

Incident Number: T12-0209 Name: DWestberg  
Sequence Number: 1 Date: 11:09:11 02/10/2012

Narrative  
(See below)

=====

Narrative:

TOMBSTONE MARSHAL'S OFFICE  
INCIDENT SUPPLEMENT

Incident #:T12-0209

Date of Report: Fri Feb 10 11:09:38 MST 2012

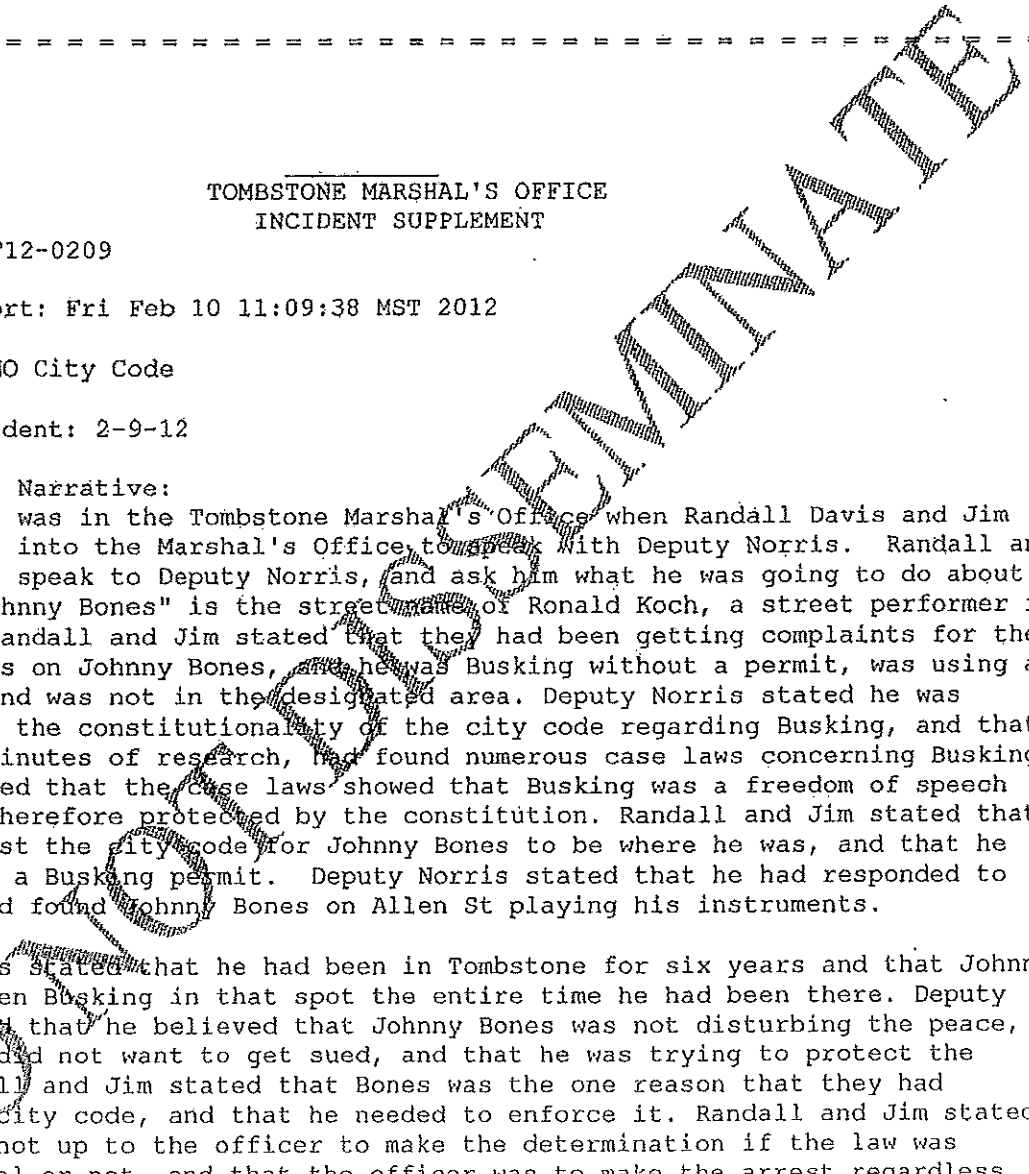
Incident: TMO City Code

Date of Incident: 2-9-12

Supplemental Narrative:

On 2-9-12, I was in the Tombstone Marshal's Office when Randall Davis and Jim Doherty came into the Marshal's Office to speak with Deputy Norris. Randall and Jim began to speak to Deputy Norris, and ask him what he was going to do about "Bones." "Johnny Bones" is the street name of Ronald Koch, a street performer in Tombstone. Randall and Jim stated that they had been getting complaints for the last two days on Johnny Bones, and he was Busking without a permit, was using an amplifier, and was not in the designated area. Deputy Norris stated he was looking into the constitutionality of the city code regarding Busking, and that with a few minutes of research, had found numerous case laws concerning Busking. Norris stated that the case laws showed that Busking was a freedom of speech issue, and therefore protected by the constitution. Randall and Jim stated that it was against the city code for Johnny Bones to be where he was, and that he did not have a Busking permit. Deputy Norris stated that he had responded to Allen St. and found Johnny Bones on Allen St playing his instruments.

