

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

JACQUELYN BARELA,

**Plaintiff,**

v.

No. D-202-CV-2017-03630

THE CITY OF ALBUQUERQUE;  
and ALBUQUERQUE POLICE DEPARTMENT  
OFFICERS TIMOTHY WOLFFBRANDT  
And DANIEL GALVAN, in their individual capacities,

**Defendants.**

**PLAINTIFF'S COMPLAINT FOR DAMAGES RESULTING FROM DEPRIVATION OF  
CIVIL RIGHTS AND NEGLIGENCE RESULTING IN BATTERY**

**INTRODUCTION**

Jacquelyn Barela (“Ms. Barela”) was humiliated, brutally raped, and beaten as a direct result of the City of Albuquerque’s (“city”) policy of the prioritization of the investigation of property crimes over crimes of sexual violence and one officer’s shocking disregard for her well-being.

Tito Fajardo (“Fajardo”) and his mother, Mary Lou Hern (“Hern”), kidnapped Ms. Barela and held her hostage for approximately two weeks. On March 2, 2016, Ms. Barela was finally able to access a phone and called 911 to report that Fajardo was holding her hostage at a house located at 2214 Arno St. SE., Albuquerque, New Mexico. Albuquerque Police Department (hereinafter “APD”) officers, including Officers Daniel Galvan (“Officer Galvan”) and Timothy Wolffbrandt (“Officer Wolffbrandt”) responded to that address, but left when no one answered their knocks on the front door. After the officers left, Ms. Barela again called 911 and told the operator that she heard the officers knock, that she was in the house at 2214 Arno St. SE along

with her kidnapper, but that he was not going to answer the front door. She implored APD to return and help her.

The officers returned, but again failed to do an adequate search of the property despite Ms. Barela having provided 911 with her exact location, her name, and the name of her kidnapper. Instead, Officers Wolffbrandt and Galvan began to investigate stolen cars on an adjacent property and alerted the neighbors and Fajardo's mother that a woman had repeatedly called 911 to report that she was being held hostage in the area. The officers recklessly announced this sensitive information with conscious disregard for Ms. Barela's safety, placing her in even greater danger and ensuring retaliation by her kidnappers. After the officers completed the stolen car investigation and put the neighbors and Fajardo's mother on notice that Ms. Barela was trying to escape, they left. But Ms. Barela remained captive in the home, forced to suffer the consequences of the officers' reckless disclosure.

Upon learning that Ms. Barela had called 911 and was trying to escape, Fajardo beat Ms. Barela, raped her, and shaved her head to symbolize that she was a "rat." Despite APD's and the officers' prioritization of the investigation of property crimes over the report of a woman who had been kidnapped, the following day, Ms. Barela devised yet another plan to escape. This time successful and without the aid of APD.

Citizens rely on police officers to enforce our laws. Officers, obviously, cannot reasonably be expected to prevent every crime or effect arrest of everyone who has committed a crime. Officers should, however, employ ordinary care and ensure that in the course of performing their duties they do not further endanger the public. In this case, officers not only failed to intervene in a very serious crime, but their reckless, affirmative actions directly caused the victim of that crime far greater suffering.

Further, in enforcing the law, officers cannot discriminate on the basis of sex in prioritizing the investigation of one category of crime over the other. In this case, the officers followed the city's unlawful practice of prioritizing the investigation and pursuit of property crimes over crimes of sexual violence that largely impact women. Again, Ms. Barela suffered greatly as a direct result.

### **JURISDICTION, VENUE, AND PARTIES**

1. Jurisdiction and venue are proper in Bernalillo County.
2. All of the acts complained of herein took place in Bernalillo County.
3. Ms. Barela is a resident of the City of Albuquerque, County of Bernalillo, in the State of New Mexico.
4. Officer Wolffbrandt is an employee of the City of Albuquerque, which is a governmental entity in Bernalillo County, State of New Mexico, and, at all material times herein, acted in his scope of duties and under the color of state law. He is sued in his individual capacity.
5. Officer Galvan is an employee of the City of Albuquerque, which is a governmental entity in Bernalillo County, State of New Mexico, and, at all material times herein, acted in his scope of duties and under the color of state law. He is sued in his individual capacity.

### **FACTUAL ALLEGATIONS**

#### ***A. Ms. Barela's first call to 911 and APD officers' first investigation***

6. On or around late February 2016 and early March 2016, Fajardo and his mother kidnapped Jacquelyn Barela and held her against her will at 2214 Arno St. SE, Albuquerque, NM, 87102 for approximately two weeks.
7. As Ms. Barela understood it, Fajardo did so because Ms. Barela had allowed her mother to watch Fajardo and Ms. Barela's son, who was still with her mother.

