

Entered - 3-17-09 sb
CL 09L0208 GWENDOLYN BURNS

10- R -0199

CLAIM OF: JOSHUA BYRD,
AMY GUNDERSON, AND
MEGHAN TRUESDALE
THROUGH THEIR ATTORNEY,
TYLER B. KASPERS, ESQ.
KASPERS & ASSOCIATES
75 14TH Street, Suite 2130
Atlanta, Georgia 30309

FEB 01 2010

For damages alleged to have been sustained when a dog was taken from his owner on September 2, 2008 at 187 13th Street.

THIS ADVERSED REPORT IS APPROVED

BY: _____

JERRY L. DELOACH
DEPUTY CITY ATTORNEY

ADVERSE REPORT

PUBLIC SAFETY &

LEGAL ADMINISTRATION COMMITTEE

DATE: 1/26/10

CHAIR: [Signature]

ya
[Signature]

FEB 01 2010

FEB 01 2010

ADVERSED BY
CITY COUNCIL



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON
MUNICIPAL CLERK

February 9, 2010

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6030
FAX (404) 658-6273

Mr. Tyler B. Kaspers, Esquire
75 14th Street, Suite 2130
Atlanta, Georgia 30309

10-R-0199

**RE: Joshua Byrd, Amy Gunderson, &
Meghan Truesdale**

Dear Dear Mr. Kaspers

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on February 1, 2010. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400.**

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

SDEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 09L0208

Date: December 29, 2009

Claimant /Victim JOSHUA BYRD, AMY GUNDERSON AND MEGHAN TRUESDALE
BY: (Atty) (Ins. Co) TYLER B. KASPERS, ESQ., KASPERS & ASSOCIATES
Address: 75 14TH Street, Suite 2130, Atlanta, Georgia 30309
Subrogation: Claim for Property damage \$ Bodily Injury \$ unspecified
Date of Notice: 2/26/09 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 9/2/08 Place: Unspecified
Department POLICE Bureau: Office:
Employee involved ANTOINE HARP Disciplinary Action: None

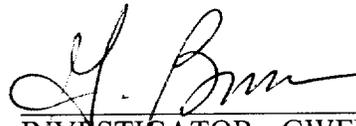
NATURE OF CLAIM: Claimants allege that they sustained damages when Officer Harp and the Atlanta Police initiated and assisted actions of third parties' in the removal of a dog from its owner. However, the issues of this claim are being resolved through litigation

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other X
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,



INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation
Claims Manager: [Signature] Concur/date 01/07/10
Committee Action: Council Action



RECEIVED
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mg

2009 FEB 26 PM 4:38

75 14TH STREET, SUITE 2130 ATLANTA, GEORGIA 30309
TELEPHONE 404.888.3740 FACSIMILE 404.888.3737 kasperslaw.com

February 26, 2009

ENTERED - 3-17-09 - SB
09L0208 - G. BURNS

BURNS
03/16/09

VIA CERTIFIED MAIL TO:

City of Atlanta Police Department
Richard J. Pennington, Chief
City Hall East, Ninth Floor
675 Ponce de Leon Ave.
Atlanta, Georgia 30308

Dennis M. Young, Esq.
Senior Assistant City Attorney
City of Atlanta Department of Law
68 Mitchell Street, Suite 4100
Atlanta, Georgia 30303

VIA HAND-DELIVERY TO:

City Counsel of Atlanta
Atlanta City Hall, Suite 2700
55 Trinity Ave. SW
Atlanta, Georgia 30335

**Re: Joshua Byrd, et al v. City of Atlanta Police Department, et al.
Ante Litem Notice**

To Whom It May Concern:

My firm has been retained to represent Joshua Byrd, Amy Gunderson, and Meghan Truesdale in the above-referenced matter.

