

**ALL SECTIONS OF THIS DEMAND LETTER
ARE FOR SETTLEMENT PURPOSES ONLY**

INTRODUCTION

This packet is a good-faith effort to settle Mr. Nelson's claims against Knox County, Knox County Sheriff Jimmy "JJ" Jones, and Knox County Deputy Sheriff Paul Story.

FACTS

On February 8, 2014, shortly before 6:00 p.m., Mr. Story was sitting in his car in front of the Redbox movie rental machine outside of the CVS drug store located at 4500 East Emory Road in Knox County. Mr. Nelson was sitting in his car because it was particularly cold that evening and he was waiting for the person currently using the Redbox to finish so that he could get out of his car and rent his own movies.

While Mr. Nelson was waiting for the person at the Redbox to finish, Deputy Story and his wife and son pulled into a parking spot behind Mr. Nelson. Deputy Story, who was in plain clothes at the time, and his son, got out of their car, walked across the parking lot, and stood in line at the Redbox in front of Mr. Nelson's car.

Mr. Nelson, who had been waiting in his car, got out of his car and said to Deputy Story, "You're not going to cut in front of me, are you?"

Deputy Story replied, "What are you going to do about it?"

Mr. Nelson responded, "Nothing. You have your son with you. If your son weren't with you, it might be different."

Deputy Story was inexplicably angered by this and immediately became hostile and aggressive toward Mr. Nelson.

At this point Gregory Allen Mathews and his wife Marcee Mathews, who were parked in the spot next to Mr. Nelson, noticed the confrontation and rolled down their passenger-side window a couple of inches to hear what was happening.

Mr. and Mrs. Mathews both describe the scene as Mr. Nelson trying to get his movies from the Redbox while Deputy Story was raising his voice at Mr. Nelson as well as talking on his cell phone.

Deputy Story was on his phone with Knox County 911 Dispatch. Deputy Story made the call at 6:01 p.m., and asked dispatch to send a car to his location.

Over the course of the next few minutes, according to both eye witnesses as well as the audio recording of Deputy Story's call to dispatch, Deputy Story grew increasingly agitated and hostile while Mr. Nelson does nothing but deny ever threatening Deputy Story. Deputy Story tells Mr. Nelson that he's charging him with assault, tells him to "Shut the hell up," calls him a "dick" and a "dumb ass," and tells him, "I'm gonna put your ass in jail. For assault." Both eye witnesses also recount hearing Deputy Story yell at, threaten, and curse at Mr. Nelson. Meanwhile, both witnesses assert that they never saw Mr. Nelson act in even the remotest threatening manner.

During this time, Deputy Story's wife also became involved. At some point early in the encounter, she got out of the car and asked her husband more than once whether this was all over a movie. Deputy Story told her more than once to "get back in the car." When she does get back in the car, she pulls it up behind Mr. Nelson's car, preventing Mr. Nelson from leaving.

Finally, at some point before backup officers arrived, Mr. Nelson, who at the time was wearing a t-shirt, told Deputy Story that if he was going to have to stand out there in the cold, he was going to get his jacket. Mr. Nelson then opened his car to get his jacket. At that point, Deputy Story pulled his gun on Mr. Nelson, and later explained that it was because he feared for his and his family's safety. Based on the observations of the eye witnesses and the audio recording of the event, the only person who needed to fear for his safety was Mr. Nelson.

After several minutes, a number of back-up deputies arrived, interviewed Deputy Story and Mr. Nelson, and then released Mr. Nelson to leave and go on with his evening.

PRIMARY LEGAL THEORIES

In general terms, Mr. Nelson contends that Deputy Paul Story of the Knox County Sheriff's Office, unlawfully detained him, threatened him, and pulled his gun on him, thereby violating his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Moreover, his violent actions and language evidence a deliberate and callous indifference to Mr. Nelson's clearly established constitutional rights.

Mr. Nelson also avers that this occurrence was not an isolated episode. Mr. Nelson contends that this blatant and public display of violence and abuse of authority arose out of a failure by Knox County Sheriff's Office supervisors—up to and including Sheriff Jimmy “JJ” Jones—to properly train and supervise their subordinates. Additionally, it is Knox County's deliberate indifference to the proper training and supervision of its deputies that directly led to the unlawful detention and assault of Mr. Nelson.

1. Deputy Story violated Mr. Nelson's Fourth Amendment right to be free from unreasonable seizure when he detained him with neither reasonable suspicion nor probable cause that Mr. Nelson had committed any crime.

For a warrantless arrest to be constitutionally valid, “at the moment the arrest [is] made, the officers [must have] probable cause to make it . . .” *Beck v. Ohio*, 379 U.S. 89 (1964). Moreover, “. . . whenever a police officer accosts an individual and restrains his freedom to talk away, he has ‘seized’ that person.” *Terry v. Ohio*, 392 U.S. 1, 16 (1968). Here, Deputy Story simply did not like something Mr. Nelson said to him. Mr. Nelson never raised his voice, acted in a threatening manner, or did anything else to give Deputy Story any reason to think that Mr. Nelson was breaking any law. Regardless, Deputy Story informed Mr. Nelson he was arresting him for assault, had his wife park their car behind Mr. Nelson's so that he could not drive away, and ultimately pulled his gun on Mr. Nelson. Deputy Story did not have probable cause for an arrest. He did not, in fact, even have reasonable suspicion of criminal behavior justifying even the briefest of detentions. He very plainly, and under the color of law, falsely detained and arrested Mr. Nelson.

