

‘I’m honestly afraid to get out’

Army officer sues Windsor officers; video goes viral

By **Stephen Faleski**
Staff Writer

A lawsuit filed April 2 in Norfolk’s federal court claims two Windsor police officers assaulted and threatened a person of color during a traffic stop.

According to the suit, 2nd Lt. Caron Nazario, an Army Medical Corps officer of Latinx and African American descent, was in uniform driving home from his duty station the evening of Dec. 5, 2020, when Daniel Crocker and Joe Gutierrez pulled him over, allegedly for not having a rear license plate and “dark tinted windows.” Nazario had temporary license plates displayed in his rear window, but the officers claimed they didn’t see them, and accused him of “eluding police” — owing to his having driven below the speed limit until he found a well-lit area to stop: a BP gas station.

The officers’ body camera footage shows both exiting their patrol cars and approaching Nazario’s vehicle with guns drawn.

A tense exchange follows, with the officers continuing to demand Nazario exit his vehicle. In a video of the incident Nazario recorded on his cell phone, he re-



A Virginia State Police investigation is under way into a Windsor Police Department traffic stop that happened in December. During the stop, two officers held a U.S. Army officer at gunpoint, and one pepper-sprayed and assaulted him. (Submitted Image)

peatedly asks the officers “What’s going on?” and receives responses of “Get out of the car now!”

That is, until one of them — identified in the lawsuit as Gutierrez — replies, “What’s going on?

You’re fixin’ to ride the lightning, son.”

“This is a colloquial expression for an execution, originating from glib reference to execution by the electric chair,” the lawsuit

states.

When Nazario says “I’m honestly afraid to get out” of the vehicle, Gutierrez’s body cam records the officer replying, “Yeah, you should be.”

The officers continue to give conflicting commands, at times telling him to keep his hands out of the window and other times

Lawsuit

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telling him to get out of the car, which would have required putting at least one arm back inside the vehicle to unbuckle his seatbelt.

The exchange continues until Gutierrez, as shown on his body cam, tells Nazario “you’re under arrest ... you’re being detained for obstruction of justice.” Gutierrez then sprays him with oleoresin capsicum, commonly known as pepper spray.

Nazario’s lawsuit alleges the officers later made false statements on their incident reports to cover up what they’d done.

According to those reports, when Crocker attempted to unlock and open the driver’s door, the driver hit the officer’s hand away, and still refused to exit the vehicle, at which time he was OC sprayed. The driver then reportedly stepped out of the vehicle, but refused to comply and lay on the ground, and a “short struggle” with the officers ensued.

“In an attempt to get the driver on the ground, the driver was actively resisting, Officer Gutierrez delivered knee strikes to try to gain compliance,” Crocker writes. “The driver went down on one knee, however would not lay flat.”

The suit, however, claims Nazario had his hands up and out of the vehicle the entire time and “at no time does Lt. Nazario touch or smack either Gutierrez or Crocker during this interaction.”

With Nazario in handcuffs, blinded by the OC spray and in custody, an emergency medical technician asked if Nazario had any firearms in the vehicle, to which he replied he did. Upon locating the weapon, Crocker ran Nazario’s identification through his patrol car’s computer system, which confirmed Nazario’s driver’s license and concealed carry permit were both valid. He then checked the gun’s serial number to see if it was stolen. It wasn’t.

“Gutierrez watched this unfold and failed to stop Crocker or intervene in this unlawful search, despite having reasonable opportunity to do so,” the suit states.

As Nazario’s vision begins to return, Gutierrez is heard on Crocker’s body cam acknowledging Nazario’s reasons for continuing to drive to the well-lit BP.

“I get it,” he says. “The media spewing race relations between law enforcement and minorities, I get it,” adding that it “happens all the time” and that “80% of the time, it is a minority.”

The incident concludes with Gutierrez saying to Nazario, “If you want to fight and argue ... you have that right as a citizen, if that’s what you want, we’ll charge you ... If you want

to just chill, let this go, and no charges filed, we’ll take the handcuffs off, we’ll get you a bottle of water ... and sit here until you feel comfortable driving.”

According to Crocker’s report, Nazario was told he could be charged with improper display of license plates, obstruction of justice with force, misdemeanor elude and assault on a law enforcement officer or avoid charges due to his being active-duty military.

“I did not want to see Nazario’s career be ruined by poor judgement (sic),” Crocker writes. “Nazario chose not to be charged.”

The suit describes the body cam and cell phone footage as “behavior consistent with a disgusting nationwide trend of law enforcement officers, who believing they can operate with complete impunity, engage in unprofessional, discourteous, racially biased, dangerous and sometimes deadly abuses of authority.”

It further characterizes Crocker’s and Gutierrez’s after-the-fact incident reports as containing “near identical material misstatements of fact” that “ignores and intentionally omits material facts of the Defendant’s escalation, use of firearms, and the threats of murder within a minute of pulling Lt. Nazario over.”

The suit asks for \$1 million in damages. Nazario’s lawyer, Jonathan M. Arthur of Thomas H. Roberts & Associates P.C., said no court date has been set yet.

Gutierrez fired

Nazario’s lawsuit and the accompanying video footage made national headlines over the weekend, drawing reactions from local, state and federal officials. On Sunday evening, Windsor Town Manager William Saunders sent an email to several media outlets, including The Smithfield Times, stating Gutierrez had been fired as a result of the incident.

According to that press release, Gutierrez’s use of pepper spray had prompted an internal investigation “immediately following the incident,” which concluded that “Windsor Police Department policy was not followed,” and resulted in “disciplinary action, and department-wide requirements for additional training” implemented in January.

“We are saddened for events like this to cast our community in a negative light, Saunders’ press release states. “Rather than deflect criticism, we have addressed these matters with our personnel administratively, we are reaching out to community stakeholders to engage in dialogue, and commit ourselves to additional discussions in the future.”

But Saunders’ press re-

lease gave no specific date for when Gutierrez was terminated, nor any indication of whether Crocker was still employed. That didn’t sit well with Valerie Butler, who is president of Isle of Wight County’s NAACP chapter, and called the videos “evident of what the NAACP has been saying all along” with regards to treatment of African Americans by police.

On Monday, she hosted a press conference in the parking lot of Windsor’s municipal building in view of the BP gas station where the incident occurred. There, she and state Del. Don Scott called for Crocker’s immediate termination.

On Tuesday, Saunders confirmed to the Times that Windsor’s police department had allowed Gutierrez to remain employed for four months following the incident, only firing him this Sunday, April 11, after the video — and Nazario’s police brutality lawsuit — made national headlines.

Saunders further confirmed Crocker is still employed by the Windsor Police Department, but didn’t say why the department had allowed Gutierrez to remain on the force four months after its review of the body cam footage during its internal investigation.

“I’m a former naval officer myself, and one of the things that made me sick to my stomach was to see this man in uniform being disrespected in the manner and the way that he was treated,” Scott said.

