



CITY COUNCIL EXECUTIVE SESSION  
Wednesday, July 6, 2011  
Lorraine H. Morton Civic Center  
Aldermanic Library

**Present:** Alderman Burrus, Fiske, Holmes, Rainey, Tendam, and Wilson

**Absent** Mayor Tisdahl, Ald. Braithwaite, Grover and Wynne

**Staff Present:** Wally Bobkiewicz, City Manager and Grant Farrar, City Attorney

**Presiding:** Ald. Ann Rainey

**Litigation**

The meeting was call to order at 6:56 p.m.

Grant Farrar reported on a pending litigation, Kevin LaSalvia vs. Evanston Police Department, filed in 2010. The allegations are after a stop Mr. LaSalvia, who pleaded guilty to resisting arrest, ran from the vehicle after the vehicle was stopped. Three officers pursued him and while making the arrest, since Mr. LaSalvia would not comply with the commands to bring his arms up, was prone on the ground and the officer punched him in the ear one time causing a punctured ear drum. The punch did not require any continuing medical care, surgery nor loss of any hearing as a result. Mr. LaSalvia filed a civil rights complaint. The city moved for summary judgment to try and get the case terminated short of a trail. Judge Amy St. Eve denied the motion for summary judgment and ordered the parties to go to a pre-trial. Pursuant to Judge St. Eve's order a pre-trial was held with Magistrate Denlow last week. The Plaintiff made a demand of one hundred thousand dollars (\$100,000.00). Again, this is based upon the fact that not withstanding the ear drum there were no lost wages claimed and no damages that the plaintiff suffered other than pain and suffering associated with the ear. The plaintiff's attorney is also seeking payment for his defense cost which at this point is about forty thousand dollars (\$40,000.00).

In speaking with Chief Eddington and the officers involved, Officer Giese, Panek and Tamburrino, the decision was to go into this pre-trial and talk to Magistrate Denlow and indicate that the city is very aggressive in terms of defending cases. So in short, any facts of the contrary that the plaintiff really suffered injuries and continuing harm, the city was not prepared to offer money. He had some discussions with Magistrate Denlow and indicated that based upon the facts and that Mr. LaSalvia has a criminal record, drug convictions in his past and pleaded guilty to resisting arrest on this particular stop, this was just not a good case for the city to put any money on. He told Magistrate Denlow that the City Council is taking a very new approach to settlements and are not going to be as eager to put money on cases because they realize the new approach, in terms of aggressively defending, is one that makes sense for a number of reasons.

After going back and forth Magistrate Denlow recommended a settlement for \$33,000 which essentially is the plaintiff's cost of the case right now.

The recommendation is that this case absolutely should be taken to trial. The officers made a good stop and the plaintiff is going to admit that he ran, that he knew he was out on an arrest warrant, that is why the police stopped him, and also admit that initially he did not stop when commanded to. What it really boils down to is was the blow to the head, when Mr. LaSalvia was resisting not getting his arms behind his back so they could handcuff him, a reasonable use of force. This is a good faith argument and he intends to do what he can to persuade the jury of saying that it was reasonable. In the continuum force that they have here you basically go from a non lethal contact of this nature to pepper spray or to more aggressive means of using a black jack. The officers in the situation that was presented used the minimum force necessary to effectuate the arrest. It was kind of the luck of how the hit struck the ear. It displaced the air within the ear canal and caused the injury. The officers are going to admit that that is indeed what happened but it was a justified use of force. The issue of they didn't take him to a hospital soon enough, they had to secure the scene and Mr. LaSalvia was not complaining of pain. Even when the doctor saw him, and she will testify, she didn't make any note of bleeding or seepage from the ear drum or that Mr. LaSalvia complained of pain. The only thing the doctor said is if it hurts take Advil or ibuprofen later. Mr. LaSalvia didn't go to a doctor to follow up on this and didn't see a psychiatrist over reported psychiatric damage. Essentially the guy was going shopping for drugs and the police officers made a legitimate stop and he got scared.

Mr. Farrar stated that the warrant stems from driving without insurance, registration or driving licenses. A big evidentiary fight that he is going to have at trial is whether he can get evidence of his felony drug conviction. Under state and federal law you can get a drug conviction if it has been within the last 10 years. This one has. He is not sure he is going to be able to get it in but the plaintiff put it at issue during his deposition. So he can always use it for impeachment to make Mr. LaSalvia show that he is not credible in terms of his recollection of certain events. The plaintiff's attorney Bill Foutris, an Evanston resident was shocked when told the city might not be inclined to put any money on this. He told Mr. Foutris that the city was not going to be rolling over on these cases anymore. He is not certain what a jury is going to do, but even if Mr. LaSalvia wins he can guarantee that the next time a case comes in Mr. Foutris' transom, he will think twice about suing the city. And it goes back to what Magistrate Denlow said that there was a case 10 years ago where the city had to pay millions and have been settling and settling since then. He told Magistrate Denlow that's why it is going to take 5 years to get past that perception. It is just an incremental process.

Ald. Rainey moved to go with Mr. Farrar's recommendation. Ald. Holmes seconded.

Ald. Fiske asked if Magistrate Denlow would be presiding. Mr. Farrar said Judge St. Eve will be presiding. She is pro-plaintiff most of the time but is also very careful, diligent and knows the rules of evidence. All he is asking from a judge is that they call it down the middle. The city will win and lose some but if they win and lose as much as he thinks they should then he is reasonably confident about getting a good jury in the box. The plaintiff is just not credible or likable. He is an auto mechanic who lives in Palatine, IL. He has buddies that live in Evanston and he comes in town and does his thing. He also has kind of the demeanor where you don't want to be perceived as

beating or picking on him because that could backfire with the jury. He expects they will get a trial date either in September or October of this year.

Meeting adjourned at 7:07p.m.

Darlene Francellno  
Mayoral/Aldermanic Secretary

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