Springs Police Department will exercise utmost care to respect personal and property rights by following carefully-defined procedures in obtaining and executing all search warrants. Execution will be carried out thoroughly and vigorously, but with the minimum of force necessary to fulfill legitimate police purposes.

.5 Definitions

AFFIANT: A person who swears under oath that the information contained in the affidavit is true. This is usually an officer.

AFFIDAVIT: A document stating facts under oath that give probable cause to believe that a crime has occurred and that certain crime-related evidence is located in a specific place.

SEARCH WARRANT: An order, in writing, from a court of record that permits a peace officer to search a particular place or person for crime-related evidence. It must be based upon probable cause.

.10 Authority to Search with Warrant

In compliance with Article 3, of Title 16, Colorado Revised Statutes, a search warrant shall issue only on affidavit sworn to or affirmed before the judge and relating facts sufficient to:

- Identify or describe, as nearly as may be, the person or property to be searched for, seized, or inspected;
- Identify or describe, as nearly as may be, the premises, person, place or thing to be searched;
- Establish the grounds for the issuance of the warrant or probable cause to believe that such grounds exist;
- Establish probable cause (see GO 740) to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

All officers and detectives will use the standard approved forms available when completing the face sheet, application, affidavit and attachments necessary to obtain a search warrant.

.18 Authorization to Search for Controlled Substances

All search warrant affidavits that are specifically requesting authorization to search for controlled substances shall be coordinated with the Metro Vice, Narcotics, and Intelligence Division. Contact with an on-duty or on-call supervisor assigned to Metro VNI should be made, as soon as possible, so that detectives may assist, if necessary, with the preparation of the affidavit, assist with efforts to corroborate information, assist with surveillance measures, and ensure that the warrant does not interfere with an on-going Metro VNI investigation. (See G.O. 880 on Deconfliction.)

.20 Entry Into a Private Dwelling to Make a Search

After obtaining a search warrant, and having it physically in their possession, officers may enter a private dwelling to conduct a search in accordance with the following procedures.

No member of the news media, nor any other third party other than a member of the CSPD or other law enforcement official, then in the performance of official duties, will be permitted to accompany officers of the Colorado Springs Police Department into a private dwelling, or a private office that is not open to the general public, during the execution of a search warrant without the specific, prior approval of the lawful owner or occupant of those premises.

Exceptions may be made on a case-by-case basis for persons whose presence is critical to the accomplishment of the search warrant, such as contractors employing specialized technical skills, victims/witnesses who are critical to the identification of persons or property being sought, and like circumstances.

.21 Promptness of Search

Search warrants should be executed as promptly as practical and not later than 14 days after issuance. Unnecessary delays should be avoided. If a search warrant has expired prior to execution, a new search warrant should be applied for.

.22 Preliminary Measures

Except when a "no-knock warrant" has been obtained, as described in paragraphs .40 through .44 below, certain actions are required before attempting entry:

- Knock on the door and announce your authority and purpose

- Demand entrance.
- Wait a reasonable amount of time.

.24 Manner of Entry

The manner of entry to conduct the search will depend upon the response of the person against whom the search is directed. If the person complies with the entry demand, the officers may enter immediately and conduct the search. If the person audibly refuses to comply, an immediate forcible entry may be made. The degree of force used must be reasonable; that is, it must be sufficient to promptly and safely gain access, but no more. Ordinarily, this means breaking open the door.

Devices such as pry bars, axes, battering rams and sledge hammers may be used, if necessary, to make immediate entry. If the person behind the door remains silent or responds ambiguously to the entry demand, officers must wait a reasonable time before making a forcible entry. Examples of ambiguous responses include:

- "I'm getting dressed."
- "Take it easy."
- "What's the rush?"

A reasonable time depends upon the circumstances, and particularly with regard to the object of the search. What may be reasonable with respect to stolen typewriters may not be reasonable if gambling records on flash paper or water-soluble paper are sought. A good rule of thumb is thirty seconds, but this time will be less if highly disposable evidence is involved. If, during the announcement procedure, the officers have reason to believe they or others will be endangered by further delay, or that the occupant is escaping, or that no occupant intends to voluntarily admit officers, or that the evidence sought is in the process of being destroyed or in immediate danger of being destroyed, an immediate entry may be made. Officers are under no obligation to argue or negotiate with a person whose property is to be searched, nor should they display credentials through peep holes, slide a copy of the warrant under the door or otherwise delay the execution of the warrant beyond the procedure described above.