Deputy Norris stated that he had been in Tombstone for six years and that Johnny Bones had been Busking in that spot the entire time he had been there. Deputy Norris stated that he believed that Johnny Bones was not disturbing the peace, and that he did not want to get sued, and that he was trying to protect the city. Randall and Jim stated that Bones was the one reason that they had written the city code, and that he needed to enforce it. Randall and Jim stated that it was not up to the officer to make the determination if the law was constitutional or not, and that the officer was to make the arrest regardless and let the Judge and Jury decide. They also stated that the city attorney had approved the city code, and stated that it was constitutional. Deputy Norris continued to argue that numerous case laws showed that it was not constitutional, and that he was not going to enforce a non-constitutional law. Randall and Jim insisted again that he needed to enforce the city code, and that it was not up to the officer. I then told Randall and Jim that we were not going to enforce a law that was obviously unconstitutional. Randall informed me



that it was not up to me to say if something was unconstitutional or not, but that it was up to the courts. Deputy Norris then left the Marshal's Office and cited Johnny Bones.

Reporting Officer: D. Westberg T-4  
Date/Time: Fri Feb 10 12:30:33 MST 2012

APPROVED: Marshal Billy Cloud, T-1 Wed Mar 07 21:47:43 MST 2012

DO NOT DISSEMINATE

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
16:19:57	02/09/2012	1	T-3	24	TMO	TMO
16:01:14	02/09/2012	1	T-3	ENRT	TMO	TMO incid#=T12-0209 Enroute to a c

Incident M.O. Detail:

Seq Factor	Modus Operandi	Method
1 Day of Week	Preferred Day of Week	Thursday
2 Time of Day	Preferred Time of Day	Day
3 Scene	Type of Crime Scene	Street

Narrative:

TOMBSTONE MARSHAL'S OFFICE  
INCIDENT REPORT

Case Number: T12-0209

Distribution: Records, Attorney

Victim: City of Tombstone

Suspect: Ronald D. Koch (DOB 11-15-1957)  
110 S. 7th St.  
Tombstone AZ. 85638

Witness: Randy Davis  
James Daugherty

Synopsis: On 02-09-12, at approximately 1700 hrs, Ronald D. Koch was cited and released for street performing without a permit. The above is in violation of Tombstone City Code 8-2-3B, Street Performance Permit Required, a misdemeanor.

Narrative: On 02-09-12, at approximately , I was dispatched to the area of 4th and Allen St. reference a City Code violation. Dispatch advised they had received numerous calls from two City Council members about Ronald street performing, busking, on Allen St. I went to City Hall and obtained a copy of City Ordinance 8-2-3, Street Performances in Public Places, and then I went by 4th and Allen St. and observed Ronald in his usual spot, performing as Johnny Bones.

I returned to TMO and read through the ordinance. I then checked case law online for further information on busking. I located numerous case laws in reference to busking: Goldstein v. Town of Nantucket, Davenport v. City of Alexandria, Virginia, Friedrich v. Chicago, Carew-Reid v. New York Metropolitan Transportation Authority et al., Jews for Jesus Inc., v. Massachusetts Bay Transportation Authority, Bery v. New York, Harry Perry and Robert "Jingles" Newman v. Los Angeles Police Department, Turley v. NYC, and White v. Sparks Nevada.

advised to contact the City Attorney at 459-2639. I called the attorney's office

and left a message with the secretary and then Randy Davis and James Dougherty, both Council Members, came into TMO.

Randy stated they had been receiving complaints for the past four days about Ronald busking without a permit. I advised Randy that was BS because Ronald had not been performing yesterday, 02-08-12, due to other domestic issues Ronald was having.

Both Randy and James insisted I go and arrest Ronald regardless of what case law or the Constitutionality of the ordinance. James stated Ronald had insisted the City come up with a busking law and then not complied with it. James stated he thought Ronald had done this so as to sue the City.

Randy stated I had taken an oath to uphold the laws of the City and that I had to go and arrest Ronald for violating the ordinance.

Case Status:	Subject Cited and Released
Reporting Officer:	J. Norris, T-3
Date and Time:	Wed Mar 07 21:45:31 MST 2012

APPROVED: Marshal Billy Cloud, T-1 Wed Mar 07 21:45:47 MST 2012

DO NOT DISSEMINATE