8. Fajardo and his mother kept Ms. Barela hostage inside of 2214 Arno St. SE by hog-tying her with chains.
  9. Fajardo beat and raped Ms. Barela numerous times while he held her hostage.
  10. His mother physically restrained Ms. Barela while Fajardo beat her.
  11. At approximately 4:53 PM on March 1, 2016, Ms. Barela finally had access to a phone and called 911.
  12. Ms. Barela told the operator that she was being held hostage in a house at 2214 Arno St. SE, and asked him to hurry.
  13. Ms. Barela told the operator that "Tito Fajardo" had kidnapped her.
  14. APD dispatched Officer Galvan and, on information and belief, Officer Wolffbrandt, to 2214 Arno St. SE.
  15. Upon arrival, Officers Wolffbrandt and Galvan knocked on the front door of the 2214 Arno St. SE address Ms. Barela had provided to 911 and looked inside the windows.
  16. While officers were there, Fajardo turned off all of the lights and remained silent when he realized APD officers were outside.
  17. Fajardo did not allow Ms. Barela or anyone else to interact with the APD officers.
  18. The APD officers reported that no one had answered the door and that the house was dark.
  19. The APD officers left 2214 Arno St. SE without making contact with Fajardo or Ms. Barela.
- B. Following Ms. Barela's second 911 call, APD Officers put the kidnappers –Fajardo and Hern – on notice that Ms. Barela had reported the kidnapping***
20. At approximately 5:55 PM on March 1, 2016, Ms. Barela called 911 a second time.

21. Ms. Barela advised the operator that she and Fajardo had heard the APD officers, but that her kidnappers were not going to answer the officers' knocks at the front door.
22. Ms. Barela begged for APD to respond again to 2214 Arno St. SE because she was still being held hostage.
23. The CAD from the 911 call noted that the caller "did sound in distress."
24. The CAD also cross-referenced Ms. Barela's first 911 phone call from earlier in the day.
25. APD Officers Wolffbrandt and Galvan were again dispatched to 2214 Arno St. SE in response to Ms. Barela's second call to 911 call.
26. This time, Officers Wolffbrandt and Galvan knocked on the doors and windows of the apartments at 2214 Arno St. and not the house where Fajardo held Ms. Barela captive.
27. The officers reported that there was no response from inside of the apartments, the lights were out, and the residences appeared unoccupied.
28. Officers Wolffbrandt and Galvan spoke with two men – Richard Bombin and Charles Hochhalter – who were outside of 2214 and 2218 Arno St. SE.
29. Bombin and Hochhalter stated that they were unaware of any disturbance in the area.
30. Several others – Michael Hess, Douglas Hess, and Toni Rosenberry – approached the APD officers from other nearby residences.
31. Officer Wolffbrandt told the now gathered group of individuals that a woman had called 911 claiming that she was being held hostage in the area.
32. Officer Wolffbrandt stated, "we got a call, a girl saying that she's in some type of domestic with her boyfriend."
33. Michael Hess replied, "no domestics around here."

34. Officer Wolffbrandt responded, “ok – well we don’t really know what’s going on because she keeps hanging up – but we’ve already gotten two separate calls.”
35. Officer Wolffbrandt offered additional details about Ms. Barela’s 911 call, stating, “right now we have someone calling multiple times basically saying that they’ve been kidnapped.”
36. Officer Wolffbrandt also advised the group, “they were out here earlier referencing the exact same thing, and then she called back.”
37. The officers did not ask the gathered individuals if they knew and/or if they were acquainted with Fajardo.
38. Hern, Fajardo’s mother and co-conspirator, was also present when the officers advised the bystanders of Ms. Barela’s repeated calls.
39. While speaking with the group that had gathered around the property, the officers noticed some suspicious cars at 2218 Arno St.
40. Officer Galvan requested another officer come assist them on-scene and Officer Jarred Smith responded.
41. APD turned their attention away from the kidnapping investigation and instead focused on the cars next door.
42. Officer Wolffbrandt ran the VINs of two vehicles at 2218 Arno St. SE, which were identified as stolen vehicles.
43. Officer Wolffbrandt then observed a male subject, identified as Robert Gallegos, standing at the east end of the property.
44. Officer Wolffbrandt ran Robert Gallegos’s information through the police database, found that he had two outstanding felony warrants, and arrested him.
45. While still on-scene, Officer Wolffbrandt observed a vehicle pull into 2214 Arno St. SE.