.26 Exigent Circumstances

At times, before officers can "Knock and Announce" during the execution of a "Knock and Announce" search warrant, unanticipated, exigent circumstances may develop that provide the officers with probable cause to believe that:

- Evidence subject to seizure is about to be destroyed or disposed of; or
- The lives or safety of the officers or other persons are in jeopardy; or
- A party to be arrested is attempting to escape.

In these circumstances, an unannounced entry may be made. However, in the case supplement, following the execution of the warrant, the officer must describe in specific written detail the probable cause that led him/her to believe that one or more of the above exigent circumstances was occurring or was about to occur.

.30 Scope of Search

After having made entry, officers should take whatever reasonable steps are necessary to protect themselves. They may control the movements of persons found inside the premises and may frisk such persons for weapons on a reasonable suspicion that they are armed. Persons found within the premises may not be searched for evidence described in the warrant unless those persons are specifically described in the warrant. Therefore, if the items sought are apt to be concealed on persons thought to be in the premises, those persons should be named in the warrant.

Generally speaking, persons found on premises when a search warrant is executed or persons that show up during the execution of the search warrant should be allowed to leave if they desire, unless they are named in the search warrant or probable cause to arrest exists. However, officers executing a search warrant for contraband (e.g. drugs) may normally detain persons present who are associated with the premises. Additionally, persons present during the execution of a search warrant may be detained if officers have a reasonable belief that those persons may alert other persons, thus allowing the escape of others or the destruction of other evidence that officers may have probable cause to arrest or search for based upon items discovered, or not discovered, during the present search (for example during the execution of multiple search warrants).

The search may extend to all places within the premises where the evidence or the person sought could reasonably be concealed. Such places may include personal property found on the premises described, such as duffel bags, suitcases and automobiles. The scope of the search, therefore, is directly related to and is controlled by the objective of the search. Officers are under no obligation to begin or end the search at any particular place within the premises.

.32 Duration of Search

A search under warrant must be terminated when the evidence described in the warrant has been found and seized. If one of several items described in the warrant has been discovered, the search may continue for other evidence. If no evidence is found, the search must end when the officers have exhausted all possibilities as to where the evidence could be concealed.

.34 Intensity of Search

The search warrant is not a license to destroy or harass individuals. However, under certain circumstances it will permit a highly intensive search which disrupts or damages property. Thus, a floor may be pulled up, or a wall torn down, or a garden dug up, if officers have a reasonable

belief that the evidence sought under the warrant has been concealed in such a place. That belief should be detailed in the affidavit for the search warrant.

.36 Plain View Doctrine

If officers are lawfully executing a search warrant, and within the scope of that search warrant they observe evidence in plain view, such evidence may be seized, even though it is not described in the warrant and not relevant to the offense under investigation provided that the officers have probable cause at the time of the discovery to believe that the item(s) is either contraband or crime-related. In major cases, it is a good idea for officers to consider obtaining an additional warrant prior to seizing these items.

.40 No-Knock Search Warrants

The legality and use of no-knock search warrants has been affirmed by the Colorado Supreme Court. Additionally, CRS 16-3-303 addresses the issuance of No-Knock search warrants. A No-Knock search warrant means a search warrant served by entry without prior identification.

In preparing the affidavit for a no-knock warrant, the affiant must cite specific probable cause to believe that:

- The subject or subjects inside the premises to be searched will destroy or dispose of evidence sought by the warrant; or
- The subject/subjects inside the premises are armed and dangerous and that announcing entry would endanger the lives and/or safety of officers and/or other persons; or
- Announcing entry would cause the subject/subjects in the premises, who are to be arrested, to escape.

Information that may substantiate the need for a no-knock warrant may be found in many ways, including:

Criminal History of Suspect. A check of criminal history may disclose that suspect has been convicted of assault. The fact that the suspect has displayed a tendency toward violence in the past may assist the application for a no-knock search warrant.

Firearms Sales Records: Information demonstrating that the suspect has purchased a firearm or is in possession of a firearm. This information, coupled with a propensity toward violence, may afford the affiant sufficient probable cause for a no-knock warrant.

