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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

LESLIE MERRITT, JR., a single man, Plaintiff, vs. STATE OF ARIZONA, a body politic; BILL MONTGOMERY, the elected Maricopa County Attorney; MARICOPA COUNTY, a body politic; JOHN DOES I-X; JANE DOES I-X; ABC PARTNERSHIPS I-X and XYZ CORPORATIONS I-X. Defendants.	Case No.: CV2016-013436 **COMPLAINT** **(Tort- Non-Motor Vehicle)**

Plaintiff alleges:

INTRODUCTION

This case arises from the Defendants' false allegations against a young man whom they have wrongfully accused of being the notorious "I-10 Freeway Shooter."

JURISDICTION AND VENUE

1. This case is brought pursuant to Arizona law.

2. Plaintiff served on each Defendant a valid and timely notice of claim pursuant to ARS § 12-821.01.

3. The Court has jurisdiction.

4. Venue is proper pursuant to ARS § 12-822(B).

5. Plaintiff demands a trial by jury.

PARTIES

6. Plaintiff Leslie Merritt, Jr. has been, at all relevant times, a resident of Maricopa County, Arizona.

7. Defendant State of Arizona is a body politic with administrative jurisdiction over the Arizona Department of Public Safety (DPS) and the DPS Central Regional Crime Lab (CRCL). The State is responsible for the administration, operation, maintenance, policies, procedures and functions of DPS and the CRCL. The State is the employer, master, and/or principal of each individual DPS and CRCL personnel who participated in the investigation and/or criminal prosecution of Leslie Merritt, Jr.

8. Defendant Bill Montgomery is and was, at all times relevant to this lawsuit,

the elected Maricopa County Attorney. As the Maricopa County Attorney, Montgomery is responsible for the administration, operation, maintenance, policies, procedures and functions of the Maricopa County Attorneys' Office, the implementation of policies and procedures, the training and supervision of staff, and the provision of criminal justice to all residents of Maricopa County, including Leslie Merritt, Jr. Defendant Montgomery is the employer, master, and/or principal of each individual Deputy County Attorney and staff member in the Maricopa County Attorney's Office who participated in the investigation and/or criminal prosecution of Leslie Merritt, Jr.

9. Defendant Maricopa County is a body politic. Maricopa County is also the employer, master, and/or principal of each individual Deputy County Attorney and staff member in the Maricopa County Attorney's Office who participated in the investigation and/or criminal prosecution of Leslie Merritt, Jr.

10. Defendants John Does I-X and Jane Does I-X are fictitious persons whose identities are unknown to Plaintiff, but whose conduct may have caused or contributed to Plaintiff's damages herein. Plaintiff reserves the right to amend the pleadings with the names of said person(s) once their identities become known.

11. Defendants ABC Partnerships I-X and XYZ Corporations I-X are fictitious entities whose identities are unknown to Plaintiff, but whose conduct may have caused or contributed to Plaintiff's damages herein. Plaintiff reserves the right to amend the pleadings with the names of said entities once their identities become known.

12. All acts and/or omissions of Defendants were done under color and pretense of the statutes, ordinances, regulations, customs, and usages of the State of Arizona.

COMMON FACTS

A. The State of Arizona undertakes to investigate the I-10 Freeway Shooting Case.

13. In the summer of 2015, Defendant State of Arizona, through the Department of Public Safety, undertook responsibility for investigating a series of shootings that occurred along or near the I-10 freeway in Phoenix, Arizona, which became known as the "I-10 Freeway Shooting case."

14. During its investigation, DPS retrieved bullets and/or bullet fragments from four separate shooting incidents: Incident A, B, C, and D.

15. Incident A occurred August 29, 2015 at approximately 1103 hours involving a Cadillac Escalade travelling eastbound on the I-10 near 19th Avenue.

16. Incident B occurred at approximately 1109 hours involving a passenger bus travelling westbound on the I-10 near 43rd Avenue.

17. Incident C occurred at approximately 2215 hours involving a Kia travelling eastbound on the I-10 near the exit for northbound SR51 and eastbound SR 202.

18. Incident D occurred August 30, 2015, between 2145 and 2215 hours involving a BMW travelling westbound on the I-10 near SR 51.

19. Defendants have failed to produce any evidence that Incident D occurred at any other time other than between 2145 hours and 2215 hours on August 30, 2015.

20. Defendants have produced no evidence that Leslie Merritt, Jr. was at or near the scene of any of the shooting incidents.