46. Officer Wolffbrandt kept his attention on the stolen cars and asked Officer Galvan to make contact at the 2214 apartments again.
  47. Officer Galvan contacted the subjects in the vehicle, who advised that they were unaware of anyone needing police assistance.
  48. Officer Galvan did not make contact with anyone inside the house or apartments at 2214 Arno St.
  49. The APD officers called into dispatch to see if they needed permission to search the cars and the outdoor area.
  50. Officer Wolffbrandt returned to 2218 Arno St. after transporting Robert Gallegos to the Prisoner Transport Center to ensure that the stolen vehicles were removed from the property.
  51. APD did not search any of the properties at 2214 Arno St. for Fajardo.
  52. APD did not search the house at the 2214 Arno St. property for a hostage.
  53. APD did not search the apartments at 2214 Arno for a hostage.
  54. APD did not attempt to obtain a warrant to search 2214 Arno St.
- C. Tito Fajardo brutally “punishes” Ms. Barela for calling law enforcement for help***
55. On information and belief, Fajardo learned from his mother and a neighbor that a woman had called 911 to report that she had been kidnapped.
  56. Upon learning Ms. Barela had called 911, Fajardo became enraged and attacked her for seeking help from law enforcement.
  57. Fajardo shaved Ms. Barela’s head to symbolize that she was a “rat.”
  58. Fajardo beat Ms. Barela more severely than he had previously.
  59. Fajardo raped Ms. Barela more violently than he had previously.

***D. Jacquelyn Barela is forced to devise a third plan of escape, without the help of law enforcement***

60. On the morning of March 2, 2016, Fajardo told Ms. Barela that he would kill Ms. Barela and her mom if Ms. Barela did not get Ms. Barela and Fajardo's son back to Fajardo that day.

61. To keep her son safe and to save both her life and her mother's life, Ms. Barela had to devise another escape plan.

62. Ms. Barela told Fajardo and Hern that she did not know her mother's exact address, but that they should go to the police department to look it up.

63. Ms. Barela also told Fajardo and Hern that they should go to the police station to get a police escort in case her mother refused to return their son to her.

64. When Fajardo and Hern took Ms. Barela to the Valencia County Sheriff's Office, Ms. Barela, Hern, and another woman who was with Hern went inside while Fajardo waited in a car outside.

65. Once inside, Ms. Barela immediately tried to escape, following an employee into the restroom and asking her for help.

66. Hern followed Ms. Barela into the bathroom and overheard Ms. Barela begging for help.

67. Hern told Ms. Barela, "you fucked up – I heard you tell her that you don't want to go."

68. Hern then called Fajardo on her cellphone and told him that Ms. Barela had tried to get them into trouble.

69. Hern handed Ms. Barela the cellphone with Fajardo on the other end, who told her to "get in the fucking car."

70. Ms. Barela exited the restroom and, knowing it was her last chance to escape, ran through an open secure door that was ajar for a FedEx delivery.



71. Ms. Barela was then able to tell a Valencia County Sheriff's officer that she had been raped and kidnapped.

72. As a result, Fajardo and Hern were criminally charged.

73. Both Fajardo and Hern pled guilty to crimes related to their false imprisonment of Ms. Barela.

***E. The city unconstitutionally prioritizes property crimes over crimes against women***

74. New Mexico ranks 48<sup>th</sup> out of 50 states in the frequency of sexual assault. See Office of the State Auditor's December 2016 Special Audit of Untested Sexual Assault Evidence Kits in New Mexico ("State Auditor's Report") at page 7.

75. According to the New Mexico State Auditor, "[s]exual assault victims are three times more likely to experience depression, four times more likely to contemplate suicide, six times more likely to experience PTSD, 13 times more likely to abuse alcohol and 26 times more likely to abuse drugs." State Auditor's Report at page 20.

76. Women are the victims of crimes of sexual violence far more frequently than men. See State Auditor's Report at page 7.

77. In New Mexico, one in four women will be raped in their lifetimes; whereas, one in twenty men will experience rape in theirs. *Id.*

78. Sexual assault victims do not falsely report more frequently than victims of other crimes, even though APD officers often believe that they do. See State Auditor's Report at page 20.

