

Brian A. Wilkins
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City of Tempe: Clerk or Recording Officer
Re: Tempe Police Department
31 E. 5th Street, 2nd Flr
Tempe, AZ 85281

January 16, 2009

Notice of Claim

On the night of July 22, 2008, Claimant Brian A. Wilkins was arrested at his former Tempe residence, 1223 W. University Dr. #5, and taken to jail by the Tempe Police Department. The Tempe Police - most notably officers M. Wallace (#16814), T. Johnson (#18490), and subsequently Detective J. Loewenhagen (#14620) for his failure to further investigate the incident - put on a disgraceful display of negligence, aloofness, and power-drunkenness and are now being put on notice for the consequences of their actions.

The Claimant was jailed and charged (your incident report number: 08-123168) with several serious felonies, including aggravated assault with a deadly weapon (Class 3 Dangerous Felony), Possession and Use of a Weapon in a drug offense (Class 4 Felony), and three (3) counts of disorderly conduct involving a weapon (all Class 6 Dangerous Felonies). The nature of the charges gave Maricopa County Commissioner, Miles Nelson, enough ammunition to place a \$54,000 bond on the Claimant, which subsequently left him incarcerated for 57 days; which is what Wallace and Johnson wanted all along, regardless of the facts. The negligence of Wallace, Johnson, et al was exposed only one week later, when a supervening indictment was issued on July 31, 2008, dropping every charge your officers attempted to levy on the claimant, except for one count of disorderly conduct. The claimant, however, remained jailed once all the serious charges were dropped, as the judicial system in Maricopa County is difficult to navigate from inside a jail cell. Claimant has been presented with, and will likely sign, a plea agreement, drafted by Maricopa County Prosecutor, Lynn Krabbe, which he'll ultimately plead guilty to

two misdemeanor charges after a settlement conference on March 2, 2009. Though the Claimant prefers a trial, many facts in the case were either completely and negligently omitted by Tempe in their police report and/or completely and negligently dismissed by your officers as irrelevant. The Claimant feels a trial in the same county will be biased, unfair, and unlawful, in a continuation of the past six months of his life.

The Claimant's right to "equal protection of the laws" pursuant to U.S.C. § 42-1983 were violated as a result of gross negligence, negligence, and intentional infliction of emotional distress by Wallace, Johnson, et al acting under color of law. Wallace, Johnson, et al instead displayed a juvenile, gangster-mentality, and reinforced the reality and perception of the Tempe Police being a racially homogeneous and racially insensitive department.

BACKGROUND

For purposes of this claim, the initials "AV" will be used to describe the alleged "victim" in incident # 08-123168; the initials "AW" will be used to describe the alleged witness in the incident. On July 22, 2008, the Claimant and "AV," who were neighbors, had been watching a Diamondbacks baseball game in the Claimant's apartment. Both men had been drinking and smoking marijuana. After the game, the two went to get more alcohol at a Circle K across the street. Upon their return, "AV" first went to his apartment, before returning to the Claimant's place, as he wanted to partake in methamphetamine use, something the Claimant did not allow in his apartment. When "AV" returned to the Claimant's apartment, the two were watching the show "Cops" on television. A "black" man was being beaten by the police in the show. While "AV" was sitting in a chair, scratching off his lottery tickets with a pocket knife, he remarked, "that's what would happen to your nigger ass if I ever called the cops on you." It was this remark that led to the incident. The Claimant told "AV" to leave his apartment and never come back. "AV" then stood up with knife still in hand, and said "What did you say? Nigger I'll kill your monkey ass." "AV" then backed the Claimant into the kitchen corner, spit in the Claimant face, and put one hand around the Claimant's neck, while holding the pocket knife a few inches from the Claimant's face. "AV" then asked "fuck this...where the money at nigger?" It must be noted the Claimant had a broken right hand at the time and the Claimant is right-handed. While "AV" was rummaging through the