21. On August 31, 2015, DPS Detective Ron Baroldy requested that the DPS crime lab, CRCL, analyze and compare the bullets and bullet fragments recovered from the four shooting incidents.

22. DPS crime lab personnel told DPS detectives that the evidentiary bullets and fragments from all four incidents all came from a single firearm with certain class characteristics.

23. DPS crime lab personnel identified the evidentiary bullets and fragments as having been fired from a 9mm handgun that caused cartridges to spiral three times with a leftward twist as they emerged from the barrel. Based on these characteristics, crime lab personnel identified the make and model of the firearm as a Model C9 manufactured by Hi-Point.

24. DPS crime lab personnel contacted Hi-Point, and learned that the company had produced about 286,800 Model C9 firearms that are capable of creating the characteristics that CRCL personnel purportedly found on the bullets and bullet fragments recovered in the various shooting incidents.

B. The Pawn Shop Connection

25. Meanwhile, DPS personnel were under intense public pressure and media scrutiny to solve the I-10 Freeway Shooting Case.

26. By September 2015, DPS personnel were working overtime on the investigation. Detectives normally assigned to other details within DPS were

temporarily assigned to work on the I-10 Freeway Shooting Case as well. All the detectives in the General Investigations Unit were assigned to the I-10 Freeway Shooting Case.

27. On September 5, 2015, DPS officer Travis Graff started as a new detective on the General Investigations Squad. He was immediately assigned to the I-10 Freeway Shooting Case.

28. Detective Graff had not at that time received any training in investigating weapons-related offenses, gun identification, or ballistics.

29. While still being trained, Detective Graff was aware or became aware that DPS had access to a computerized PAWN database.

30. The PAWN database, which is designed to assist in the recovery of stolen property, identifies the items in possession of various pawn shops.

31. Detective Graff asked his supervisor, Sgt. Tony Mapp, whether he could use the system to see if any Hi-Point 9 mm firearms were in pawn shops.

32. Sgt. Mapp responded that "if you want to buy a lottery ticket to go ahead," or words to that effect.

33. Accordingly, on September 17, 2015, Detective Graff travelled to various pawn shops to collect Hi-Point 9mm Model C9 firearms that were in pawn. DPS collected eight such firearms, including one from Mo Money Pawn Shop, located at 1152 East Indian School Road, Phoenix, Arizona.

34. The PAWN database contained information about the various eight firearms, including the dates and times at which they were respectively pawned

and received by their owners.

35. At the time that Detective Graff collected the Hi-Point C9 firearm from Mo Money Pawn, he knew from the PAWN database that it had been pawned by its owner on August 30, 2016 at approximately 5:31 p.m., **more than four hours before the occurrence of Incident D**.

36. Records from Mo Money Pawn Shop confirmed that the firearm which Detective Graff seized had been pawned there by Leslie Merritt, Jr. on August 30, 2016 at about 5:31 p.m.

37. On September 17, 2015, Detective Graff took the pawn shop firearms, including Leslie Merritt's, to the DPS crime lab. Criminalist Christopher J. Kalkowski was waiting for him.

38. At around the same time, DPS personnel were searching Leslie Merritt's Facebook profile and saw that he had shared newspaper articles about the I-10 Freeway Shooting case.

39. DPS personnel told the crime lab to test Leslie Merritt's gun first.

40. Crime lab personnel used flawed methodology to analyze the evidentiary bullets and fragments.

41. The evidentiary bullets and fragments submitted to the DPS crime lab contained insufficient data for a firearm examiner to make a positive individualized match to any particular firearm.

42. Despite their flawed methodology, on September 18, 2015, State criminalists told Detective Graff that the evidence bullets from all four shooting were a "100%

match" to Leslie Merritt's gun.

43. Criminalists told Detective Graff that the "100% match" was true of all four incidents with respect to Merritt's gun.

44. The opinion of the State's crime lab personnel that Merritt's gun was the firearm that fired the bullets in all four shootings to a "100% certainty" was the only evidence that linked Merritt to any of the shooting incidents.

C. DPS Criminalists Misled the Police About the Probability of an Identification

45. DPS criminalists intentionally misled detectives that they could identify Leslie Merritt's firearm as the source of the evidentiary bullets and fragments for all four incidents with "100% certainty."

46. Individualized firearm identification is not like the more scientifically rigorous field of forensic DNA analysis. Individualized firearm identification, as a field, lacks sufficient statistical empirical foundations. The methodology is subjective in nature, and based on the examiner's training and experience, and subject to bias.