“It was shameful; it was embarrassing; it was disgusting. Neither one of those officers who perpetrated those acts should be wearing that uniform right now. They should not be in this community doing this type of work.”

Del. Jeff Bourne, who’s sponsoring a General Assembly bill to end qualified immunity for law enforcement in Virginia, also spoke at the conference. According to the American Bar Association, qualified immunity shields government employees from liability for their misconduct, even if they break the law. Under the doctrine, police officers can never be sued for violating someone’s civil rights, unless they violated “clearly established law.”

Bourne and Scott admit ending it will only make it easier for people like Nazario to sue officers after-the-fact for misconduct. To prevent misconduct from occurring in the first place, Scott is suggesting the state consider revising its Law Enforcement Procedural Guarantees Act.

“Go look at it; it protects officers when they get in trouble, when they do something wrong,” Scott said. “It gives them more due process than the average

citizen.”

According to Bourne, the allegedly missing license plate for which Nazario was pulled over shouldn’t have warranted a traffic stop in the first place per recent changes to state law.

“We passed a bill in the summer [of 2020] that made these types of stops for minor traffic infractions illegal and unfortunately it was too late for Lieutenant Nazario,” he said.

Butler and other NAACP officials are asking the public to sign an online petition asking Gov. Ralph Northam to call a special session of the General Assembly for the purpose of passing Bourne’s bill. The petition, available at demandspecialsession.com, had 1,500 signatures as of the time of the press conference, according to Virginia’s NAACP executive director, Da’Quan Love.

“Ladies and gentlemen, the time for statements and sympathies is over,” Love said. “We deserve action and we deserve it right away.”

Calls for independent investigations mount

The incident also drew the attention of Gov. Ralph Northam, who, on Sunday, directed the Virginia State Police to begin its own independent investigation of Windsor’s police department. Northam called the incident “disturbing” and said it angered him.

“Our Commonwealth has done important work on police reform, but we must keep working to ensure that Virginians are safe during interactions with police, the enforcement of laws is fair and equitable, and people are held accountable,” the governor said. “I am inviting Army medic Lieutenant Caron Nazario to meet soon — we must all continue the larger dialogue about reform in our country.”

Virginia’s House Democratic Caucus also condemned the department’s conduct, stating, “The footage of Windsor police officers conducting themselves in an undeniably unprofessional and unethical manner reflects why Black and Brown communities fear and distrust the police,” the statement read. “Behavior like this tarnishes the work of all law enforcement and undermines efforts to create trust between police officers and communities. We call for a full and transparent investigation into the actions of the officers involved. No one is above the law, especially those sworn to uphold it.”

On Monday, Virginia Attorney General Mark Herring announced his Office of Civil Rights had requested the department send over numerous re-

cords, including those concerning the employment status of the two involved officers and any other allegations of racial profiling or police brutality over the past 10 years.

The Fraternal Order of Police of Virginia, the state’s branch of the world’s largest organization of sworn law enforcement officers, “supports a comprehensive investigation of the Windsor Police stop of U.S. Army 2nd Lt. Caron Nazario,” said Virginia FOP President John H. Ohrnberger. “The FOP of Virginia does not condone excessive use of force in any way, and that appropriate action should be taken upon completion of an investigation.”

“I will state for the record — no deputies from the Isle of Wight County Sheriff’s Office were present or in any way involved in this traffic stop,” said County Sheriff James R. Clarke Jr.

Primary law enforcement jurisdiction within Isle of Wight’s two incorporated towns — Smithfield and Windsor — falls to each town’s police department, he said.

“When the matter is fully investigated, my hope is that justice and fairness will prevail,” Clarke added. “The professional men and women of the Isle of Wight County Sheriff’s Office have worked hard to build positive and constructive relationships with all who live, work, or visit our County. We will continue to conduct ourselves in a manner that holds the public faith and trust as a priority.”

Del. Emily Brewer, the Republican representative for Isle of Wight County in Virginia’s House of Delegates, is also calling for an investigation — one that will be “full, transparent, and unbiased” according to a statement she made on Twitter Sunday.

Congressman Bobby Scott, whose 3rd Congressional District includes Isle of Wight County, is calling for a concurrent federal investigation.

“I was horrified when I viewed the recently released video footage of the police treatment of Caron Nazario, a second lieutenant in the U.S. Army,” Scott said. “This should have been a routine traffic stop and the video speaks for itself. The release of this video comes while the Hampton Roads community is still mourning the loss of Donovan Lynch who was killed by officers while their body worn cameras were not activated. Both of these instances should be investigated by federal authorities.

“These dangerous and tragic events highlight why the House of Representatives passed the George Floyd Justice In Policing Act. I urge my Senate colleagues to immediately

pass this legislation and send it to President Biden’s desk for signature. It would be a critical first step in reforming policing in America.”

Lynch was killed the night of March 26 in Virginia Beach as police responded to two shooting incidents. Police initially described Lynch as an “armed citizen,” but Virginia Beach Police Chief Paul Neudigate later said his officers found a gun “in the vicinity” of the shooting and didn’t have any evidence it belonged to Lynch, the Virginian-Pilot reported. The officer who killed Lynch was wearing a body camera, but it wasn’t activated and investigators don’t know why.

Future lawsuit expected?

Saunders deferred any further comments on behalf of the town until after Windsor’s Town Council meeting Tuesday evening, which had yet to start as of press deadline.

The council had scheduled a closed session at the end of the meeting for a consultation with legal counsel. The meeting agenda cites an exemption from open meeting requirements under state code 2.2-3711.A.7, which states a closed session for this purpose is allowable when “actual or probable litigation” would “adversely affect the negotiating or litigating posture of the public body” were it to be discussed in view of the public.

Nazario’s lawsuit, however, doesn’t name the town or its police department as defendants. Instead, it names Crocker and Gutierrez in their personal capacities.

“There must be some adverse effect on the Town’s negotiating or litigating posture in order for the exemption to apply,” Alan Gernhardt, executive director of Virginia’s Freedom of Information Advisory Council, confirmed. “It follows that the Town could not use that exemption to discuss litigation in which the Town had no legal interest. However, without knowing what was actually discussed, I cannot offer a definite opinion on this issue, especially keeping in mind that the exemption includes probable litigation.”

Probable litigation, he said, is defined as litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party.

“A discussion of whether the Town could have legal liability if it was added as a defendant in the suit would qualify as probable litigation, even though [Nazario] did not actually file against the Town at this point,” Gernhardt said.

WPD chief: Viral video, not Gutierrez's actions, led to his firing

By Stephen Faleski
Staff Writer

The Windsor Police Department's decision to fire Officer Joe Gutierrez April 11 — four months after he held a Black Army

lieutenant at gunpoint during a traffic stop and pepper-sprayed him — had more to do with a video of the incident going viral than the incident itself, according to Police Chief Rodney “Dan” Riddle.

The chief held a press confer-

ence April 14 — his first public appearance since the video and the lawsuit 2nd Lt. Caron Nazario filed on April 2 made national headlines.