Claimant's belongings looking for cash, the Claimant opened his kitchen drawer looking for a chef's knife or anything to defend himself from being robbed and further assaulted. The Claimant's legally-owned and registered 40-caliber pistol happened to be in that drawer, as the Claimant had forgotten he left it in there earlier in the day. The Claimant quickly grabbed his gun, pointed it in the direction of "AV" and said, "Get out of my house." "AV" continued taunting the Claimant, going as far to say "Come on nigger, shoot me....Come on nigger, shoot me!" The Claimant, with his gun still pointed at "AV", continued walking "AV" to the door until he was just outside the apartment; maybe 3 feet from the front door. With one foot in the door and one foot out, the Claimant then asked "AV", "what the hell's the matter with you man? I thought we were friends." "AV", apparently not pleased with what the Claimant just asked, suddenly lunged at the Claimant, knife still in hand. The quick lunge startled the Claimant, and he discharged three rounds from his pistol into the air. The Claimant had the gun pointed at "AV", but had the wherewithal, even under the influence of alcohol, to not shoot "AV" or fire into the ground, causing bullets to ricochet. "AV" ran back to his apartment, and the Claimant went back into his apartment and locked the door, thinking the incident was over. However "AV", who is on probation for several felonies, continued taunting the Claimant outside his apartment; yelling several demeaning racial slurs, not limited to: "the cops will never believe your monkey, nigger ass...I have a witness nigger." The Claimant, being Nubian American ("black"), had his reservations already about police and especially the Tempe Police, after several highly-publicized incidents involving the aforementioned department. He did not call the police because he simply does not trust them, which is sadly the case for many "black" and Latino Americans. For the next three hours (between 11pm-and-2am), "AV" not only continued the high-volume taunting outside, but sent several threatening text messages laced with racial slurs to the Claimant in that time, including obvious and self-incriminating extortion and blackmail messages. "AV" specifically demanded \$1000 or "ur done bitch im not fuckin around" at 1:29 a.m. "AV" then sent another message clarifying the extortion and blackmail attempts at 2 a.m. when he wrote, "I'm talking to the police right now. You best bring cash now – no joke try me nigger." The claimant did not respond to the attempts or the taunts. At 2:32 a.m., the Tempe Police showed up to, first interview "AV" and "AW," then arrested the claimant.

NEGLIGENCE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The Claimant tried to explain to Wallace, Johnson, et al what had happened, but was rebuffed with condescending, radically unprofessional, reckless behavior. The Claimant told police that “AV” had held him at knife-point in his apartment and threatened to kill him. Wallace informed the Claimant “this means nothing” and continued taunting the Claimant regarding his gun ownership instead. It should be noted that when Johnson interviewed “AV” and asked him what happened leading up to the incident, “AV” stated, according to the police report, “I cannot remember what happened...[because I’m too] intoxicated.” “AV” instead could only remember the fabricated story he and “AW” conjured. This was, however, acceptable to the Tempe Police.

That night, “AW” told Tempe the Claimant simply walked out of his apartment and pointed a gun at “AV” unprovoked. “AW” has since changed her story; in an interview with the Claimant’s defense; she made clear “AV” was bragging about “choking” and “spitting on” the Claimant. Regardless, the Claimant told Wallace of the assault and it was dismissed as “nothing.” The Claimant then showed Wallace all the physically threatening and blackmail/extortion messages “AV” sent him in the three-plus hours between the incident and their arrival. Wallace acknowledged in the police report he went through all the messages, but dismissed them as “basically name calling.” Not only is blackmail/extortion a violation of ARS §13-1804, but is also a federal crime pursuant to 18 U.S.C. 876 and 18 U.S.C. 873; information a reasonable person would assume police officers would know. “AV” had also violated A.R.S. 13-2904 (3) – based on statements by the Claimant, “AW,” and from the documented text messages – with all his high-volume taunting and racial slurs, which was also recklessly dismissed by Wallace, Johnson, et al. The actions of “AV” that night will easily pass the “Chaplinsky fighting words” test (*Chaplinsky vs. New Hampshire, 1942*) and “speech that is not protected because it could incite imminent lawlessness” test (*Brandenburg vs. Ohio, 1969*) in civil litigation in U.S. District Court; though Tempe Police, again, dismissed the verbal and physical assaults as “basically name calling.” The fact “AV” was/is on probation and was intoxicated, further proves Wallace, Johnson, et al had only one goal that night; which was to lock up “a black.” “AV,” “AW,” and every Tempe Police

officer (approximately 7 of them) present the night of the Claimant's arrest were all European American ("white"). The Claimant had also been studying his Arabic in anticipation of starting an Arabic 201 class at Rio Salado College. When the police entered the Claimant's apartment, they saw two copies of the Qu'ran, several Arabic dictionaries and textbooks, and posters of Malcolm X and Elijah Muhammed on the walls. Though the Claimant is not Muslim, the negligence by the Tempe police was not only provoked by the Claimant's race, but by his PRESUMED religion as well. Wallace ended his interview with the Claimant, saying "Ok, well I don't like you, so I'm done talking to you," before placing the Claimant in the back of a police cruiser.