47. Accordingly, it is a practical impossibility, and contrary to the protocols of the Association of Firearm and Tool Mark Examiners (AFTE), of which DPS CRCL criminalists had affirmative knowledge, to make a firearm identification with a 100% certainty to the exclusion of other firearms.

48. DPS criminalists had only identified general class characteristics, but not individual characteristics of the evidence bullets.

49. The State criminalists intentionally relayed information to DPS personnel in a manner that lacked a scientific basis and violated their industry standards.

D. DPS Knew or Should Have Known that the Crime Lab Had Botched the Identification

50. On September 18, 2015, DPS detectives executed a search warrant at the MO Money Pawn Shop and picked up several pawn slips.

51. DPS detectives recognized that Leslie Merritt's gun was at the pawn shop on August 30, 2015 at 5:31 p.m., before the time of the fourth shooting, Incident D.

52. DPS recognized that it was physically impossible for Leslie Merritt's firearm to have been used in Incident D when it was in the pawn shop.

53. DPS detectives lacked any evidence that Leslie Merritt did not pawn his gun at 5:31 p.m. on August 30, 2015.

54. Since the DPS criminalists identified each of the evidentiary bullets and fragments to Leslie Merritt's gun with 100% certainty for each of the four incidents, DPS recognized that if Incident D could not be linked Leslie Merritt's firearm, then none of the incidents could be linked to the firearm.

55. In other words, DPS recognized that only one of two scenarios could be true: either (a) the crime lab had botched its identification or (b) Incident D did not occur when Merritt's gun was at the pawn shop.

E. DPS Changed the Timeline to Fit Its Theory

56. In response to their dilemma, DPS detectives chose to completely discount the first scenario and, rather, invented a theory that the tire involved in Incident D

must have been shot days earlier, with the bullet lodging in the sidewall of the tire, only to later dislodge and deflate the tire on the night of August 30, 2015, after Leslie Merritt's gun was in the pawn shop.

57. To bolster their theory, DPS detectives conducted a second interview of the driver of the BMW involved in Incident D, and suggested that he was incorrect in his timing of the fourth shooting. The BMW driver disregarded their suggestion, reiterating that he could tell that the tire deflated promptly upon being shot.

58. DPS crime lab again fell below the standard of care by telling DPS detectives that it was possible that Plaintiff's gun could have been used in Incident D.

59. During the pendency of the criminal case against Plaintiff, Defendants failed to test the vehicle or tire to see whether the detective's scenario was possible.

60. During the pendency of the criminal case against Plaintiff, Defendants failed to test the vehicle or tire to see whether the timing of the shooting twice offered by the driver of the BMW in Incident D could be corroborated.

61. DPS' criminalist indicated that it was possible, knowing that the detectives would arrest Leslie Merritt, Jr.

62. In fact, the gouge marks on the BMW tire from Incident D establish that bullet passed immediately through the tire causing it to deflate almost instantaneously.

63. In two separate interviews with DPS detectives, the driver of the vehicle of Incident D was adamant that the shooting occurred between approximately 9:45 and 10:15 p.m. on Sunday, August, 30 2015, and that that the bullet did not lodge

in the sidewall based on all of his observation and knowledge.

64. DPS knew or had reason to know that no objective evidence has ever supported the claim that the bullet was lodged in the tire for days before it finally caused the tire to deflate.

F. Leslie Merritt, Jr. was Working and Taking Care of His Family

65. On September 18, 2015, Leslie Merritt was 21 years old. He was working as a landscaper, and parenting two young children.

66. At about 6:15 p.m., Leslie Merritt was driving to Walmart to buy some diapers and wipes for his five month old daughter.

67. After completing his purchase, he proceeded to the parking lot to return to his car. Suddenly, he saw Department of Public Safety SWAT officers rushing toward him, pointing their automatic rifles, and yelling at him to get on the ground.

68. He could not understand why this was happening to him.

69. Defendants forced him to face lay down on the parking lot.

70. He could only think to ask why this is happening.

71. The officers did not respond.

72. Next, DPS drove him to an interrogation room. They placed him in a small room.

73. They interrogated him for over an hour, accusing him of a crime he did not commit.

74. Leslie repeatedly declared his innocence.

75. During the interrogation, DPS detectives lied to Leslie Merritt and told him that they had video of him.

76. Leslie Merritt asked to see the alleged video. No such video exists.

77. Leslie never asked for a lawyer. He thought that since he was answering all of their questions and has never fired a weapon at anyone, he would be going home.

