

STATE OF WISCONSIN                      CIRCUIT COURT                      OUTAGAMIE COUNTY

STATE OF WISCONSIN,                      OUTAGAMIE COUNTY                      Incident No. 00-0117-852  
Plaintiff,                      Sheriff's Office                      Police Agency: Appleton Police Dept.

-vs-                      SEP 29 2000                      CRIMINAL COMPLAINT

NICHOLAS R. WALES, D.O.B. 06/23/78  
1719 N. OWAISSA STREET                      EUTH H. JANSSEN  
APPLETON, WI 54911.                      CLERK OF COURTS  
Defendant.

00 CF 632

Special Investigator Mark A. Moderson, being first duly sworn, on oath, on information and belief, states that on or about June 28-30, 2000, in the City of Appleton, Outagamie County, Wisconsin, under oath or affirmation did make a false statement which he does not believe is true, when such oath or affirmation is authorized by law, contrary to §946.32(1)(a) of the Wisconsin Statutes. For this Class D Felony offense, the Court may impose the penalty of a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both, pursuant to §939.50(3)(d), Stats. and 1997 Wis. Act 283.

Further, upon a felony conviction, the Court shall order the defendant to provide a biological specimen to the State Crime Laboratory for DNA analysis and may impose a DNA surcharge pursuant to §§973.047(1f) and 973.046(1g), Stats.

AND PRAYS SAID DEFENDANT BE DEALT WITH ACCORDING TO LAW; AND THAT THE BASIS FOR THE COMPLAINANT'S CHARGE OF SUCH OFFENSE IS AS FOLLOWS:

Your complainant, being first duly sworn on oath, complains as follows: Your complainant states that he is an employee of the Outagamie County District Attorney's Office and is a sworn lawn enforcement officer who has read the reports of the Appleton Police Department, the Clerk of Courts for Outagamie County, and has received personal information from Investigator Randy Cook of the Appleton Police Department and, in that capacity, has knowledge of the following:

On January 7, 2000, in the afternoon hours, Investigator Randall Cook of the Appleton Police Department met with a citizen witness identified as NICHOLAS R. WALES, D.O.B. 06/23/78, after receiving a telephone call from Wales regarding a pending investigation of a suspected arson to the So's Dry Cleaner store on West Wisconsin Avenue in the City of Appleton, Outagamie County, Wisconsin. Cook reports that he met with Wales and received information regarding Wales' knowledge of other individuals admitting that they were involved in the arson to So's Dry Cleaners. Cook reports that Wales was a very cooperative witness and Cook prepared a summary report regarding Wales' information which is contained in Pages 71-75 of Appleton Police Report No. 98-001-265 regarding the So's Dry Cleaner arson investigation. Cook further reports that Nicholas Wales agreed to allow Cook to tape the interview and Cook did an audio recording of such interview. Cook reports that at the time of the interview with Nicholas R. Wales in January 2000, formal charges had already been filed against one of the co-defendants (Dale Chu) in the arson case. Cook further reports that subsequent to January of 2000, he stayed in touch with Nicholas R. Wales because Wales had concerns for his safety as a witness providing information. Cook further reports that as of April of 2000, he had further contact

with Nicholas Wales because Wales had received a threatening letter in his mail box and he suspected that it was from one of the individuals involved in the arson fire.

Investigator Cook reports that as of April of 2000, the fact that Nicholas Wales was cooperating with law enforcement would have been public because police reports regarding Wales' January 7, 2000, statement would have been public based on the discovery process. Cook reports that on March 27, 2000, the District Attorney's office sent several hundred pages of discovery to Dale Chu and his attorney as part of the discovery process in preparation for trial. Cook reports that any associate of Dale Chu's or any other person could contact Chu and his lawyer to determine if Wales was cooperating and if Wales was likely to be part of the court process. Cook reports that Wales' cooperation with the police officers was clearly documented on Pages 71-75 according to the Appleton Police Department reports that were public as of late March 2000.