Riddle said he watched his officers' body cam footage of the

incident “multiple times” during the department's internal investigation, which he said began Dec. 8 last year — three days after the incident. That investigation ended Jan. 28, concluding “Windsor Police Department policy was not

followed.” “Disciplinary action was taken” that same day, but Gutierrez was allowed to keep his job.

That changed when the video

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and Nazario's allegations of police brutality attracted the attention of national media outlets and prominent government officials, among them Gov. Ralph Northam, who called for an independent investigation of the department by the Virginia State Police.

"As things continued to unfold, we got to a point Sunday where I lost faith in his ability to continue to serve the community," Riddle said. "Bottom line is, we're a small community; we're 2,600 people. We know just about everybody here. That's why we have good relationships within our community ... that was destroyed by the social media posting, the coverage of it. There was no way, in my mind, that he could ever engage in this community in an effective manner beyond that day."

Riddle declined to specify what disciplinary actions Gutierrez faced after the department's internal investigation concluded, calling the matter a "personnel issue." But he denies his department has been less than transparent about the incident.

"The video was released to Mr. Nazario's attorney in mid-December," Riddle said. "There's been no attempt to hide this or keep this from anybody. They've had possession of it for well over four months."

But one person who said he hadn't known of the incident prior to The Virginian-Pilot breaking the story April 8 is Windsor Town Councilman Jake Redd.

Redd was present during the chief's press conference and also attended the Town Council meeting the night before, where Mayor Glyn Willis — following a two-hour closed session to discuss the "performance, discipline or resignation" of town employees, made a statement of support on behalf of the council for Chief Riddle and Officer Daniel Crocker, the officer who initiated the Dec. 5 traffic stop and was also seen on video pointing his gun at Nazario.

"We as a council fully support the Windsor Police Department, and that includes Chief Riddle and Officer Crocker," Willis said. Asked why Gutierrez had been fired — but not Crocker — Riddle said that while both officers had been with the department for less than a year, Gutierrez had far more experience in law enforcement and was serving as the department's training officer. Crocker, on the other hand, had just graduated the police academy last October and was still in his on-the-job training phase.

"If you watch the video you'll see there's several times in the video where Officer Crocker makes an effort to de-escalate that situation verbally ... he changes his pitch, his tone, his demeanor," Riddle said. "That is somebody right there who has the makings of being a policeman."

"I've known Daniel since he was 14; he's a lifelong resident of the town of Windsor," Riddle added. "There is little doubt in my mind that with some additional training and more years under his belt he will continue to serve this community well."

As for Gutierrez being captured on video telling Nazario he was "fixin' to ride the lightning," "I take that, based on my police career, as a reference to an electronic control weapon or a taser," Riddle said.

Nazario's lawsuit, however, says there's another meaning to the phrase.

"This is a colloquial expression from an execution, originating from glib reference to execution by the electric chair," the lawsuit states.

In the videos, the officers give conflicting commands to Nazario, at times telling him to keep his hands out of the window and other

times telling him to get out of the car, which would have required putting at least one arm back inside the vehicle to unbuckle his seatbelt. At one point, Nazario tells the officers he's "honestly afraid" to exit his vehicle, to which Gutierrez responds, "Yeah, you should be."

Riddle called Gutierrez's "ride the lightning" remark "inappropriate" and his "you should be" remark "inexcusable."

"That upset me; it made me mad," Riddle said.

But he blamed Nazario for the incident ultimately ending the way it did, saying there were "certain actions" the lieutenant took, such as slowing down but not stopping and passing "multiple locations" where he could have pulled off the roadway before ultimately stopping at a well-lit BP gas station one mile away, raised "red flags" for the responding officers based on their training.

"Those officers initially reacted relatively well in my opinion," Riddle said. "The use-of-force continuum, escalation of force, de-escalation of force, they actually were doing it. They came out with their firearms. Officer Gutierrez transferred to his taser and eventually to his pepper spray and then went hands-on, so that's coming down the use-of-force continuum."

"What they missed, though," he said, "was the opportunity to verbally de-escalate that situation, to engage Mr. Nazario in a positive manner and use language to gain compliance from him."

"At the end of the day, I'm glad that nobody got hurt," Riddle said. "I wish he would have complied a lot earlier."

Asked if he felt he owed Nazario an apology for the way he was treated, Riddle replied, "I don't believe so."

In addition to the pending investigations of the department by the state police and Virginia Attorney General Mark Herring's Office for Civil Rights, Riddle confirmed that afternoon that there is now a federal investigation pending as well by the FBI.

Herring, on Monday, issued a press release stating his office had requested the department send over numerous records in its search for a pattern of discriminatory and abusive policing over the past 10 years.

"I invite them," Riddle said. "There's nothing there, there's nothing there for them to find."

The same day as Riddle's press conference, Congressman Bobby Scott, whose 3rd Congressional District includes Isle of Wight County, wrote to Attorney General Merrick Garland, to ask that the federal Department of Justice open criminal and civil rights investigations into Nazario's traffic stop, and into the recent officer-involved shooting of Donovan Lynch in Virginia Beach.

"The residents of Hampton Roads deserve transparency, accountability, and most of all, they deserve the truth about these incidents," the congressman wrote. "I have long supported evidence-based reforms for local police and the criminal justice system; however, I do not believe an internal review of these events by local police departments will provide the answers our community deserves."

Lynch was killed the night of March 26 in Virginia Beach as police responded to two shooting incidents. Police initially described Lynch as an "armed citizen," but Virginia Beach Police Chief Paul Neudigate later said his officers found a gun "in the vicinity" of the shooting and didn't have any evidence it belonged to Lynch, the Virginian-Pilot reported. The officer who killed Lynch was wearing a body camera, but it wasn't

activated and investigators don't know why.

NAACP responds

Isle of Wight County's NAACP chapter reacted to Riddle's press conference remarks by calling for his immediate resignation.

"We are appalled at some of the statements made by the Town officials as well as the Chief of Police," said Isle of Wight NAACP President Valerie Butler.

Butler had previously called for Crocker's firing when the NAACP held its own press conference April 12 in the parking lot outside Windsor's municipal office in view of the BP gas station where the traffic stop occurred.

On April 16, Butler's NAACP chapter sent a formal letter to town officials detailing their reasons for continuing to call for the resignation or firing of Crocker and Riddle. State Sen. L. Louise Lucas and state Del. Emily Brewer, whose districts include Isle of Wight County, are copied on the correspondence.

"Officer Crocker 'immediately' escalated this situation by radioing to the dispatcher that this was a 'high-risk traffic stop' and that the driver was 'eluding police'; only to later admit in a written report that Lt. Nazario was traveling at a low rate of speed," Butler writes.

She then states Crocker further escalated the situation by drawing his gun and standing by idly as Gutierrez taunts Nazario and pepper-sprays him, and would later join in with Gutierrez in using "unnecessary physical force."