Informant/Witness Statements: A debriefing of confidential informants, and/or witnesses, may disclose information for probable cause. For example, a suspect may have told an informant/witness that s/he keeps his/her drugs packaged in small containers that can be easily disposed of by flushing in a toilet or using a garbage disposal. A suspect may have indicated that s/he will shoot it out with police if they attempt to enter his/her property for purposes of a search.

Intelligence Files: These may contain any of the above information in other areas, or other information that would assist an affiant in developing probable cause for an affidavit for a no-knock warrant.

.42 Completion of No-Knock Warrant Procedure

Warrant preparation will be completed by the initiating officer. Application for no-knock warrants must contain the wording "No-Knock" or other language that specifically allows unannounced, forcible entry on the face of the warrant. A complete description of the exigent circumstances used as the basis for a no-knock warrant and a specific request for a no-knock warrant must be contained in the affidavit.

If grounds for the issuance of a No-Knock search warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant. The statement shall not identify the confidential informant.

After a review of the affidavit has been conducted by the initiating officer's chain of command through the rank of lieutenant, a decision will be made as to whether or not the affidavit meets the criteria for a no-knock search warrant. If the involved lieutenant agrees that the affidavit meets the criteria for a no-knock search warrant, the involved lieutenant will coordinate a review of the affidavit by the Tactical Enforcement Unit Sergeant/designee and the Tactical Operations Section Lieutenant/designee, prior to the signing of the warrant. As a rule of thumb: if you're not sure whether or not the probable cause currently present meets the criteria for a no-knock search warrant, coordinate your efforts with the Specialized Enforcement Division or Metro VNI Division first, rather than find out later that a safety hazard exists because a no-knock warrant was not obtained.

If the TEU Sergeant and Tactical Operations Section Lieutenant agree that the affidavit meets the criteria for a no-knock search warrant, the review process will continue through a Department Staff Officer, usually the Specialized Enforcement Division Commander or the Metro VNI Commander. If the Department Staff Officer agrees that the criteria exist for a no-knock warrant, the investigating unit will coordinate a review and signing of the no-knock search warrant through the District Attorney's Office of the Fourth Judicial District. The presentation of the affidavit for review by the District Attorney's Office, as well as the judge, shall remain with the originating officer/affiant.

During normal business hours, the District Attorney's review will be conducted at the District Attorney's Office. The District Attorney's review of the affidavit for a no-knock search warrant must be conducted by the District Attorney, the Assistant District Attorney, or a Chief Deputy District Attorney. After normal business hours, the District Attorney's review will be conducted by the designated on-call Homicide Deputy District Attorney. The involved attorney representing the District Attorney's Office shall indicate approval of the affidavit for a no-knock

search warrant by signing, dating, and attaching their attorney registration number on the final page of the affidavit.

.44 Execution of No-Knock Warrant

The execution of a no-knock search warrant may pose extreme danger to both the officers making entry and to occupants of the premise being entered, or to others in the vicinity. The Tactical Enforcement Unit of the Colorado Springs Police Department is a specially trained force that is best suited for conducting this type of mission.

The Tactical Enforcement Unit will conduct all no-knock search warrant raids. If the Tactical Enforcement Unit is not available for a no-knock warrant because of another mission, the Specialized Enforcement Division Commander will review the no-knock warrant and the other mission and will determine the mission priorities for the Unit. If the no-knock warrant is placed on hold, the Tactical Enforcement Unit Commanding Officer will advise the affiant, or his/her supervisor, as to when they may anticipate the execution of the warrant.

A Command Level Officer will be designated for each no-knock warrant execution. This designated Command Level Officer will normally be the Tactical Operations Section Lieutenant or a Metro VNI Lieutenant, but another Lieutenant or higher-ranking officer may be given the duty when necessary. The commanding officer must be present before execution and will take part in all pre-execution briefings.

The designated commanding officer, after reviewing all appropriate documents, will continue to monitor the situation until the warrant has been executed and the warrant site secured. The designated commanding officer will continue the monitoring responsibility even if the activity carries over for one or more watches.

In the event of watch overlap, all supervisors within Departmental components and units, which are connected in any manner with the execution of the warrant, will be responsible for briefing their relief personnel on all relevant matters.

.46 Conclusion of Search Warrant Execution

At the conclusion of the execution of a Knock and Announce or a No-Knock search warrant, a copy of the search warrant along with a list of any items seized should be left with a responsible occupant. If nobody is present, a copy of the warrant and a list of seized items should be left in a conspicuous place. The Return of Execution of Search Warrant should be completed promptly after the search concludes and returned to the court.