Investigator Cook reports that during the spring and summer of 2000, Nicholas R. Wales had a pending misdemeanor theft case in Circuit Court, Branch VI, in Case No. 99 CM 1057. Cook reports that he obtained a copy of the sentencing hearing transcript from June 30, 2000 on that case. Cook reports that during the course of the hearing, the transcript reflects that the public defender representing Wales at the time (identified as Attorney Brian Figy) submitted an alleged affidavit by Wales to the Court that had some references to the arson investigation regarding So's Dry Cleaner. Investigator Cook reports that at Page 7 of the sentencing transcript, the public defender for Wales makes the comment that he was submitting the affidavit "although I would admit that it has little if any information for sentencing purposes today." Cook further reports that on Pages 7-8 of the same transcript, the public defender indicates that the affidavit "does cast some light upon a warrant which was mysteriously quashed on or about March 31, 2000 in this particular branch." Cook reports that at the beginning of sentencing comments, Circuit Court Judge Dee Dyer made the following comments in response at Pages 10-11 of the sentencing transcript, "Just one comment about Mr. Figy's comments about mysteriously having a warrant quashed. Nothing mysterious about it. This court quashes warrants all the time when people write to the Court, if there are warrants issued upon failure to pay a fine, various other reasons why warrants might be quashed, if there are good reasons and valid reasons to do so."

Cook reports that he personally was involved in the process to have the Wales' warrant quashed and reports that it was only prompted based on Wales' willingness to voluntarily show up for court. Investigator Cook reports that he obtained a copy of the sworn affidavit submitted by the public defender at the June 30, 2000, sentencing hearing on Case No. 99 CM 1057. Cook reports that a review of the affidavit indicates that it does not relate to the pending misdemeanor charge in that case file, but does have some comments regarding Cook's investigation of the So's Dry Cleaner case. Cook notes in particular that in the fourth paragraph on the first page of the affidavit, the affidavit attributes the following sworn information to Nicholas R. Wales:

Sometime during the second or third week of January 2000, Detective Sgt. Cook from the Appleton Police Department contacted me and asked me if I had any knowledge of Dale Chu's involvement in the arson at So's Dry Cleaner in 1998. I denied that I knew anything and the matter was dropped.

Your complainant, Investigator Cook and Investigator Cary Meyer of the Appleton Police Department decided to have follow-up contact with Nicholas R. Wales to clarify information in the affidavit submitted by his public defender at his sentencing hearing. Cook reports that based on the public

information in the Appleton Police Department report, it is obvious that Wales was cooperating as a witness with the police on the So's Dry Cleaner investigation, so it did not make any sense why Wales would have an affidavit submitted in his misdemeanor case which include obvious mis-information regarding Wales's cooperative role in the So's Dry Cleaner investigation. Your complainant reports that a series of contacts were made by himself, Investigator Meyer, and Investigator Cook with Nick Wales to try to clarify the affidavit. During the course of the contacts, Wales admitted he knew various parts of his sworn affidavit contained incorrect or false information, including the paragraph that referenced his contact with Cook on January 7, 2000.

Cook reports that in follow up statements, Wales acknowledge that it was obvious from public police reports that he had cooperated on the So's Dry Cleaner investigation and that the claim in the affidavit that the "matter was dropped" was obviously not true. Cook further reports that Wales indicated that he agreed to sign the sworn affidavit after it was prepared for him by his public defender and an investigator for the public defender only because he felt pressure from his public defender. Cook reports that Wales explained that his public defender was extremely angry with him for cooperating with law enforcement and the district attorney investigator on the So's Dry Cleaner investigation. Wales indicated that he only signed the affidavit in order to appease his public defender at the time. Cook reports that Wales acknowledged that the affidavit really had nothing to do with his misdemeanor theft case and it caused significantly more problems for him than helping him on that misdemeanor case in 99 CM 1057.

Your complainant reports that Wales specifically told Investigator Meyer and your complaint that the motivation to have the affidavit created was not to necessarily to help him on his misdemeanor theft case, but that they (the public defender and defender investigator) wanted it on record specifically that the prosecutor's office "is crooked." Your complainant and Investigator Meyer reported that Wales reported that his public defender also made a variety of other profane comments regarding his personal ill feelings towards the district attorney investigator and the prosecutor's office. Investigator Cook also reports that at the end of the affidavit, that there was a typed portion that indicated Wales was told to "lie" by the investigator. Cook reports that Wales specifically told Cook that the investigator "had not" told him to "lie." Wales reports that the document was not typed by him and that many of the words used in the document were not his choice of words.

All of the above-foregoing took place in Outagamie County, Wisconsin.

*Maureen A. Johnson*  
Complainant

Subscribed and sworn to before me and approved for filing this 29th day of September, 2000.

*Carrie Schneider*  
Assistant District Attorney  
Duty  
Wales.Comp.cmf

0-3