79. Adult women are more likely to be kidnapped than men.

80. When an acquaintance kidnaps an adult woman, the woman is at high risk of sexual assault.

81. The city prioritizes the investigation of property crimes over the investigation of crimes of sexual violence.
82. When the city's current mayor took office he stated he was going to prioritize the investigation of property crimes in Albuquerque.
83. The city funds the investigation of property crimes at a far greater rate than the investigation of sex crimes.
84. There are significantly more APD officers devoted to property crime investigations (approximately 100), and there are multiple units devoted to property crime investigations, including Impact, Burglary, Auto Theft, Pawn Shop, Night Detectives, White Collar, and Organized Crime.
85. There are only a handful of APD officers, however, devoted to sex crime investigations (approximately 10).
86. The city's commitment to the prioritization of property crime investigation over sex crime investigation is also apparent in its officers' investigations, themselves.
87. If a field officer is able to obtain prints from a stolen car, the APD forensic lab routinely runs those prints. If there is a match, a given officer will forward that information to the APD Auto Theft Unit or to one of its Impact Teams. From there, an officer will issue a warrant.
88. In 2015, however, the city had failed to test 3948 rape kits gathered in the course of sexual assault investigations.
89. The city places "most wanted" property crime offender advertisements in the Albuquerque Journal.
90. The city places "most wanted" property crime offender billboards along the interstates.
91. The city does not do the same for the most wanted perpetrators of sexual violence.

92. The city also pursues property crime suspects far more aggressively than suspects of sexual violence.

93. For example, in 2014, multiple APD officers established a perimeter around a mobile home park in the early morning hours to investigate a nineteen-year-old girl, Mary Hawkes', possible receipt of a stolen vehicle. One of those officers ended up killing her.

94. Also in 2014, APD officers followed Jeremy Robertson ("Mr. Robertson") out of their jurisdiction to pursue him for an alleged car theft. Later that year, they conducted surveillance on Mr. Robertson, who had allegedly failed to meet with his probation officer in an auto burglary case. Approximately fourteen officers coordinated to pursue him for failing to meet with his probation officer, including an officer in a police helicopter. Two of those officers ultimately killed this suspect, as well.

95. On the other hand, in 2014, APD determined that it could not investigate the brutal rape of a young woman that originated in Albuquerque that resulted in massive internal injuries, requiring the woman be hospitalized for two weeks and undergo multiple surgeries.

96. Further, despite repeated requests from Detective Ida Lopez ("Detective Lopez") of the APD Missing Person's Unit, who had identified the pattern of women going missing from East Central and suspected a serial killer had been preying on them, APD refused to provide her additional resources to investigate.

97. Detective Lopez was right. The women's remains were found on the West Mesa of Albuquerque.

98. That lack of prioritizing the women's deaths persists today: after an initial investigative flurry that followed the discovery of the women's remains, APD has started the so-called "111<sup>th</sup> Street Task Force" of resources such that it scarcely exists at all in 2017.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **Negligence Resulting in Battery and Deprivation of Statutory Rights Resulting in Bodily Injury (Officers Wolffbrandt and Galvan)**

99. Ms. Barela incorporates by reference the preceding paragraphs as though they were stated fully herein.

100. At all times relevant, Officers Wolffbrandt and Galvan were law enforcement officers employed by APD, acting within the scope of their duties.

101. Based on the facts described above, Fajardo and Hern posed a danger to Ms. Barela and others, and Officers Wolffbrandt and Galvan knew or should have known of that danger.

102. As police officers, Officers Wolffbrandt and Galvan had a common law duty for the safety of others to exercise that care ordinarily exercised by a reasonably prudent and qualified officer in light of the circumstances.

103. As police officers, Officers Wolffbrandt and Galvan had various statutory duties to investigate crimes, to act on their investigations, to suppress assaults and batteries and to keep the peace.

104. By their conduct described above, Officers Wolffbrandt and Galvan did not act reasonably or prudently, and they did not meet the standard of care applicable to law enforcement officers.

105. By their conduct described above, Officers Wolffbrandt and Galvan facilitated and emboldened Farjardo and Hern's violence against and torture of Ms. Barela.

106. The conduct of Officers Wolffbrandt and Galvan—specifically, the failure to investigate Ms. Barela's calls to 911; the officers' failure to enter the home based on the emergency 911 call; the officers' failure to conduct surveillance in the area; and the officers' revealing sensitive

information—constitutes negligence within the meaning of Section 41-4-12 of the New Mexico Tort Claims Act.

107. Ms. Barela's batteries resulted from and were proximately caused by the negligence of the Officers Wolffbrandt and Galvan.

### **SECOND CAUSE OF ACTION**

#### **Violation of Constitutional Right to Due Process under the Fourteenth Amendment to the United States Constitution (Officer Wolffbrandt)**

108. Ms. Barela incorporates by reference the preceding paragraphs as though they were stated fully herein.

109. The Fourteenth Amendment to the United States Constitution protects citizens against state enhanced danger.

110. Ms. Barela was a member of a limited and specifically definable group, and, by virtue of her call to 911, the risk of harm to her was known to Officer Wolffbrandt.

111. At all times relevant, Officer Wolffbrandt was a law enforcement officer employed by APD, acting under color of state law.