.50 Consent Searches

Consent searches are recognized by the courts as a valid means of conducting police activities so long as the search meets certain legal requirements. In order for a warrantless search to be conducted based upon consent, the courts have said that the consent must be free and voluntary. Colorado law also states that police officers requesting a consent search must inform the person giving consent that the search is voluntary, and that the person has the right to refuse consent. Failure to meet these requirements may be considered by the courts as a factor in determining the voluntariness of the consent.

When officers are seeking to conduct a consent search of a person's vehicle, home, effects, or any other legally protected item or place, the officers shall inform that person that they are being asked to voluntarily consent to the search and that they have the right to refuse consent to the search. Officers are not required to use a verbatim advisement. Substantial compliance with the substance of the advisement factors is sufficient to show compliance.

Officers should use the standard search warrant waiver form to document consent searches whenever possible; however, use of the form is not required. Officers shall document the advisement of the voluntary nature of any consent searches in appropriate case reports or summonses. Should an officer conduct a consent search which does not result in a case report or summons, the officer will ensure that the voluntary nature of the search is noted in the associated call screen in CAD.

.60 Pat-Down Searches For Weapons

When an officer has contacted a person for questioning either by consent or based upon reasonable suspicion (pursuant to C.R.S. § 16-3-103) and the officer reasonably suspects that the person is armed and dangerous, the officer may conduct a pat-down search of that person for weapons. In determining whether a person presents such a danger as to require a pat-down search, an officer may consider all of the relevant factors including but not limited to; the person's behavior, prior knowledge that the person is known to carry weapons, the type of crime that is reasonable suspected, number of suspects or other people present, the time of day, the number of officers present, and any other information that supports the officer's conclusion that the person is armed and poses a danger to the officer or others. Pat-down searches based upon reasonable suspicion must be limited in scope to the protective safety purpose which is the detection and discovery of a weapon and not a general search for evidence of a crime. Officers should note that pat-down searches for a weapon may be conducted at any time upon consent given by the person subject to the pat-down search.



**Colorado Springs Police Department
General Order 755**

Section 7: Field Interviews -- Force, Detention, and Arrest

Active Date: 7/12/2012
Supersedes Date: 3/14/1997

Approved
Peter Carey
General Order

.1 Purpose

To define, describe, and set guidelines for conducting field interviews.

.2 Cross Reference

GO 740, Determining Probable Cause
GO 750, Citizen Contacts
GO 758, Handling of Street Gang Contacts
GO 760, Physical Arrest
GO 1303, Bias Based Profiling Prohibited

.3 Discussion

The "field interview" is a very useful and effective means of maintaining the safety and welfare of the community. By remaining alert, perceiving circumstances that may indicate crime, stopping suspicious persons and conducting field interviews, officers serve the community by preventing, discovering, or solving crimes. Properly conducted, a field interview can improve the Department's performance; improperly conducted, it can jeopardize successful prosecution and/or expose the Department and its personnel to adverse legal consequences.

.4 Policy

The courts have indicated that certain elements must be present before an officer initiates a field interview. In this regard, the Department maintains procedures that detail these elements and officers will abide by them when conducting a field interview.

.5 Definitions

FIELD INTERVIEW: A field interview is temporary detention of any person for the purpose of investigating activity that reasonably implies criminal conduct. A field interview occurs when an officer uses police authority either to compel a person to halt, to remain in a certain place, or to

perform some act (such as walking to a nearby location where the officer can use a radio or telephone). If the person being stopped reasonably believes that s/he is not free to leave the officer's presence, a field interview is occurring.

FIELD INTERVIEW REPORT: A field interview report is an internal administrative report made by field officers to document official contacts with persons under suspicious circumstances or in other specified cases. It provides a means of systematically recording information on persons, contacted under suspicious circumstances, for the purpose of facilitating the retrieval of that information for use as investigative leads and to support criminal investigations.

REASONABLE SUSPICION: The term "reasonably suspects", CRS 16-3-103, cannot be precisely defined. The term means information known to the officer which amounts to more than a mere hunch or generalized suspicion, but less than probable cause to arrest. Unless a field interview is conducted as part of a consensual contact, the stop should be treated as an investigative detention which requires an officer to have reasonable suspicion that the individual being contacted is engaged in illegal activity.