"AV" and "AW" told Tempe, according to the police report, two entirely different times as to when the fabricated, "deliberate assault" on "AV" by the Claimant happened: "AV" said the fabrication happened "a half hour before the police arrived (around 2:00 a.m.); "AW" said it happened "between 11pm and midnight." "AW" also described the fabricated scene, saying the Claimant "grabbed 'AV' around his collar with one hand and pointed a gun with him at the other." The Claimant had a broken, splinted hand at the time, making this scene impossible. The Claimant's right hand is now slightly deformed as well, since he was denied medical treatment of the broken hand for 57 days in jail. These obvious discrepancies in both "AW" and "AV's" statements – which any reasonable person would see as obvious - further displays Wallace, Johnson, et al desire only to lock up a "black," ASSUMED Muslim that night.

The Tempe Police, like all other police departments in the United States, have a duty to "protect and serve" the community who pays their salaries. Tempe specifically states in their "values" how they specifically strive for "openness and honesty within the...community." Tempe's blatant and obvious racial bias – especially Wallace and Johnson - on the night of July 22, caused the Claimant to sit in jail for nearly two months. Wallace and Johnson negligently charged the Claimant with several serious felonies, giving him zero chance for release from incarceration. Both officers seemed more appalled and more interested in the Claimant owning a gun rather than the facts of the evening; almost as if to say the Claimant has no Second Amendment Rights. Had the officers exercised their rightful, lawful duty, the Claimant – who had no criminal record other than a misdemeanor OWI from 2001 in Iowa - would have

had a reasonable bond or would have simply been released the next day from jail and all the subsequent damages would not have occurred. It must be noted the \$54,000 bond levied on the Claimant was ultimately reduced to \$0 two months later, after the Claimant did his best to communicate with the outside world, without a paid attorney, from the Maricopa County jail, which is a very difficult feat to accomplish. On October 1, 2008, the Claimant returned to the Tempe Police Department and presented the extremely damning evidence which showed he was extorted and blackmailed. The community officer on duty turned the Plaintiff away, saying, "there's nothing we can do about this." The Claimant then tried contacting the United States Attorney's Office to press criminal charges against "AV," Wallace, and Johnson. They politely stated the matter was out of their jurisdiction at that time.

GROSS NEGLIGENCE

On July 22, 2008, the Tempe Police released what they call "Quick Response and Keen Observat" on the World Wide Web, detailing the arrest of the Claimant. Tempe blatantly lied and changed the story of the evening, saying the "victim contacted Police IMMEDIATELY" after the Claimant "threaten[ed] to shoot him." It is well-documented in the police report and via times and dates of the 18 text messages sent to the Claimant by "AV" the night of July 22, that the alleged "victim" did not call police for at least 3 hours after the incident. During those three hours, the alleged "victim" continued taunting the Claimant with threats of physical violence, racial slurs, and of course, the extortion/blackmail attempt. The "Quick Response," with that simple, yet powerful manipulation of the facts, made the Claimant look like a completely guilty, violent monster to the public, and dismissed the facts that "AV" assaulted, attempted to rob, and attempted to extort the Claimant. This gross negligence by Tempe has destroyed the Claimants reputation, as two news agencies picked up the story and printed it in their own ways. The Claimant was a journalism/pre-law student at Arizona State University and has worked in media all over the Valley. Anybody and everybody the Claimant knows professionally saw these reports. The Claimant is now unemployable – except for manual labor and telemarketing jobs - as he has attempted to find employment since his release from jail, but is forced to explain aggravated assault with a deadly weapon felony charges that show up on background checks. Had Tempe reported the

incident truthfully in their “Quick Response,” the public at large would have noticed there was likely more to the incident than what the police were claiming, happened that night. The lies and manipulation are so reckless and so negligent; it demonstrates complete lack of concern for whether injury to the Claimant would result.

CONCLUSION

The City of Tempe is named in this claim because it is the entity which the Tempe Police operates under. In the event the City of Tempe argues they are not the jural entity at fault, this Notice of Claim is hereby amended to name the Tempe Police Department as well. (*Gobel vs. Maricopa County, 867*). The Claimant will find, during discovery, whether or not the Tempe Police has followed orders to undergo diversity training after former Tempe Police officer Chuck Schoville violated two young “black” men by forcing them to “do a little rap (music)” in 2006, and declaring “I’m always right because I have a gun and a badge” to the two young men.