"If this brief summary of the facts does not constitute immediate grounds for termination," Butler writes, "Then we just ask the Town of Windsor and its officials, what does?"

Throughout the process, Riddle has been "complicit in this entire situation," Butler writes.

During his press conference, Riddle "admitted the only reason he terminated Officer Gutierrez was due to the video going viral," Butler writes. "This leads our community to wonder if any disciplinary actions that were taken against the officers on January 28, 2021, as originally stated by the Chief of Police."

"Instead of taking full responsibility for the actions of these officers — as a leader should — Chief Riddle chooses to invoke favoritism by letting the community know of his longtime personal ties with Officer Crocker," Butler writes.

"Many African Americans and other allies have lost complete confidence in the Town of Windsor and the Police Department due to their handling of this case," Butler writes. "For the aforementioned reasons and many others, we are immediately calling for the resignations or terminations of Chief Rodney Riddle and Officer Daniel Crocker."

"The nation is watching as this situation unfolds," she adds. "Let us be abundantly clear, this Chapter of the NAACP will not stand by 'idly' as oppression and injustice occur to Army Lt. Caron Nazario and the Citizens of Windsor."

The letter concludes by requesting the release of the police department's newly-implemented January 2021 department-wide training manual, a timeline for implementing a citizens review board and the hiring of an active-duty African American patrol officer.

It is signed by Butler and Brandon Randleman, advocacy advisor to the Isle of Wight NAACP.

Area residents condemn, applaud Windsor police

A group of Black Lives Matter protesters organized outside the Windsor Town Center roughly an hour before the Town Council's scheduled meeting the evening of April 13, and more than a dozen speakers — Black and white — addressed the council members during the meeting's open session. Japharii Jones, leader of Black Lives Matter 757, called for criminal charges against Gutierrez.

Paraphrasing the Rev. Dr. Martin Luther King Jr., Jones said his purpose in protesting outside the Windsor Town Center prior to the meeting was to let "the entire 757 know that an injustice anywhere is an injustice everywhere."

Riddle, who typically attends each Town Council meeting to present his departmental report, was absent that evening. Neither were any other Windsor police officers present — a fact that didn't go unnoticed by citizens' time speaker Judy Dempsey.

Dempsey, an Air Force veteran, lives in Windsor with her husband, Clarence. She said watching the body cam footage of Nazario's interaction with officers Daniel Crocker and Joe Gutierrez made her "ashamed of the town" she has grown to love.

"Where's Windsor's police department?" she asked. "I know Riddle. I taught Riddle's kids ... but is there anybody here tonight to answer any of our questions?"

"I think that first step [firing Gutierrez] was only taken because we went viral and there was a lot of public pressure," said Amanda McKinney of Zuni, who joined in Jones' BLM protest before the meeting. "Much more needs to be done. I think the chief needs to be fired and the other officer as well."

"What happened was awful, but not representative of all of us," she added.

"There is a culture of systemic racism that has taken hold of this county," said citizens' time speaker Rev. W.L. Williams.

But not every speaker was of a similar mindset. Volpe Boykin, who leads the Southern and Central Isle of Wight County Citizens Group, said the group wished to "express its support for the town of Windsor police department and Town Council."

"We agree with and support the actions they have taken in reference to the Dec. 5, 2020 incident involving Officer Joe Gutierrez and Daniel Crocker. We expect the town of Windsor to continue its support for Officer Daniel Crocker unless it's proven through due process that he intentionally acted improperly."

"I don't care who you are, if you have never done that job you cannot know what it's like to do it," Boykin added.

"We weren't there; we don't know the whole story," said Chris Wingard, another citizens group member. "I can't put myself in that position ... but I do encourage you to support Officer Crocker just in having that chance to go through due process ... If he's found guilty, so be it. But if not, then we need to accept that as well."

Butler also spoke during citizens' time, stating she was "disappointed" to hear Wingard's and Boykin's remarks.

"I cannot understand how any organization can condone the actions that we've seen on that video ... it was a simple traffic stop but yet the police officers got out of their cars with their guns drawn," she said. "You could not know how I feel as a Black American unless you've walked in my shoes and experienced some of the things that we've experienced ... If a police officer is that uncomfortable patrolling the street

then as Volpe Boykin said, no I don't know how they feel, but they are sworn to protect and serve our community, and if they're not comfortable with that capacity then they need to choose another profession."

At the end of the meeting, Willis outlined a five-point action plan to guide the town's future responses to the continued fallout from the incident, which includes full cooperation with the state police investigation. He also pledged that the town would post the body cam videos and all answers to Freedom of Information Act requests concerning the incident on its website, and schedule weekly council work sessions every Tuesday to engage the community.

The body cam videos are now live on the town's YouTube channel, accessible via the town's website: [https://www.windsor-va.gov/page/police-stop-december-5,-2020-\(nazario\)/](https://www.windsor-va.gov/page/police-stop-december-5,-2020-(nazario)/).

Same car, same town, two different police reactions

The town also released body camera footage of a traffic stop involving Army 2nd Lt. Caron Nazario that occurred about a month prior to the one that's gone viral.

On Nov. 7 last year, a different officer stopped Nazario in the parking lot of Windsor's Food Lion, telling Nazario that his radar had detected the lieutenant doing 54 miles per hour in a 35 mph zone.

Aside from the alleged speeding, the circumstances surrounding both traffic stops are nearly identical.

In both situations, officers report they are following an SUV with no visible rear license plate displayed that doesn't immediately pull over. Nazario is wearing his Army uniform both times.

On Nov. 7, Nazario is heading east on Route 460 at dawn, and eventually stops at Food Lion. On Dec. 5, he's heading west after dark, and stops at a BP gas station on the opposite side of the highway.

Other than that, the only real difference is the ways the officers react.

The same "red flags" Riddle referenced when defending his officers — no visible plates, tinted windows, driving a ways before stopping — appear to be present in this video as well, only that time the

officer doesn't pull his gun immediately upon exiting his patrol car.

Instead, a polite exchange follows, in stark contrast to the Dec. 5 interaction. The officer calmly asks Nazario for his license and registration. Nazario tells him he purchased his car in New York, and says Virginia's Department of Motor Vehicles has been "backed up" in issuing him permanent plates.

Nazario then asks to be let off with a warning, which the officer declines, telling Nazario he'd been doing only one mile below the standard for reckless driving by speed.

Nazario has a court date of May 12 in Isle of Wight County General District Court to answer the speeding charge, according to court records.

Nazario is suing Crocker and Gutierrez personally for at least \$1 million in federal court. His lawyer, Jonathan Arthur, blames COVID-19 protocols for the delay in Nazario being issued permanent plates.

He says the dealer — not Nazario — was the one to affix the temporary plate to the upper right-hand corner of Nazario's rear window.

According to Jessica Cowardin, spokeswoman for the DMV, Virginia dealers typically issue temporary license plates for 30 days, but state law allows dealers to request an extension of up to 90 days under certain conditions.