.10 Authority And Required Elements

Legal authority to conduct field interviews is granted in section 16-3-103, CRS, "Stopping of Suspect," which provides:

- (1) A peace officer may stop any person who he reasonably suspects is committing, has committed or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions. A peace officer shall not require any person who is stopped pursuant to this section to produce or divulge such person's social security number. The stopping shall not constitute an arrest.
- (2) When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that [the person is armed and dangerous, the officer] may conduct a pat-down search of that person for weapons.

In determining whether a person presents such a danger as to require a pat-down search, an officer may consider all of the relevant factors including but not limited to; the person's behavior, prior knowledge that the person is known to carry weapons, the type of crime that is reasonably suspected, number of suspects or other people present, the time of day, the number of officers present, and any other information that supports the officer's conclusion that the person is armed and poses a danger to the officer or others.

Officers should note that pat-down searches for weapons may be conducted at any time upon the consent given by the person subject to the pat-down search.

.20 Initial Approach

Once reasonable suspicion is established, a person may be stopped. If it is safe and practical to do so, an officer may elect to delay contact with a suspicious person in order to develop probable cause for an arrest. The guideline is: "Don't ruin a good arrest by making a premature stop."

.30 Use Of Force To Detain

Officers will use the least coercive means necessary to stop a person. The means used may be a verbal request, an order, or physical force. In general, officers shall not employ a level of force that could cause death or serious bodily injury to the person detained. However, If the officer is attacked, or circumstances exist that create probable cause to arrest, the officer may use reasonable force to defend him or herself or make a full custody arrest.

.32 Refusal To Cooperate

Refusal to answer questions or cooperate in other ways does not, by itself, establish probable cause to arrest. Nonetheless, such refusals may be considered along with other facts discovered during the contact, as elements that may establish probable cause.

For example, a person fitting the description of a burglary suspect is observed walking down the sidewalk in the vicinity of a very recent "channel lock" burglary. The time is 00:30 hours. Officers stop and question the person who then refuses to give a name and address. The officers then observe a pair of channel lock pliers in the suspect's hand. Under these circumstances, the officers may attach some weight to the suspect's refusal to answer their questions about his identity and address. At this point, an arrest for burglary may be proper.

.34 Treatment Of Detained Persons

Officers will be courteous and use only reasonable force during a field interview. They will identify themselves as law enforcement officers as soon as practical. At some point during the interview, the officer initiating the stop will explain to the suspect why the field interview is being conducted.

As outlined in G.O. 1303, Bias Based Profiling Prohibited, when no enforcement is taken, and as a courtesy to the members of our community, officers will provide the individual(s) with his/her business card with the date and time of contact written clearly on any part of the card.

.36 Moving The Detained Person

When an officer moves a detainee or orders a detainee to move, a court may conclude that the suspect has been taken into custody. An officer who moves a detainee risks losing evidence gathered as a result of the movement. As a general rule, officers should not move detainees from the location where the stop was made. If an officer believes the need exists to move a detainee, and no probable cause for an arrest exists, the officer should obtain the suspects consent for the movement. If an officer wishes to obtain an identification of the suspect by a victim/witness, the victim/witness should be brought to the location where the suspect is at if possible.

.38 Duration Of Stop

During a field interview, an officer may only detain a person for a reasonable time. If probable cause cannot be established within a reasonable time, the person must be released. What constitutes a reasonable period of time is based upon the totality of the circumstances. If a field interview exceeds 20 to 30 minutes, an officer should be prepared to provide the court with an explanation. In addition, officers must act diligently to conclude the investigation. Any unnecessary delay may result in evidence being suppressed.

.40 Guidelines For Use Of Field Interview Reports

Field interview reports shall be made in the following cases:

- To facilitate retrieval of information for use as investigative leads and to support criminal investigations
- To document contacts with, or observations of, confirmed career criminals
- To document contacts with citizens that lead the officer to believe that future contact by officers may pose a serious threat to the officers' safety. Under such circumstances, officers should also consider completing an Intelligence Report and sending it to the Metro VNI Intelligence Unit.

Field interview reports may also be made at the officer's discretion. Examples would be as follows:

- Persons contacted under suspicious circumstances pursuant to consent or reasonable suspicion.
- Misdemeanor arrests which the officer feels should be entered.
- All field interviews will be conducted in conformance with Colorado Statutes including but not limited to 16-3-103.



