

# Sells vs. the Outlaw Saloon and others

**COUNT ONE (continued from page six)**

40. Defendants' policies and relationships with the Cheyenne Police Department were calculated to cause harm to patrons such as Dwayne in that the improper and illegal relationship was for the express purpose of influencing police department officers, creating illegal conflicts of interest that would lead to an improper investigation of Dwayne's death, including ignoring and disregarding evidence which inculpated the Bar, compromising the investigation of incidents at the Bar, and preventing corrective and preventive actions which would otherwise have been taken by the police; the relationship was further calculated to protect Defendants from liability, and encourage violent patrons of the Bar to feel they could cause harm to other patrons without suffering criminal or civil consequences.

41. The assault on Dwayne and his resulting death, as well as the damages suffered by claimants alleged herein were a direct and proximate result of Defendants' said policy and relationship with the Cheyenne Police Department.

**COUNT TWO: NEGLIGENT BREACH OF DUTY OF CARE CREATED BY SPECIAL RELATIONSHIP**

50. When Jay Payne and his companion Josh Cooper arrived at the Outlaw Saloon on the evening of April 23, 2005, Defendants HEJE, Hein and Jedlicki had actual and constructive previous knowledge of Payne's propensity for both verbal and physical assaults on other patrons.

51. Shortly after Dwayne and Colt Price arrived at the Outlaw Saloon, Payne verbally assaulted, harassed and threatened Dwayne with physical violence.

52. Payne's behavior at all times he was present at the bar on the evening of April 23, 2005 also put HEJE, Hein and Jedlicki on actual or constructive notice that Payne was both intoxicated and belligerent.

53. Payne's conduct in the bar put HEJE, Hein, Jedlicki and HEJE employees and agents on actual and constructive notice that an assault or battery by Payne was reasonably foreseeable and imminent.

54. As a direct consequence of the knowledge of HEJE, Hein and Jedlicki concerning Payne's reputation, their knowledge and observance of Payne's behavior, and their knowledge and observance of Payne's visible and physical threats directed towards Dwayne on the evening of April 23, 2005, there arose a legal duty, and created in HEJE, Hein and Jedlicki an obligation, to take reasonable and necessary steps to prevent an unreasonably hazardous situation that would cause Dwayne harm; a duty to maintain reasonable order within the establishment so as not to endanger Dwayne; and the duty to protect Dwayne from violent injury or death.

55. Shortly after Payne arrived at the Outlaw Saloon, and continuing throughout Payne's repeated harassment of Dwayne at different locations of the bar, HEJE, Hein and Jedlicki had the opportunity and ability to initiate remedial and protective measures, had the ability to remove Payne and his companion from the establishment, and had the ability to contact law enforcement.

56. Rather than initiate protective measures, Defendants HEJE, Hein and Jedlicki specifically permitted the disturbance to continue and escalate, without making any efforts to quell the same.

57. In failing to initiate protective measures or make any efforts to quell the disturbance, HEJE, Hein and Jedlicki and their agents acted in conformity with Defendants' policy and practice of creating and encouraging an environment of violence among patrons designed to promote the namesake of the establishment, thus appealing to violent patrons.

58. Defendants HEJE, Hein and Jedlicki were negligent by their failure to provide reasonable protection to Dwayne, and their failure to take reasonable and necessary steps to prevent an unreasonably hazardous situation; Defendants' acts and omissions included: (a) allowing Payne and his companion to remain in the bar despite Payne's behavior and despite Payne's removal from the Bar on previous occasions; (b) observing multiple disturbances initiated by Payne and ignoring the same; (c) doing nothing while Payne's harassment of Dwayne escalated into physical violence; (d) standing by and observing Payne and his companion physically assault Dwayne; (e) preventing Colt Price from assisting Dwayne; and (f) consenting to the acts of their agent and/or employee, Donald Nath, in continuing to batter Dwayne after he was assaulted by Payne and his companion.

59. Payne's reputation, behavior and harassment of Dwayne at the Outlaw Saloon was directly related to and the catalyst for Payne's subsequent assault and battery on Dwayne.

60. As a direct and proximate result of Payne and his companion's assault on Dwayne, and HEJE, Hein and Jedlicki's negligence, Dwayne was injured and killed, and each claimant suffered the damages alleged in paragraphs 25 through 29 of this Complaint.

**COUNT THREE: NEGLIGENT BREACH OF DUTY OF CARE AFTER ASSAULT**

64. After the assault by Payne, Defendants HEJE, Hein, Jedlicki and Nath breached their duty of reasonable care owed to Dwayne by: (a) allowing the assault to proceed; (b) failing to immediately summon emergency personnel to the scene; (c) physically moving Dwayne from the location of the assault to the bar exit despite Dwayne's obvious injuries; (d) subjecting Dwayne to a choke/stranglehold administered by Nath immediately after the assault and despite Dwayne's obvious injuries; (e) Nath's dropping or shoving Dwayne to the floor near the bar exit so as to inflict additional head injuries on Dwayne; (f) restraining and preventing Dwayne's companion Colt Price from rendering aid to Dwayne during and after his assault; and (g) by Hein discouraging concerned bystanders from offering potential assistance to Dwayne by informing them they "should not worry about it," and that the matter will be "taken care of."

65. As a direct and proximate result of the negligent conduct of Defendants HEJE, Hein, Jedlicki and Nath, Dwayne was injured, his other injuries were exacerbated, he was prevented from obtaining immediate and timely medical assistance, and as a consequence thereof he was severely injured and died, and each claimant suffered the damages alleged in paragraphs 25 through 29 of this Complaint.