"We cannot speak to New York's processes and procedures for the issuance of temporary license plates," but the turnaround time for receiving permanent Virginia plates can vary, depending on whether a driver has made an in-person appointment at one of the DMV's customer service centers or applied for new plates by mail or at one of the DMV's partner offices, Cowardin said.

"Customers who apply for a title and registration at a customer service center or DMV Select typically leave with their paperwork and permanent license plates the same day," she said.

The town first uploaded the video of the Nov. 7 incident last week, but then took it down and uploaded an edited version. According to Town Manager William Saunders, the first video was taken down once he realized there were portions that included some of Nazario's personal information, including his home address and driver's license number.

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Windsor PD to get implicit bias training

By Stephen Faleski
Staff Writer

Officials in Windsor are hoping additional training of its police force will help the town avoid future situations like the one last

December where two officers held Army lieutenant Caron Nazario at gunpoint and pepper-sprayed him.

According to a memorandum from Police Chief Rodney “Dan” Riddle, all Windsor police officers

must, by April 30, complete a four-hour online course on implicit bias — the idea that people can act on prejudices without intending to do so.

The Virginia Association of Chiefs of Police developed the

training, which is available to all Virginia law enforcement officers free of charge. Command Presence, a Georgia-based training company, has also agreed to come to Windsor May 26 and 27 to train the department on de-escalation

strategies — also at no cost save for travel expenses, which the department hopes to cover by inviting other law enforcement agencies to participate for a fee.

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Training

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The chief is also proposing to revamp the department's hiring panel to one composed of two Windsor police officers, two town residents and one member of Town Council. Previously, the entire department of seven officers served as the interview panel for prospective hires.

On April 20, Windsor's Town Council held the first of its promised weekly community engagement work sessions. There, Riddle briefed the council on his plans, and two other reforms he's considering,

which — if approved — will cost town tax dollars.

The first involves revamping the police department's policies and procedures. To do this, Riddle proposes contracting with Lexipol LLC, a Texas company founded by public safety experts that helps law enforcement departments check their policies against the latest changes to state and federal law.

Currently, it's a very tedious process, Riddle said — one which to date has involved his calling other chiefs and asking what

their policies are.

"It's a struggle when you have a small staff and a very limited budget," he said.

And those policies are often written for much larger departments than Windsor.

"Each agency is very specific, and they work to what the needs are in their communities," Riddle said.

Funding the proposal would involve appropriating \$25,748.79 from the town's unallocated fund balance, but the council took no action on the matter that evening.

Riddle also proposes the

town invest in speed measurement devices to place along Route 460, which wouldn't replace the need for officers to pull people over but could decrease the number of officer-motorist encounters. The chief's memo doesn't list a price for these devices.

"The town has a reputation as a speed trap," Riddle acknowledged, but said he's "never seen any bias" in how his officers enforce Route 460's 35 mile-per-hour limit through town.

Gutierrez, Crocker granted extra time to answer lawsuit

NAACP organizes petition, march in support of Nazario

By Stephen Faleski
Staff Writer

A federal judge on April 27 granted ex-Windsor officer Joe Gutierrez an additional two weeks to respond to Army 2nd Lt. Caron Nazario's lawsuit accusing him

of police brutality. The following day, the court granted the same for Officer Daniel Crocker, who is named as a co-defendant in Nazario's suit.

According to Gutierrez's attor-

• See **LAWSUIT**, p. 8

Lawsuit

• Continued from p. 1

ney, John B. Mumford of the firm Hancock, Daniel & Johnson P.C., a delay is needed to answer the numerous allegations — 51 in total — made in the suit's statement of facts. As such, the original April 30 deadline for Gutierrez to file a written response has now been extended to May 15. Crocker has until May 18.

The lawsuit contends Nazario, who is of Black and Latinx descent, had been driving down Route 460 through Windsor the evening of Dec. 5, 2020, when Crocker and Gutierrez stopped him allegedly for not having a rear license plate. A temporary New York tag was affixed inside the vehicle's rear window, but the officers claimed they didn't see it and accused him of "eluding police" — owing to his having driven roughly a mile to a well-lit BP gas station after he saw the flashing blue lights on their patrol cars. The officers' body camera footage shows both exiting their patrol cars with guns drawn, and a heated verbal exchange, with Gutierrez eventually pepper-spraying the lieutenant and forcing him out of his vehicle and onto the ground.

Crocker has retained representation by Anne C. Lahren of the firm Pender & Coward P.C.

Windsor Police Chief Rodney "Dan" Riddle fired Gutierrez April 11, a decision he said during an April 14 press conference had more to do with the video footage of the traffic stop going viral than Gutierrez's actions themselves. Crocker, whom the chief said he's known since the officer was a teenager, remains on the force.

Windsor's Town Council has issued a public statement of support for Riddle

and Crocker, though state and local NAACP leaders continue to call for the officers' ouster.

On April 28, the NAACP launched a website where people can sign a petition to Windsor's Town Council demanding the resignation or termination of Riddle and Crocker.

They've also now taken their campaign in support of Nazario on the road to Petersburg, where a march took place on the campus of Virginia State University, Nazario's alma mater.

It began at 4 p.m. April 29 in the parking lot of Rogers Stadium and proceeded through the university's campus to Virginia Hall, where local leaders made speeches.

"Like Lt. Nazario, a graduate of Virginia State University, many young African American students who often come through Windsor while traveling along Route 460 have had similar horrific experiences with the police during traffic stops," states Valerie Butler, president of Isle of Wight County's NAACP chapter, in an April 28 press release announcing the march.

Isle of Wight County NAACP leaders previously met with Riddle, Windsor Mayor Glyn Willis and Town Manager William Saunders April 21. There, they again demanded Riddle and Crocker be fired or resign.

"We had hoped through this meeting the town would have been open to healing the divide of the community, but instead, the town of Windsor stood firm on their support of these two officers," Butler writes. "The Chief of Police and the town of Windsor have made it abundantly clear they will only re-

spond to this unfortunate incident when the nation is watching. Therefore, we are launching a National Major Public Engagement Campaign in order to pursue justice for Lt. Nazario and for the citizens of the Town of Windsor."

The new website, www.justiceinwindsor.com, takes visitors to a page showing images of Crocker holding his gun and Nazario with his hands in the air, with a link to "take action now," which directs visitors to the petition where they can call for Crocker's and Riddle's resignation or termination. Further down on the web page is an embedded YouTube video titled "Why they must go" and a list of the names and phone numbers for Windsor's council members, town manager and police department. Below that is a "donate" button that takes visitors to a site where they can donate funds to the NAACP in support of its campaign to end qualified immunity for law enforcement officers in Virginia.

According to the American Bar Association, qualified immunity shields government employees from liability for their misconduct, even if they break the law. Under the doctrine, police officers can never be sued for violating someone's civil rights, unless they violated "clearly established law."