**Colorado Springs Police Department
General Order 1551**

**Section 15: Recording of Police Activity -- Information and
Records**

Active Date: 3/28/2016
Supersedes Date:

Approved
Peter Carey
General Order

.1 Purpose

To specify the relationship between members of the police department and those individuals who wish to document their activity in any form, such as audio or video recording.

.2 Cross Reference

GO 831, Collection of Physical Evidence
GO 839, Collection and Handling Digital Devices
GO 1550, Public Information Office and News Media
GO 743, Search Warrants

.3 Discussion

With the advent of multiple methods of documenting behavior (e.g., audio recording, video recording, note taking, digital pictures, etc.) that are available to the general public, department members may be subjected to the recording of their activity at any time or place while in the performance of their duty. Officers should assume that their activities are being recorded throughout many of their interactions with the community and while in public. The department has a responsibility to allow this recording in the interest of public information and transparency. Federal courts and guidance from the U.S. Department of Justice indicate that there is no applicable law that prevents the recording of police activity by members of the media or general public. Further, federal courts have held in several decisions that the recording of police activity is governed by the First, Fourth, and Fourteenth Amendments to the U.S. Constitution and must be allowed except in very narrow circumstances. Additionally, state law now states that a person has the right to lawfully record any incident involving a peace officer.

.4 Policy

All department members will allow the recording of their activity while on duty. The only exception to this policy is when the person recording is interfering with a peace officer in the performance of his or her duties. Additionally, department members shall not seize or obtain a

recording or a recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant requirement. This policy only applies to recordings of police activity.

.5 Definitions

Recording of Police Activity: Documenting actions of police officers or department employees in any form (video, audio, manual) by any device available (recorder, cellular phone, electronic device, notepad, etc.).

Member of the Media: Those individuals who are readily identifiable as a member of a recognized TV, radio, or newspaper outlet. The CSPD does not issue press passes or other official identification to anyone who designates himself or herself as members of the media.

General Public: Those individuals who are not readily identifiable as a member of a recognized TV, radio, or newspaper outlet. While not readily identified as a member of the media, anyone may be a blogger, web site host, an independent producer of news, or freelance contributor to any news gathering agency.

Evidentiary Recording: Any digital or other type of photographic image, video or audio record, which goes to proving or disproving criminal activity. To be considered under the purview of this policy, the evidentiary recording must also include police activity.

.10 The Right to Record Police Activity

Recording of police activity is protected under the First Amendment. "Recording of governmental officers engaged in public duties is a form of free speech, through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers." (U.S. Department of Justice, Civil Rights Division, Letter Re: Christopher Sharp v. Baltimore City Police Department, et. al.). See also C.R.S. § 16-3-311 and § 13-21-128 for state laws allowing people to lawfully record any incident involving a peace officer.

.20 Interfering with Police Activity

Some people recording police activity may do so in a manner that interferes with the performance of an officer's duties. If officers encounter this situation, they should give a verbal warning to the person making it clear the person is allowed to continue recording and that directs them where they can record or how they can record in a manner that would not interfere with officers.

Criminal charges of interference/obstruction due to the mere act of recording police activity are not appropriate and could result in civil liability claims against CSPD. An individual must commit an overt act of interference or obstruction to warrant arrest on interference/obstruction

charges. Overt acts may include physical interference with any police activity, incitement to riot or inciting others to commit criminal acts, or endangering the safety of other bystanders or officers. Standing in the street and interfering with traffic or blocking the rightful passage of bystanders may constitute a criminal act requiring police intervention.

A supervisor must approve any criminal charge in connection with the recording of police activity.

.30 Request for Evidentiary Recording or Device

In no circumstance will a recording be seized from any individual and destroyed, deleted, or damaged in any way. A person has the right to lawfully record any incident involving an officer and to maintain custody and control of that recording and the device used to make the recording. There may be circumstances where a recording contains information of an evidentiary nature and must be preserved by the police. Department members shall not seize or obtain a recording or recording device without consent, a search warrant or subpoena, or without a lawful exception to the warrant requirement. In all circumstances, applicable department policies regarding the retention, disposition, and release of evidence will be followed.

If a department member seeks to obtain a person's device used to record an incident involving a peace officer for evidentiary review, the department member shall first:

1. Advise the person of his or her name, badge number or other identifying number, and agency name.
2. Identify the legal reason for which the information is requested; and
3. Ask if the person will voluntarily provide the officer with a copy of the recording by voluntarily providing the device or immediately transferring the recording to the officer or agency. Department members should make this request if practicable under the circumstances. If the circumstances prevented the department member from making this request, the reason why must be documented in the case report.