2. Deputy Story's unconstitutional behavior is part of a culture and policy within the Knox County Sheriff's Office that fails to properly train, supervise, and discipline its officers regarding unreasonable seizure of citizens.

“Local governing bodies . . . can be sued directly under § 1983 for monetary . . . relief where . . . the action that is alleged to be unconstitutional implements or executes a policy

statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. New York City Dept. of Social Services of City of New York*, 436 U.S. 658, 690 (1978). Acts or omissions by a municipality that rise to the level of reckless conduct or gross negligence, including in the areas of hiring, training, supervising, and disciplining its police officers may create liability under § 1983. *McKenna v. City of Memphis*, 785 F.2d 560, 562 (6th Cir. 1986).

Here, Knox County, through its officials, has displayed deliberate indifference to the conduct of its deputies in failing to properly train, supervise, and discipline them regarding the use of excessive force and their arresting powers. It is this deliberate indifference that directly led to the actions Deputy Story when he arrested Mr. Nelson and pulled his gun on him without any provocation or other legal reason.. The fact that these Deputy Story displayed such callous indifference to Mr. Nelson's safety and constitutional rights in public while area residents looked on only further evinces his lack of concern for any possible consequences of his actions.

3. Additional state law tort claims: assault, intentional infliction of emotional distress, and false imprisonment

"[I]f a defendant intends to create an apprehension of harm in the plaintiff, he or she has committed the intentional tort of assault." *Hughes v. Metropolitan Gov't of Nashville*, 340 S.W.3d 352, 371 (Tenn. 2011). Additionally, for a plaintiff to recover for intentional infliction of emotional distress, he

"must satisfy three elements: first, 'the conduct complained of must be intentional or reckless'; second, 'the conduct must be so outrageous that it is not tolerated by civilized society'; and third, 'the conduct complained of must result in serious mental injury.'"

Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville, 154 S.W.3d 22 (Tenn. 2005) (quoting *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997)). "False imprisonment is the intentional restraint or detention of another without just cause." *Brown v. SCOA Indus., Inc.*, 741 S.W.2d 916, 919 (Tenn. Ct. App. 1997).

Deputy Story had no reason to detain and arrest Mr. Nelson. Mr. Nelson was breaking no law at the time. He never threatened, provoked, or assaulted Deputy Story. Deputy Story regardless detained, arrested, and pulled his gun on Mr. Nelson. Mr. Nelson, who is a former victim of gun violence, now believes he is suffering from PTSD, having undergone the trauma of being threatened by a firearm again.

INJURIES

Although Mr. Nelson suffered no known physical damages as a result of his encounter with Deputy Story, he has suffered serious mental anguish and anxiety that he believes, coupled with having been shot in the past, is causing him to now suffer from PTSD. Mr. Nelson has complained of feeling less safe in general since the date of the incident. His ability simply to go about his daily life with the same peace of mind he enjoyed prior to this incident no longer

exists. Moreover, Deputy Nelson violated Mr. Nelson's constitutionally right to be free from unreasonable seizure, ridiculed him, put him in fear for his life, and did so in open public.

Mr. Nelson will clearly need to avail himself of psychiatric help in the future to attempt to address the damage caused by Deputy Nelson's assault and blatant abuse of authority.

SUMMARY OF DAMAGES

1. **Medical Bills** – none yet;
2. **Future Medical Bills** – unknown at this time, but Mr. Nelson has suffered from severely increased anxiety and mental distress since this incident;
 - a. Estimated cost of one year of psychotherapy: **\$20,800**
3. **Pain and Suffering** – According to the U.S. Life Tables, 2008 (see attached), Mr. Nelson, who is currently 31 years old, will continue to endure all of the hardships inflicted upon him by these officers for the next 32.6 years.
 - a. Present (since the incident, or 341 days)
 - i. Mental pain and suffering to date (\$10/day)..... \$3,410
 - ii. Loss of enjoyment of life to date (\$10/day)..... \$3,410
 - b. Future (from today, based upon U.S. Life Tables, 32.6 years, or 11,900 days)
 - i. Mental pain and suffering (\$2/day)..... \$23,800
 - ii. Loss of enjoyment of life to date (\$2/day)..... \$23,800
 - c. Total Pain and Suffering Damages **\$54,420**
4. **Punitive Damages** – Deputy Paul Story flagrantly abused his authority; based on his reprehensible conduct in this incident, a reasonable jury could be expected to award Mr. Nelson at least **\$10,000** in punitive damages;
5. **Attorney's fees and expenses** – 42 U.S.C.A. § 1988 provides that a prevailing plaintiff in a civil rights action is entitled to attorneys' fees; counsel has already spent considerable time and expense investigating this case and preparing for litigation; as this case continues, that amount will necessarily continue to increase.

Damages Totals

Current Medicals	\$ 00.00
Future Medicals	\$ 20,800.00
Pain and Suffering	\$ 54,420.00
Punitives	\$ 10,000.00
Attorney Fees	unknown
Timothy Nelson's Total Damages	\$ 85,220.00

OFFER OF SETTLEMENT

The above represents a reasonable value of the damages sustained by Mr. Nelson in the incident. Should litigation ensue, Mr. Nelson's costs and attorneys' fees will no doubt increase this total beyond \$200,000. For purposes of settlement I am authorized to accept \$25,000 for

Mr. Nelson's claims for violation of his civil rights. Please respond as soon as possible as Mr. Nelson has instructed me to file suit, and I will be forced to if this matter is not resolved before his statute of limitations runs.