The town of Windsor didn't hold the second of its promised weekly community engagement work sessions on April 27. According to Town Manager William Saunders, Mayor Glyn Willis had a schedule conflict, but the work session starting around 5:30 p.m. May 4 was still planned.

Ex-Windsor PD officer files motion to dismiss lawsuit

By Stephen Faleski
Staff Writer

Ex-Windsor officer Joe Gutierrez is asking a federal judge to partially dismiss a lawsuit accusing the former lawman of racially-motivated police brutality.

Army 2nd Lt. Caron Nazario, who is of Black and Latinx descent, filed the suit in Norfolk's federal court April 2. It argues Gutierrez and Officer Daniel Crocker, who is

named as a co-defendant, violated Nazario's Fourth Amendment rights under the U.S. Constitution by holding him at gunpoint during a traffic stop last December and pepper-spraying him.

Body camera footage of the incident, which went viral online last month, shows Gutierrez at one point telling Nazario he was "fixin' to ride the lightning," which

• **See LAWSUIT, p. 6**

Lawsuit

• Continued from p. 1

the lawsuit characterizes as a threat by Gutierrez to murder Nazario given that the phrase is a “glib reference to execution by the electric chair.” It further characterizes Gutierrez’s remark suggesting the Army could discipline him for the incident, and his subsequent offer to let Nazario go without charges if he would “let this go” as an effort to cover up their actions by extorting Nazario’s silence — thereby violating his First Amendment rights.

The motion Gutierrez’s attorney, John B. Mumford, filed May 14 asks that

Nazario’s First Amendment claims be dismissed with prejudice, meaning if granted they cannot be brought up again. A brief in support of that motion, also filed May 14, argues Nazario has “failed to state a claim upon which relief can be granted” because he has not alleged facts demonstrating having suffered an injury that affected his decision to engage in protected First Amendment activities and because no criminal charges were filed against him.

In an accompanying line-by-line response to the lawsuit’s allegations, Gutierrez

denies he or Crocker knew Nazario had a temporary New York license taped inside his rear window as they approached his vehicle with their guns drawn after pulling him over for “dark tinted windows” and an allegedly missing rear license plate. While he admits his “fixin’ to ride the lightning” remark was captured on video, he “denies the allegations ... to the extent that they misstate or mischaracterize the contents of such video recordings” as a threat to murder Nazario.

Gutierrez further denies line No. 46 of Nazario’s law-

suit, which states he had “responded with knee-strikes to Lt. Nazario’s legs” after pepper-spraying him “to force an already compliant and blinded Lt. Nazario down on his face.” In the incident report narrative Gutierrez filed after-the-fact, however, he does admit to delivering “2 knee strikes to his right thigh in an attempt to gain control and take him to the ground.”

Gutierrez then denies his offer to let Nazario go without charges was an effort to extort Nazario’s silence, as well as the lawsuit’s allegation that he and Crocker

made “near identical material misstatements of fact and omissions” in their after-the-fact police reports.

He then argues that Nazario’s claims “are barred from any recovery under the doctrine of qualified immunity.”

According to the American Bar Association, qualified immunity shields government employees from liability for their misconduct, even if they break the law. Under the doctrine, police officers can never be sued for violating someone’s civil rights, unless they violated “clearly established law.”

Nazario’s lawsuit argues the defendants “lacked any legal justification or excuse for their conduct” and therefore are not entitled to immunity. Spurred by the viral video footage and Nazario’s lawsuit, state and local NAACP officials are now calling for an end to qualified immunity for Virginia law enforcement.

Crocker had until May 18 to respond to Nazario’s suit, having been given a nearly three-week extension to do so April 28. More updates will continue to be available on this case as they develop.

Ex-WPD officer allegedly erased phone

By Stephen Faleski
Staff Writer

Ex-Windsor Police Officer Joe Gutierrez is alleged to have erased all text messages and emails from his town-issued cell phone prior to returning it to Windsor officials.

Gutierrez was fired April 11 after video footage showing him holding a Black and Latinx Army officer at gunpoint during a traffic stop last December and pepper-spraying him went viral online.

The Smithfield Times had requested under the Freedom of Information Act on April 15 to be provided with copies of all correspondence, to include emails and text messages, sent by Gutierrez from July in 2020 to date. The town acknowledged the request April 22 and requested additional time to respond, then asked for an additional 10-day extension April 28 given the number of FOIA requests from other media outlets concerning the traffic stop and the volume of communiques. Windsor Town Manager William Saunders emailed those records to the paper May 12, adding “FYI – Officer Gutierrez blanked out his phone before returning it, so those texts were lost.”

“It is absolutely not standard practice for employees to wipe their phones, as it potentially incurs the destruction of documents sooner than the Library of Virginia retention standards dictate,” Saunders said.

The Army officer, 2nd Lt. Caron Nazario, has filed a \$1 million federal lawsuit against Gutierrez, naming Officer Daniel Crocker as a co-defendant. Crocker, who remains employed by the Windsor Police Department, is the one who initiated the traffic stop.

Per state law, public records must be retained for a defined period of time based on what particular function of government they document. A set of records that document a particular governmental function is what Library of Virginia officials refer to as a record series. Text messages and emails don’t fall into a particular record series since they’re simply delivery methods that can be used to trans-

mit any number of records, including video, audio, still photos and text.

“Think of the text message or email as the envelope, rather than its content,” said Chad Owen, records management coordinator for the Library of Virginia.

Absent contents that would call for a specific retention series, such as an officer’s travel receipt or drug screening result, most text messages and emails fall under the “correspondence” records series, as defined on pages three and four of the GS-19 retention schedule for local governments, Owen said. Correspondence has multiple retention periods depending on the role of the person sending or receiving it and the content of the correspondence.

“Even the governor isn’t required to retain every spammy email he receives,” Owen said.

A significant portion of emails and the vast majority of text messages from local government employees would fall under the GS-19 series 010039, which has a retention period of zero years after being deemed no longer administratively necessary, Owen said. This occurs once a public official decides the record is no longer needed.

“As such, there is considerable leeway for public officials to delete or destroy text messages and emails under their control,” he said.

But there’s one important exception. Under the Virginia Public Records Act, records should not be destroyed if there is pending legal action, an audit, investigation or FOIA request.

Nazario filed his lawsuit against the two officers April 2, each of whom was issued summons April 6. On April 11, the same day Gutierrez was informed of his termination, Gov. Ralph Northam directed the Virginia State Police to conduct an independent investigation of the traffic stop.

“If there was pending action then said deletion would have been done contrary to the VPR Act,” Owen said. “I think that would ultimately be a matter of mens rea to be argued before a court.”

Mens rea is a legal term referring to the intention or knowledge of wrongdoing.

WPD officer seeks lawsuit's delay

By Stephen Faleski

Staff Writer

Windsor Police Officer Daniel Crocker is asking a federal judge to stay Army 2nd Lt. Caron Nazario's lawsuit against him until related investigations by the Virginia State Police, Attorney General Mark Herring's office and the FBI are completed.