.33 Obtaining Evidentiary Recordings with Consent and Searching Devices

If a person verbally consents to the transfer of the device and/or recording, officers must secure written consent with the use of a form called Electronic Device Search Waiver found on the CSPD intranet home page, under Forms tab, in the Waiver folder.

Upon obtaining consent to recover an evidentiary recording from a mobile device, the officer has the following options:

- Have the data, such as images or videos, sent to the officer electronically from the device
- Contact the Digital Forensic Unit (DFU) at 444-7704 and arrange a time for the download to be conducted during business hours 7 am – 5 pm
- Have dispatch contact the on-call DFU supervisor and request an immediate response by the DFU to assist with the download of the evidentiary data

If the person voluntarily consents to the transfer of the device, the officer shall limit the search to only the recording that is relevant evidence to the investigation. The device must be returned to the person in a timely manner and must be returned as soon as possible if the person requests it back.

If the person consents to an electronic transfer of the recording, that transfer needs to take place as soon as possible. The electronic transfer should be limited to the relevant recording.

.35 Seizing Evidentiary Recordings Without Consent and Searching Devices

Department members may only seize and search devices containing evidentiary recordings of police activity without the person's consent when they have a search warrant, subpoena, or are using a lawful exception to the search warrant requirement. Please note that with the recent U.S. Supreme Court's decision in *Riley v. California*, officers may not search an arrestee's cell phone under the search incident to arrest exception to the warrant requirement.

The ability to conduct a warrantless search and seizure of electronic devices is allowed in particular exigent circumstances. Exigent circumstances exist when an officer believes it is necessary to save a life or when an officer has a reasonable, articulable, good-faith belief that seizure of the device is necessary to prevent the destruction of the evidentiary recording while a warrant is obtained.

Any search of a cell phone under exigent circumstances must have the exigent circumstances articulated documented in the case report. Absent the existence of such exigent circumstances described above, a search warrant should be obtained prior to any to search of a device when the individual has failed to consent to the search.

A supervisor should be present on scene, or if not able to respond, will be at least consulted where any seizure and/or search of any device is either contemplated or completed by officers without consent. After reviewing the legal basis for the seizure of a device with an evidentiary recording of police activity, a supervisor must approve any review or copying of any digital evidence prior to actions being taken by officers to review or copy evidence.

Devices seized in this manner should be placed into evidence on an "Admin Hold" in accordance with GO 839, Collection and Handling of Digital Devices. The item must be accompanied by a Digital Analysis Request Form located on the Intranet under CSPD Forms or under the Evidence Unit's Page. A Search Warrant must also be obtained within 72 hours and provided to the Digital Forensic Unit.

.40 Documentation and Notifications

In any case involving the arrest of an individual engaged in the recording of police activity and/or the seizure of a device containing a recording of police activity, a case report will be completed with supplements completed by all involved department employees. In these cases, the Duty Lieutenant will be notified. The Duty Lieutenant will complete a "Not for Media Release" ETACS for these situations.

.60 Department Liability for Destruction or Unlawful Seizure of Recording or Recording Device

A new State law passed in 2015 has provided individuals with a right of recovery against CSPD when an individual attempts to lawfully record an incident involving a CSPD officer(s) and the officer(s) engage in the any type of the following behavior:

- (i) an officer unlawfully destroys or damages the recording or recording device;
- (ii) an officer seizes the recording or recording device without permission, without lawful order of the court, or without other lawful grounds to seize the device;
- (iii) an officer intentionally interferes with the person's lawful attempt to record an incident involving a peace officer;
- (iv) an officer retaliates against a person for recording or attempting to record an incident involving a peace officer; or
- (v) an officer refuses to return the person's recording device that contains a recording of a peace officer-involved incident within a reasonable time period and without legal justification.

If an individual files a complaint regarding one of the circumstances listed above and a court decides the allegation is proven, the court may order CSPD to pay up to \$15,000 in punitive damages to the individual. Additionally this civil remedy does not preclude the person for seeking criminal charges to be filed against an officer for tampering with physical evidence. Officers need to fully understand the procedures and policy regarding the seizure of recordings and recording devices prior to conducting such a seizure.