On September 2, 2008, an officer of the Atlanta Police Department, without warrant or just cause, arrived at the residence of Joshua Byrd and Amy Gunderson with the intention of snatching Byrd's property (his dog, Andi) from the residence in violation of Byrd and Gunderson's civil rights. Byrd, Gunderson, and Truesdale (who was visiting Byrd and Gunderson's residence when the snatching occurred) were the victims of a conspiracy between the officer and two civilians, Kathryn and Lindsay Curry, to deprive Byrd of his property without

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City Counsel of Atlanta
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due process. While at Byrd's residence, the officer assaulted Gunderson and falsely imprisoned Gunderson and Truesdale.

Within twelve (12) months of the date noted above, this notice is being sent pursuant to the requirements of O.C.G.A. § 36-33-5 to provide you with a thirty (30) day opportunity for adjustment of a tort claim against the City as a result of the following incident:

Name of the Municipal Government entity involved:

Atlanta Police Department

Time and Place:

September 2, 2008, 3:30 p.m.; 187 13th Street, Apartment 12, Atlanta, Georgia 30309

Nature of Claims:

Conspiracy to Commit Unlawful Deprivation of Rights under the Color of Law; Assault; False Imprisonment; Intentional Infliction of Emotional Distress; Negligent Supervision; Contempt of the Magistrate Court's Ability to Administer Justice; Punitive Damages

Acts or omissions which caused the loss:

On July 14, 2008, Kathryn Curry (hereinafter "K. Curry") filed a criminal warrant application and accompanying affidavit with the Clerk of the Magistrate Court of Fulton County (ATTACHMENT A). In said documents, K. Curry claimed that Byrd committed criminal theft by not returning a dog K. Curry alleged was hers.

K. Curry's application for the issuance of a criminal warrant against Byrd came before the Honorable Magistrate Judge Roy Roberts of the Magistrate Criminal Court of Fulton County, Georgia, for hearing on August 7, 2008 (ATTACHMENT B). K. Curry, Lindsay Curry (Kathryn Curry's sister, hereinafter "L. Curry") and Byrd all appeared before the Magistrate Criminal Court at the scheduled time on August 7.

The "proof of ownership" which K. Curry presented to the Magistrate Judge Roberts and the Magistrate Criminal Court consisted of an unsworn, hand-written hearsay note purportedly from by the dog's breeder (an acquaintance of K. Curry) stating that K. Curry was the purchaser of the dog. However, the uncontested proof of ownership presented by Byrd during the August 7 hearing included proof that Byrd bought the dog from K. Curry, reimbursing K. Curry for the

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entire purchase price of the dog (\$600) approximately two weeks after K. Curry purchased the dog from the breeder (ATTACHMENT C)(account number partially redacted to protect Byrd's privacy). Byrd also showed Magistrate Judge Roberts and the Magistrate Criminal Court numerous dog care and maintenance bills and accompanying proof of payment of these bills by Byrd as owner of the dog (ATTACHMENT D)(account numbers partially redacted to protect Byrd's privacy).

Magistrate Judge Roberts and the Magistrate Court considered the evidence presented and verbally denied K. Curry's application for the issuance of a criminal warrant against Byrd, stating that K. Curry's complaint was, at most, "a civil case, not criminal," and informing K. and L. Curry that K. Curry's only legal recourse, if any, was to "go sue...[Byrd] in civil court."

Before departing the Magistrate Court on August 7, K. Curry requested that Byrd provide K. Curry with his current residence address, claiming that she could not otherwise find Byrd if she needed to serve him with civil papers (which was patently false, as evidenced by the fact that K. Curry had no problem serving Byrd with the Notice of Hearing of her application for the issuance of a criminal warrant against Byrd). Byrd, in good faith, supplied K. Curry with his current residence address (which is also the residence address of Byrd's girlfriend, Gunderson).

K. and L. Curry obviously heard the Magistrate Court's verbal instruction that any claim K. Curry might have against Byrd was civil, rather than criminal, in nature as evidenced by K. Curry's filing of a civil suit against Byrd, with the assistance of L. Curry, on the very same day that K. Curry's application for the issuance of a criminal warrant against Byrd was dismissed. K. Curry's civil Complaint against Byrd was hand-delivered to Byrd on August 18, 2008 (ATTACHMENT E). Under the rules of the Magistrate Civil Court of Fulton County, Byrd had until Wednesday, September 17, 2008 to respond to K. Curry's civil complaint.