The Claimant has causes of action against the currently named entities and others yet unidentified, for violations of his Constitutional rights under 42 U.S.C. 1983: violating the Claimants right to “equal protection of the laws,” negligence, gross negligence, and intentional infliction of emotional distress. Tempe somehow found a way to arrest and incarcerate the Claimant, yet allowed assault, battery, extortion, blackmail, and probation violations by the alleged “victim,” in the case, without an arrest being made. “AV” predicted correctly the police “would not believe [the Claimant’s] nigger ass” and “AV” specifically stated in the second extortion text message (at 2:00 a.m.) he has talking to police while trying to extort money from the Claimant. He also placed “AW” with him while the messages were being sent. The Claimant assumes the two were looking at splitting the extorted money if successful.

The Claimant also has causes of action against said entities for violations of Arizona law for intentional infliction of emotional distress and negligence.

DAMAGES SOUGHT BY CLAIMANT

Claimant is entitled to monetary damages for violations of his rights as set forth above. Given the egregious nature of the evidence and the reckless actions by Wallace, Johnson, et al, the Claimant will also be entitled to punitive damages at trial. The Claimant will also be entitled to recover attorney fees, once counsel is hired when the complaint is filed 60 days from today in U.S. District Court. A.R.S. § 12-821.01 requires the Claimant include in this Notice of Claim a specific dollar amount in which the claims can be settled. The Claimant lost the highest paying, best benefits job he'd ever had because of the prolonged incarceration as a result of the serious charges Tempe tried to levy on him (all of which were ultimately dropped). The claimant also missed out on his December graduation from Arizona State University and will not be able to complete his final semester anytime in the foreseeable future. The claimant now suffers severe depression, anxiety, bleeding ulcers, and other health problems. The Claimant will no longer be able to find employment in the Phoenix area in his area of expertise, which is journalism because of the grossly negligent "Quick Response" report published by Tempe. The Claimant has had trouble finding employment period not only because of economic issues in Arizona and the U.S. at large, but also because of Tempe's "Quick Response" report and subsequently showing up as a convicted felon in background checks; even though the Claimant has yet to be convicted of anything. The Claimant has had suicidal thoughts as his once normal, forward-moving, prosperous life has come to a screeching halt because of the intentional, egregious negligence by Tempe. Since the Claimant still resides in the city of Tempe, he now feels, to protect himself, he must have cameras and audio recorders running in and around his apartment 24 hours a day, as he feels Tempe will try to harm him further. He also makes sure several close friends contact him nightly in case he is abducted again by Tempe.

Therefore, until March 18, 2009, this Notice of Claim can be settled for \$650,000. If the Claimant is required to pursue litigation and hire counsel, this demand will substantially increase.

It is no secret that in the United States, there is a predator/prey mentality

when it comes to police departments and “blacks.” Men and women who are seen as “heroes” and “role models” to some are viewed as terrorists and murderers to others. There are far too many incidents where police in Arizona and all across the country, literally get away with murder. There is absolutely no rhyme or reason properly trained, qualified police officers could possibly come up with all the serious charges levied on the Claimant, while overlooking obvious, blatantly criminal acts by the “white alleged victim” unless it was done intentionally. Though the Claimant will likely sign the plea (before the settlement conference possibly lowers the charges even further or dismisses the case entirely), this will go down as just another example of thuggish, gangster behavior by police towards “black” Americans. A jury, upon seeing the evidence and hearing testimony will be as enraged as everyone who has already heard the facts and it will bring the City of Tempe and its Police Department more negative publicity as a racist entity. The Claimant, being a six-year resident of Tempe and eight year resident of Arizona and someone 12-hours short of graduating from Arizona State University in Tempe with virtually no criminal record, was arrested and taken to jail because police believed a convicted felon and his accomplice in extortion instead.

This matter should be settled immediately as to not only avoid the risk of a substantially larger jury verdict with punitive damages, but also not bring further negative attention to the Tempe Police; especially after the Officer Schoville incident in 2006 and the fact your department already has 11 officers listed on the county’s “Brady List.” It will also send the message that the city of Tempe will not tolerate this rogue behavior and all the city’s citizens are treated equally and fairly.

Sincerely,

Brian A. Wilkins

1/17/09