Nazario, who is of Black and Latinx descent, filed the lawsuit in Norfolk's federal court April 2. It names Crocker and ex-Windsor officer Joe Gutierrez as co-defendants, accusing each of violating Nazario's First and Fourth Amendment rights under the U.S. Constitution during a traffic stop last December when both officers held the lieutenant at gunpoint and Gutierrez pepper-sprayed him.

Gutierrez was fired April 11, but Crocker remains on the force.

Crocker's attorney, Anne C. Lahren of the firm Pender & Coward P.C., argues in a May 20 court filing that defending a civil lawsuit in the face of an active investigation that could potentially result in criminal prosecution presents "a serious hardship to Officer Crocker."

If Crocker chooses to exercise his Fifth Amendment right not to testify during the civil proceeding, "the jury will almost certainly draw a negative inference from his silence," Lahren writes. But if he chooses to testify during the civil trial he would waive that right in any subsequent criminal proceedings to come out of the pending investigations.

"Denial of the stay could force Officer Crocker to invoke his Fifth Amendment right in the

Lawsuit

• Continued from p. 1

civil proceeding to avoid waiving his right to do so later,” she writes.

Multiple non-parties also stand to be harmed “if this highly-publicized case is brought to trial before the investigations are complete,” she argues, namely the Windsor Police Department, Windsor’s town government and the Commonwealth of Virginia.

State Police report delivered to special prosecutor

Gov. Ralph Northam had ordered on April 11, shortly after the officers’ body camera footage of the incident began going viral online, that the Virginia State Police begin its own independent investigation of the matter. Hampton Commonwealth Attorney Anton Bell was named a special prosecutor for the investigation last month after Isle of Wight’s commonwealth attorney, Georgette Phillips, recused herself. Sgt. Michelle Anaya, spokeswoman for the State Police, confirmed on June 1 that Bell has received the agency’s completed investigative report.

Anaya declined to provide any portions of the report to the newspaper, stating the matter was still an active investigation.

Bell must now decide what if any charges to bring against Crocker and Gutierrez.

Herring’s Office for Civil Rights is also conducting a separate “pattern and practice” investigation that will look for any pattern of discriminatory or abusive policing over the past 10 years in Windsor. Windsor Police Chief Rodney “Dan” Riddle also confirmed during an April 14 press conference that a federal FBI investigation of the incident is also pending.

Gutierrez and his legal team are supporting Crocker’s request for a stay, but Nazario’s legal team is opposing it.

“Neither defendant Gutierrez nor defendant Crocker asserted the 5th Amendment in their answers [to Nazario’s initial court filing],” writes attorney Thomas Roberts of the firm Thomas H. Roberts

& Associates P.C., which is representing Nazario. Instead, the two defendants have argued in their filings that their conduct was completely legal.

“They cannot have it both ways,” Roberts writes. “If they have done nothing wrong, nothing they say will incriminate them and there is no 5th Amendment concerns and no reason for a stay.”

A stay would also prejudice Nazario’s ability to depose each defendant and gather evidence through the subpoena powers afforded a plaintiff during a lawsuit, Roberts argues.

“Defendant Gutierrez has already begun the process of illegally destroying evidence relevant to the criminal investigations and the civil suit,” Roberts writes, referring to Windsor Town Manager William Saunders’ statement in a May 12 Suffolk News-Herald story that Gutierrez had wiped his town-issued cell phone after learning of his termination, before returning the device to town officials. As such, text messages the newspaper had requested from the town under Virginia’s Freedom of Information Act were lost.

Crocker joins motion to dismiss

Crocker’s attorney also recently filed a brief in support of Gutierrez’s motion to dismiss the First Amendment claims in Nazario’s suit.

The suit argues Gutierrez’s offer to let Nazario go without charges and without informing his military command if he would “let this go,” was an effort to cover up his and Crocker’s actions by extorting Nazario’s silence with a threat to his Army career — thereby violating the lieutenant’s First Amendment right to free speech. In a line-by-line response to the lawsuit’s allegations, Crocker argues Nazario’s First Amendment rights “have clearly not been ‘chilled’ as evidenced by the filing of this lawsuit, the lack of any charges filed against him by either of the Defendants, the Plaintiff’s ability to establish a GoFundMe account, and an Instagram account con-

cerning the December 5, 2020 traffic stop, and the extensive press and television interviews given by the Plaintiff’s counsel on his behalf.”

As of May 26, the GoFundMe.com page set up by Roberts & Associates for Nazario’s legal expenses had raised \$16,279 of its \$50,000 goal from 305 donors. An additional GoFundMe page for Nazario organized by Anthony Ziolkowski of Cumberland, Rhode Island, had raised \$1,465 of its \$25,000 goal from 29 donors by that same date.

In Crocker’s line-by-line response, the first-year officer denies his conduct the night of the traffic stop was improper “given the way the situation developed based on the Plaintiff’s own conduct.” He denies the suit’s claim that he could see the temporary New York license plate taped inside the rear window of Nazario’s vehicle while following Nazario to the BP gas station where he ultimately stopped, and disputes Nazario’s claim that he had been looking for a well-lit area to pull over while continuing to drive down Route 460 for about a mile after seeing Crocker activate his patrol car’s flashing blue lights. Nazario, Crocker argues, chose to drive by “numerous well-lit locations where he could have pulled over, including Farmers Bank, Anna’s Ristorante Italiano & Pizzeria, the fire station, and the CVS.”

Crocker further argues that his removal of Nazario’s legally-owned firearm from his vehicle while he checked its serial number to see if it was stolen “was not a seizure” as Nazario’s lawsuit claims, but rather was “tantamount to a ‘frisk.’”

On May 28, Nazario’s attorneys filed a motion in opposition to the defendants’ request to dismiss the lawsuit’s First Amendment claims.

“The claim that the Defendants never actually charged the Lieutenant and thus took no adverse action fails as it was the actual threats of prosecution and continued detention on the Defendants made to the Lieutenant on December 5, 2020, that were the adverse action sufficient for the violation,” attorney Jonathan

Arthur writes. “The First Amendment case law does not require the Defendants to have initiated the malicious prosecution, to commit a further Fourth Amendment violation, to complete the tort. The threat communicated is sufficient.”

Gutierrez response deficient?

Meanwhile, Nazario’s attorneys have taken issue with the line-by-line response Gutierrez filed, in which the ex-WPD officer repeatedly stated that the body camera recordings referenced in the suit’s allegations “speak for themselves” but denied the allegations “to the extent they misstate or mischaracterize the contents of such video recordings.”

Nazario’s legal team argues that per federal rules of civil procedure, defendants in a lawsuit must state in short and plain terms their defenses to each claim asserted, and any denials must fairly respond to the substance of the allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

But because of the way Gutierrez responded to the allegations referencing body camera footage, Nazario’s lawyers will have to “guess at which allegations in the complaint are undisputed or irrelevant ... and which will have to be proven by a preponderance of the evidence.”