K. Curry apparently became impatient and frustrated with the rules of the Magistrate Civil Court regarding the time provided to Byrd to respond to K. Curry's civil complaint, and accordingly decided to take the law into her own hands and proceed as if her application for the issuance of a criminal warrant against Byrd had been granted, rather than denied. In direct violation of the Magistrate Criminal Court's instruction to K. and L. Curry on August 7 that K. Curry had no criminal claim against Byrd, K. Curry, on advice from and with the assistance of her sister L. Curry, solicited the assistance of Officer Harp and the Atlanta Police Department--the very same police department which had assisted K. Curry in filing the dismissed criminal charges in an attempt to obtain possession of Byrd's dog. K. and L. Curry solicited Harp's and the APD's assistance while Harp was "moonlighting" by providing security services to a bar in the Buckhead section of Atlanta.

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On September 2, 2008, Harp telephoned L. Curry and said that it was time to get the dog from Byrd. At approximately 3:30 p.m. on September 2, 2008, K. and L. Curry arrived with Harp in his APD uniform, armed, and purportedly on duty at the Byrd/Gunderson residence while Byrd was obviously away from the residence at work (Byrd drives a vehicle with a distinct appearance which is easily visible outside Byrd's residence whenever Byrd is at said residence). Harp demanded that Gunderson, who was at the residence with Truesdale when K. and L. Curry and Harp arrived, open the screen door of the residence, claiming to be in possession of legal papers allegedly stating that K. Curry was the sole owner of the dog. Harp never showed the "legal papers" purportedly proving K. Curry's ownership of the dog to either Gunderson or Truesdale. Gunderson told Harp that he could not have possession of legal documents stating that the dog was Curry's, as there was currently a pending lawsuit in civil court to determine ownership of the dog. The dog that was the subject of K. Curry's application for a criminal warrant against Byrd as well as the subject of K. Curry's then-pending civil Complaint, Andi, ran into the doorway to Byrd's/Gunderson's residence to smell and investigate the situation (as most dogs would do). As Gunderson bent down to prevent the dog from leaving the threshold of the residence, Harp put his hands on Gunderson's shoulder and arm and forcefully pushed Gunderson back into her apartment residence, telling Gunderson and Truesdale that they were not allowed to leave the apartment or come outside after the dog. While Gunderson was being pushed back into the apartment residence by Harp and the APD, L. Curry bent down and snatched the dog. L. and K. Curry then stood in front of the door to Byrd's/Gunderson's apartment residence with the dog as Harp continued to talk with Gunderson, who remained inside the apartment (as the officer had directed her to do). Harp and the APD prevented both Gunderson and Truesdale from leaving Gunderson's apartment residence until after K. and L. Curry had left the area with the dog in their possession. As the conspirators were leaving the area outside Byrd's/Gunderson's residence, L. Curry asked Harp if she should remove the dog's collar and tag and leave them at Byrd's residence because she knew they were Byrd's. Harp responded by telling L. Curry, "No. Just take it (the dog)!" Meghan Truesdale, a personal acquaintance of Gunderson, was in Byrd's residence and not only witnessed the snatching of Byrd's dog but was also the victim of Harp's and the APD's wrongful and unlawful direction to remain in Gunderson's apartment and not to exit the apartment. Two of Gunderson's and Byrd's neighbors, Cynthia Elrod and Ashley Brown, witnessed Harp walking away from the apartment with K. and L. Curry, who had the dog under her arm. After K. and L. Curry and Harp left the area outside Gunderson's/Byrd's apartment, K. Curry, L. Curry and Harp sat and chatted beside Harp's marked ("Atlanta Police Department, Zone 5") squad car for approximately five to ten minutes before leaving the area. Gunderson obeyed Officer Harp's direction to stay inside her apartment, and made no further effort to retrieve the dog while Harp and the Currys were outside Gunderson's apartment residence.