78. Instead, DPS officers booked Leslie Merritt into 4th Avenue jail. He would not be released for over two hundred days.

79. The State arrested Leslie Merritt, Jr. without probable cause that he committed a crime.

80. The State arrested Leslie Merritt, Jr. without an arrest warrant.

81. Defendants failed to produce any evidence that Mr. Merritt was present at the scene of any of these shootings, let alone was a perpetrator. As Mr. Merritt was factually innocent of the charges there was no such evidence that could be produced.

G. The State and Prosecutors Suppressed Material Exculpatory Evidence Before the Grand Jury and Delayed Disclosure to Merritt's Counsel.

82. After the warrantless arrest of Leslie Merritt, Defendants chose to bring the case before the Grand Jury.

83. The Maricopa County prosecutor misled the grand jury that Incident D occurred between the dates of August 22, 2015 and August 27, 2015.

84. Defendants knew that Leslie Merritt did not have access to his gun at the

time of the fourth shooting incident.

85. Defendants knew that zero evidence supported changing the timeline of Incident D.

86. Defendants deliberately misled the grand jury that they had any evidence to support their theory that the bullet lodged in the inner sidewall of the BMW tire.

87. Defendants deliberately failed to disclose to the grand jury the physical evidence of gouge marks on the BMW tire showing conclusively that the bullet passed right through the tire, and that the Defendants' theory of the bullet lodging in the tire was baseless.

88. Defendants misled the Grand Jury that the crime lab had "definitively" and had "100 percent ballistically identified" Leslie Merritt's firearm to have fired the bullets from the four shooting incidents.

89. Defendants deliberately misled the grand jury that the driver of the vehicle in Incident D was "assuming or guessing" or "unsure" about when his BMW tire sustained damage.

90. Montgomery or Maricopa County or both deliberately suppressed material, exculpatory evidence during the prosecution, including the second interview of the BMW driver in Incident D and license plate reader (LPR) data.

H. Montgomery Knew that Merritt was not the Freeway Shooter

91. County attorneys working for Montgomery or Maricopa County or both recognized that the DPS Crime Lab had botched the identification.

92. As a result, county attorneys retained Forensic Firearm Expert Lucien C.

Haag, an internationally-renowned expert in the area of firearm identification, who consulted with John E. Murdock, Forensic Consultant.

93. On or about February 3, 2016, Haag collected Merritt's gun and the evidentiary bullets and bullet fragments from the DPS crime lab.

94. Mr. Haag reviewed the DPS criminalists' work and conducted his own investigation. He failed to match Leslie Merritt's gun as the source of any of the evidentiary bullets or bullet fragments in any of the shootings.

95. On or about April 14, 2016, Haag issued a report stating results of the comparisons done by DPS were wrong and insufficient to constitute an identification.

96. On or about April 19, 2016, Leslie Merritt, Jr. was released from jail.

97. On April 22, 2016, Maricopa County Attorneys filed a motion to dismiss the criminal case against Leslie Merritt, Jr.

98. On April 25, 2016, the court dismissed the criminal case.

99. On or about April 29, 2016, at the request of DPS, the Bureau of Alcohol, Tobacco, and Firearms completed a lab report based on its independent testing of Merritt's firearm and the evidentiary bullets. They found insufficient marks of value for comparison.

100. All the while, Leslie Merritt has suffered intensely and immensely from the false accusations which all Defendants have levied against him.

101. As a result of Defendants' actions, Leslie Merritt, Jr. is afraid that DPS is continuing to conduct covert surveillance of him. He feels threatened and

vulnerable. He has had difficulty sleeping and experienced loss of appetite. He tends to avoid social situations, and is sometimes recognized in public and confronted by strangers.

102. Even after the dismissal of all charges against Merritt, at least one representative of DPS has publicly stated that DPS still believes that Merritt is the I-10 Freeway Shooter.

103. Defendant Montgomery still makes public comments that Leslie Merritt, Jr. is a suspect, although the evidence supporting his innocence is only getting stronger.

FIRST CAUSE OF ACTION – False Arrest
(Against State of Arizona)

104. Plaintiffs re-allege each and every allegation contained above as though more fully set forth herein.

105. This Cause of Action is brought pursuant to Arizona common law.

106. On September 18, 2015, DPS officers arrested Leslie Merritt, Jr. without a warrant.

107. The State is unable to establish that the arrest was founded upon probable cause.

108. The State of Arizona is liable under the doctrine of respondeat superior for the tortious acts of its law enforcement and crime lab personnel committed within the scope of their employment.