**COUNT FOUR: NEGLIGENT BREACH OF DUTY TO EXCLUDE MINORS FROM ENTERING THE BAR**

68. HEJE, Hein and Jedlicki's duty of reasonable care to its patrons and the general public includes their statutory and legal duty to refrain from serving alcoholic beverages to a person under the age of 21, or to allow an individual under the age of 21 from entering the Outlaw Saloon.

69. On April 23, 2005, Jay Payne was accompanied by his companion Joshua Cooper, an individual under the legal drinking age of 21 years on that date.

72. Cooper's status as a minor, his association with Payne, and his involvement and participation in the harassment of Dwayne at the Outlaw Saloon put HEJE, Hein, Jedlicki, and HEJE's employees and agents on actual and constructive notice that by allowing Cooper to illegally remain in the bar, and by continuing to illegally serve Cooper alcoholic beverages, it was reasonably foreseeable that Cooper would engage in the type of violent behavior he subsequently participated in against Dwayne.

73. As a direct and proximate result of the negligence of Defendants HEJE, Hein and Jedlicki, Cooper joined with Payne in the assault and battery on Dwayne, and repeatedly kicked and hit Dwayne in the face and head.

75. It is reasonably probable that Payne was encouraged to act violently toward Dwayne in part to impress a minor companion who was young and foolish enough to be impressed by a braggart, bully and loud such as Payne.

76. But for the acts of Defendants HEJE, Hein and Jedlicki in allowing Cooper into the bar, serving Cooper alcohol, and expressing and implied approval of Payne's conduct, it is reasonably probable that the violent assault, and resulting injury and death of Dwayne would not have occurred.

**COUNT FIVE: BATTERY**

79. Immediately following the assault on Dwayne by Payne and Cooper, Defendants HEJE, Hein, Jedlicki and Nath willfully and intentionally physically assaulted and committed a violent battery upon Dwayne by: (a) physically moving Dwayne from the location of Payne's assault to the bar exit, despite Dwayne's obvious injuries; (b) subjecting Dwayne to a violent choke/stranglehold administered by Nath immediately after the assault and despite Dwayne's obvious injuries; and (c) by Nath's dropping or shoving Dwayne to the floor so as to inflict additional head injuries on Dwayne.

80. As a direct and proximate result of the assault and battery by Nath, for which Defendants HEJE, Hein, Jedlicki are vicariously liable under the doctrine of *respondeat superior*, Dwayne suffered physical harm, incurred medical special damages, and thereafter died, and each claimant suffered the damages alleged in paragraphs 25 through 29 of this Complaint.

81. The acts by Hein and Jedlicki in instructing Nath to conduct himself as alleged herein, and in approving and encouraging such conduct, evidenced a personal and HEJE corporate policy of willful and wanton misconduct with disregard for the reasonably foreseeable consequences of such misconduct, such that Plaintiff should be awarded exemplary and punitive damages in such amount as will deter Defendants HEJE, Hein and Jedlicki, and management of other establishments similarly situated, from engaging in similar misconduct and practicing similar policies in the future.

82. The acts by Defendant Nath, alleged herein evidenced willful and wanton intentional acts, with complete disregard for their reasonably foreseeable consequences, such that Plaintiff should be awarded exemplary and punitive damages in such amount as will deter Defendant Nath and employees of other establishments similarly situated from engaging in similar misconduct in the future.

**COUNT SIX: NEGLIGENT OR INTENTIONAL FAILURE TO OBTAIN VIDEOTAPE EVIDENCE**

85. As a result of the likelihood of violent assaults on the premises of the Outlaw Saloon, an extensive video surveillance system was installed in the Outlaw Saloon some time prior to 2005 for security reasons.

86. By their installation of a video surveillance system, Defendants HEJE, Hein and Jedlicki recognized and assumed a duty to provide increased security services in the form of video surveillance; the effect of which was to give non-violent patrons a reasonable expectation that violent assaults would be reduced and curtailed; and further, the purpose of such a system was to capture and preserve evidence of violent assaults and other crimes when they were perpetrated in order to protect the rights of patrons to access to the courts and to allow them to protect and enforce their legal right to be compensated for violence committed against them.

87. As a result of their decision to install a video surveillance system; their knowledge of past violence in the Outlaw Saloon; and their knowledge of past injuries received and crimes committed in the Saloon; HEJE, Hein and Jedlicki had actual or constructive knowledge that it was reasonably foreseeable that a working video surveillance system was necessary for their patrons' protection; and that the preservation of assaults and other crimes captured on video was necessary to safeguard their patrons' interests.

91. In the event the Bar's video surveillance system was in operable and working order, Defendants HEJE, Hein and Jedlicki breached their duty to Dwayne by negligently or intentionally erasing, destroying, or misrepresenting the status of the video surveillance tapes recording the events on the evening of April 23, 2005, alleged herein.

92. The failure of Defendants HEJE, Hein and Jedlicki to maintain the video surveillance system, or their negligence in permitting or causing destruction of the April 23, 2005 video surveillance tapes, significantly impaired the City of Cheyenne Police Department's investigation of the assaults committed on Dwayne.

JUDGMENT(S) SOUGHT HAVE NOT BEEN INSERTED ON THESE PAGES.

THE ENTIRE COMPLAINT TEXT WILL BE ON THE CHEYENNE HERALD WEBSITE SOON.