On September 15, having successfully snatched and regained possession of the dog with the assistance of L. Curry, Harp and the APD, K. Curry dropped the civil charge which K. Curry

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had filed against Byrd with the Magistrate Civil Court on August 7 and served on Byrd on August 18.

At an Emergency Hearing for Injunctive Relief held before the Presiding Superior Court Judge, the Hon. Melvin K. Westmoreland, on October 8, 2008, Curry admitted that Byrd had reimbursed her for the entire purchase price of the dog (\$600) approximately two weeks after she had purchased said dog. (See Transcript Excerpts, ATTACHMENT F). Curry therefore had no legal claim of title to the property on September 2, 2008, and Officer Harp's assistance, while wearing his APD-supplied uniform, badge, and gun demonstrates a severe lack of training and control over the APD's officer's and equipment.

Finally, Byrd, Gunderson, and Truesdale have gone above and beyond their duty to keep the City apprised of developments surrounding the Incident. Immediately following the snatching of Byrd's dog, Byrd's undersigned counsel contacted Zone 5 of the Atlanta Police Department to inform the department of the incident and also to discover the identity of the officer that arrived at Byrd's residence with the Currys. Numerous telephone conversations with Zone 5 Afternoon Shift Supervisor, Lieutenant Little, revealed no information regarding the identity of the officer. Numerous calls were also made to the Internal Affairs' Office of the Atlanta Police Department and the City's Legal Department in order to inform the City of the situation and prospective lawsuit. Finally, a courtesy copy of the Initial Complaint (ATTACHMENT G) was sent to the City Counsel of Atlanta at the above-listed address (this courtesy copy served upon the City Counsel of Atlanta mysteriously vanished, according to the City Attorney's Office). The Atlanta Police Department was added as a party to an Amended Complaint (ATTACHMENT H), and Pursuant to O.C.G.A. § 36-33-5 and *Burton v. DeKalb County*; 202 Ga.App. 676 (1992), the allegations in the Amended Complaint against the Atlanta Police Department were withdrawn without prejudice in order to allow the Atlanta City Counsel an additional opportunity to respond to and resolve the issue before being added as a party-defendant to Byrd, Gunderson, and Treusdale's pending lawsuit against Kathryn Curry, Lindsay Curry, and Antoine Harp.

No further action to make a civil recovery for these claims will be commenced except upon the expiration of thirty (30) days following receipt of this notice, or the State's denial of the claim, whichever occurs first.

Sincerely,



Tyler B. Kaspers, Esq.

RCS# 42
2/01/10
2:07 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

B Smith	Y Archibong	Y Moore	Y Bond
NV Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		02-01-10
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 10-O-0118	36. 10-R-0182	
2. 10-O-0119	37. 10-R-0183	
3. 10-O-0120	38. 10-R-0184	
4. 10-O-0121	39. 10-R-0185	
5. 10-O-0122	40. 10-R-0186	
6. 10-O-0123	41. 10-R-0187	
7. 10-O-0126	42. 10-R-0188	
8. 10-O-0127	43. 10-R-0189	
9. 10-O-0128	44. 10-R-0190	
10. 10-O-0129	45. 10-R-0191	
11. 10-O-0220	46. 10-R-0192	
12. 10-O-0221	47. 10-R-0193	
13. 10-O-0057	48. 10-R-0194	
14. 10-O-0135	49. 10-R-0195	
15. 10-R-0134	50. 10-R-0196	
16. 10-R-0162	51. 10-R-0197	
17. 10-R-0227	52. 10-R-0198	
19. 10-R-0164	53. 10-R-0199	
20. 10-R-0165	54. 10-R-0200	
21. 10-R-0166	55. 10-R-0201	
22. 10-R-0169	56. 10-R-0202	
23. 10-R-0170	57. 10-R-0203	
24. 10-R-0171	58. 10-R-0204	
25. 10-R-0222	59. 10-R-0205	
26. 10-R-0228		
27. 10-R-0173		
28. 10-R-0174		
29. 10-R-0175		
30. 10-R-0176		
31. 10-R-0177		
32. 10-R-0178		
33. 10-R-0179		
34. 10-R-0180		
35. 10-R-0181		