109. As a direct and proximate result of Defendants' misconduct, Leslie Merritt

suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

SECOND CAUSE OF ACTION- False Imprisonment
(Against All Defendants)

110. Plaintiffs re-allege and re-incorporate by reference each and every allegation contained above as though more fully set forth herein.

111. This Cause of Action is brought pursuant to Arizona common law.

112. Defendants' actions as indicated above constitute false imprisonment.

113. Defendants caused Leslie Merritt to be imprisoned against his will.

114. As a direct and proximate result of Defendants' acts, omissions, and constitutional violations alleged above, Leslie Merritt suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

THIRD CAUSE OF ACTION -Malicious Prosecution
(Against All Defendants)

114. Plaintiffs re-allege by reference every allegation contained above as though more fully set forth herein.

115. This Cause of Action is brought pursuant to Arizona law.

116. Defendants initiated or caused a criminal proceeding to be brought against Leslie Merritt, Jr.

117. The Defendants' criminal prosecution of Leslie Merritt, Jr. terminated in Leslie's favor.

118. The prosecution lacked probable cause.

119. In their investigatory process, Defendants acted with malice, or a primary purpose other than to bring Leslie Merritt to justice.

120. As a direct and proximate result of Defendants' acts, omissions, and constitutional violations alleged above, Leslie Merritt suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION- Negligence and/or Gross Negligence (Against All Defendants)

121. Plaintiff re-alleges by reference every allegation contained above as though more fully set forth herein.

122. This Cause of Action is brought pursuant to Arizona common law.

123. Defendants had a legal duty of care to Leslie Merritt, Jr.

124. Defendants and each of them fell below the standard of care in their treatment of Leslie Merritt by, among other things, failing to follow accepted scientific methodology in the crime lab, concealing material fundamental evidence from the grand jury, failing to disclose material fundamental evidence during the course of the prosecution, and violating AZ CONST Art. 2 § 4.

125. As a direct and proximate result of Defendants' acts, omissions, and violations alleged above, Leslie Merritt suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION- Intentional Infliction of Emotional Distress (Against All Defendants)

126. Plaintiff re-alleges by reference every allegation contained above as though more fully set forth herein.

127. This Cause of Action is brought pursuant to Arizona common law.

128. As described above, the conduct of each Defendant was extreme and outrageous.

129. Each Defendant either intend to cause emotional distress or recklessly disregard the near certainty that such distress will result from their conduct.

130. As a result of each Defendants conduct, Leslie Merritt, Jr. was caused to incur severe emotional distress.

131. In addition, as a direct and proximate result of Defendants' acts, omissions, and violations alleged above, Leslie Merritt suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION- Aiding and Abetting Tortious Conduct (Against All Defendants)

132. Plaintiff re-alleges by reference every allegation contained above as though more fully set forth herein.

133. Each Defendant has aided and abetted others to commit tortious acts against Leslie Merritt.

134. This Cause of Action is brought pursuant to Arizona common law.

135. As expressed above in causes of action One through Five, each Defendant

has committed a tort or torts that has caused injury to Leslie Merritt, Jr.

136. Defendants Montgomery and Maricopa County knew that the State of Arizona breached a duty of reasonable care to Leslie Merritt, Jr.

137. Defendants Montgomery and Maricopa County provided substantial assistance or encouragement to the State of Arizona in the achievement of the breach of reasonable care to Leslie Merritt, Jr.

138. Defendant State of Arizona knew that Defendants Montgomery and Maricopa County breached a duty of reasonable care to Leslie Merritt, Jr.

139. Defendant State of Arizona provided substantial assistance or encouragement to Defendants Montgomery and Maricopa County in the achievement of the breach of reasonable care to Leslie Merritt, Jr.

140. As a direct and proximate result of Defendants' acts, omissions, and constitutional violations alleged above, Leslie Merritt suffered severe physical pain, mental anguish, and emotional distress, medical expenses, and lost wages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. For general damages experienced by Leslie Merritt, Jr.;

B. For such medical and medical expenses as may be reasonably incurred by Plaintiff in the future and as may be proven at the time of trial;

C. For past and future loss of earnings/loss of earning capacity;

D. For Plaintiff's court costs incurred herein and legal interest,

pursuant in part to ARS § 12-823; and

E. For such other and further relief as the Court may deem just and proper.

Dated this 13th day of September, 2016.

LAW OFFICES OF DAVID J. DON, PLLC

By: _____
David J. Don
Attorney for Plaintiff Leslie Merritt, Jr.