112. By alerting bystanders and one of Ms. Barela's kidnappers to Ms. Barela's 911 call, Officer Wolffbrandt enhanced the danger Fajardo and Hern posed to Ms. Barela and affirmatively acted to place Ms. Barela in substantial risk of serious, immediate, and proximate harm.

113. By alerting bystanders and one of Ms. Barela's kidnappers to Ms. Barela's 911 call, Officer Wolffbrandt impeded Ms. Barela's freedom to act on her own behalf and caused her greater danger.

114. In alerting bystanders and one of Ms. Barela's kidnappers of Ms. Barela's 911 call, Officer Wolffbrandt acted recklessly in conscious disregard to Ms. Barela's safety.

115. Officer Wolffbrandt's affirmative conduct in alerting bystanders and one of Ms. Barela's kidnappers of Ms. Barela's 911 call is conscience shocking.

116. Officer Wolffbrandt's affirmative conduct deprived Ms. Barela of her right to liberty under the Fourteenth Amendment to the United States Constitution.

117. Officer Wolffbrandt's affirmative act was intentional, wanton, malicious, and in gross and reckless regard of, or deliberate indifference to, Ms. Barela's constitutional rights.

### **THIRD CAUSE OF ACTION**

#### **Violation of Constitutional Right to Equal Protection under the Fourteenth Amendment to the United States Constitution (Officer Wolffbrandt)**

118. Ms. Barela incorporates by reference the preceding paragraphs as though they were stated fully herein.

119. At all times relevant, Officer Wolffbrandt was a law enforcement officer employed by APD, acting under color of state law.

120. Ms. Barela is a rape and kidnapping victim, which crimes occur at a far greater rate against women.

121. Ms. Barela is similarly situated to crime victims who are not the victims of rape and kidnapping.

122. Ms. Barela is similarly situated to property crime victims.

123. In investigating stolen vehicles instead of Ms. Barela's 911 calls, Officer Wolffbrandt violated Ms. Barela's right to equal treatment under the law.

124. Officer Wolffbrandt had a discriminatory purpose in investigating property crimes over kidnapping, which is often concordant with sexual assault.

125. Officer Wolffbrandt's acts do not further a legitimate state interest.

126. Officer Wolfbrandt's actions were the direct and proximate cause of Ms. Barela's injuries and would foreseeably result in the deprivation of her right to liberty and the rights of others similarly situated.

#### **FOURTH CAUSE OF ACTION**

##### **Unconstitutional Municipal Policy in Violation of the Fourteenth Amendment's Guarantee of Equal Protection under the Law (city)**

127. Ms. Barela incorporates by reference the preceding paragraphs as though they were stated fully herein.

128. Ms. Barela is a rape and kidnapping victim, which crimes occur at a far greater rate against women.

129. Ms. Barela is similarly situated to crime victims who are not the victims of rape and kidnapping.

130. Ms. Barela is similarly situated to property crime victims.

131. The city has a policy of pursuing the investigations and arrests of crimes not involving rape and kidnapping.

132. The city funds the investigations of property crime victims significantly more than it funds investigations involving crimes perpetrated against women.

133. The city has an unwritten policy of investigating and arresting property crimes perpetrators with greater frequency than perpetrators of crimes against women.

134. The city had a discriminatory purpose in adopting this policy.

135. This policy does not further a legitimate state interest.

136. The city's policy is the direct and proximate cause of Ms. Barela's injuries and would foreseeably result in the deprivation of her right to liberty and the rights of others similarly situated.

**PRAYER FOR RELIEF**

WHEREFORE, Ms. Barela respectfully requests that the Court enter judgment in her favor, including:

1. Awarding damages in an amount a jury deems sufficient to compensate Plaintiff for Defendants' unlawful conduct;
2. Damages for the nature, extent, and duration of Plaintiff's injuries;
3. Punitive damages in an amount a jury deems sufficient to deter Defendants and other municipalities and law enforcement officers and agencies from acting in gross and reckless disregard of, or indifference to, the rights and safety of Plaintiff and others;
4. Awarding reasonable costs and attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1983;
5. For an award of pre- and post-judgment interest; and
6. For such other and further relief as the Court deems just.

Respectfully Submitted,

**KENNEDY KENNEDY & IVES**

/s/ Laura Schauer Ives

Laura Schauer Ives

Joseph P. Kennedy

Shannon L. Kennedy

Larissa M. Lozano

1000 2<sup>nd</sup> Street, NW

Albuquerque, New Mexico 87102

(505) 244-1400/ Fax (505) 244-1406

*Attorneys for Plaintiff*