As such, Nazario’s legal team is asking that the court strike from the record Gutierrez’s responses that state the videos “speak for themselves,” and declare him as having admitted to the associated allegations in Nazario’s initial court filing.

“Alternatively, and only if the court is not willing to grant the foregoing,” Nazario’s legal team asks that Gutierrez be required to provide answers “consistent with the obligations” of the federal rules of civil procedure.

Court documents allege prior excessive force by Gutierrez

By Stephen Faleski
Staff Writer

Ex-Windsor Police Officer Joe Gutierrez is no stranger to excessive-force complaints, according to the latest court documents filed in Army 2nd Lt. Caron Nazario's pending lawsuit against him.

Gutierrez was fired in April after video footage showing him holding Nazario — who

is described in the suit as of Black and Latinx descent — at gunpoint and pepper-spraying him during a traffic stop last December that went viral online. Nazario has filed a \$1 million lawsuit against the former lawman and Officer Daniel Crocker, who was also involved in the incident but remains on the force. The suit accuses both officers of racially motivated police brutality.

The two had pulled Nazario over for allegedly not having a rear license plate. Nazario had a temporary New York license plate displayed in his vehicle's rear window, but the officers said they didn't see it and accused the lieutenant of eluding police when he drove roughly a mile down Route 460 to a BP gas station before stopping.

• See **FORCE**, p.7

• Continued from p. 1

According to an Oct. 27 court filing by Nazario's attorney, Jonathan Arthur, Gutierrez — when asked under oath to identify by date and law enforcement affairs any and all internal affairs investigations to which he had been subjected — disclosed an incident from his previous employment as an Isle of Wight County Sheriff's Office deputy in which he'd used force on an elderly African American man during another traffic stop.

The subsequent internal affairs investigation allegedly concluded Gutierrez had committed a Level III violation of the Sheriff's Office's use-of-force policy and resulted in his being suspended for 10 days without pay in lieu of outright termination.

According to Sheriff's Office spokesman Capt. Tommy Potter, Gutierrez was employed as a deputy with the agency from August 2017 through July 2020, at which point he left to pursue employment with the Windsor Police Department.

Arthur declined to provide The Smithfield Times with a copy of the alleged internal affairs report. The Smithfield Times had previously asked Potter on April 16 to provide body camera footage and incident reports from any use-of-force incidents during Gutierrez's tenure with the Sheriff's Office.

"At this time we are not releasing any personnel documents or additional videos due to the ongoing multiple investigations," Potter replied to the Times that same day.

The viral body camera footage from the Dec. 5, 2020 incident sparked state and federal probes into the Windsor Police Department's conduct. The Virginia State Police completed its investigation of the incident earlier this year and turned its findings over to Hampton Commonwealth's Attorney Anton Bell, who was named a special prosecutor after Isle of Wight County Commonwealth's Attorney Georgette Phillips recused herself. Bell's office has yet to announce any prosecutorial decision. Concurrent investigations by Virginia Attorney General Mark Herring's Office for Civil Rights and the FBI are still pending.

Herring's office has been conducting a "pattern and

practice" investigation that involves looking for evidence of discriminatory or abusive policing over the past 10 years.

"We are close to proposing an agreement with the Windsor Police Department that will outline internal changes and policies that need to be implemented in the department," said Herring spokeswoman Charlotte Gomer. "Attorney General Herring is incredibly proud of the work that his Office of Civil Rights has done on this case."

Gutierrez's employment applications "demonstrate another, undisclosed, founded excessive force complaint," Arthur wrote in his court filing, which had sought a judge's order to compel Gutierrez to provide "full and accurate responses."

Arthur declined to provide the Times with documentation substantiating the alleged third incident, nor would he specify whether said employment applications occurred before or after Gutierrez's time with the Windsor Police Department.

Arthur withdrew his motion the next day, Oct. 28. According to Arthur, "Gutierrez complied" with providing additional details, thereby negating the need for a hearing on the matter.

Gutierrez had previously used force against another Black man — Mark A. Hynes Jr. — while in the employ of the Smithfield Police Department on Dec. 19, 2016. In body camera footage of that incident, which occurred near Church Manor Apartments, the use of force begins roughly 2 minutes and 40 seconds into the video as SPD Officer Will Wooley is asking Hynes to exit his car.

"Taser! You want to get tased? Do as he says! Do as he says!" Gutierrez shouts.

Wooley then orders Hynes to put his hands behind his back.

"Give me your other hand ... you're gonna get tased," Wooley warns Hynes.

Gutierrez then shouts, "Taser!" three more times and fires. Hynes screams.

Wooley then demands Hynes roll over.

"Roll over or you're going to get it again!" Gutierrez shouts.

Gutierrez later wrestles Hynes to the ground.

According to Gutierrez's use-of-force report, Hynes was charged with driving under the influence, obstructing justice and providing false information to police. According to Smithfield Town Manager Michael Stallings, "no complaints were received" regarding the Dec. 19, 2016 incident alleging Gutierrez had used excessive force.

•••

In another court filing, also on Oct. 27, Arthur asked that Nazario be granted a protective order from Gutierrez and Crocker's attempts to gain access to "highly sensitive information" from Nazario, including his military service record, medical records, home address, names of cohabitants, vehicle identification and military deployment orders.

"Given the media attention and high-profile nature of this case, the Plaintiff has considerable concern that if this information is leaked to outside sources, or retained by the Defendants, it can be used by nefarious parties to locate and harm the Plaintiff or his family members as indeed the Plaintiff believes that he has already suffered retaliation in the form of vandalism of his vehicle," Arthur writes. "Plaintiff is also concerned that such information as contained in his military records and deployment orders implicate national security concerns to the extent that they reveal what Army units are deploying where and when."

According to Arthur, the parties have since reached a "consent protective order" in this matter. A Nov. 11 court filing states the attorneys for Crocker, Gutierrez and Nazario have agreed to "permit discovery and trial preparation to proceed with a minimum of discovery motions over matters of confidentiality." According to the accompanying court order, any document production or deposition testimony that contains financial information or employment personnel files may be designated as "confidential" and may be disseminated only to the parties, their respective attorneys and their staff, expert witnesses, insurers providing a defense in the case and others to whom the parties provide prior written consent. Personally identifying information,

military records and medical information is to be designated as "confidential — attorney's eyes only."

A virtual settlement conference is scheduled for Nov. 23, but Arthur declined to comment on whether he expects to reach an agreement with Crocker and Gutierrez or proceed to trial. If a settlement isn't reached, a trial date of March 28 has been set.



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Gutierrez records withheld

By Stephen Faleski
Staff Writer

The Isle of Wight County Sheriff's Office, on Nov. 18, acknowledged the existence of body

camera footage and an internal affairs report purported to show ex-Windsor police officer Joe Gutierrez using force against an elderly Black driver — but declined to share those records

with The Smithfield Times.

The incident occurred between August 2017 and July 2020 when Gutierrez was in the employ of the Sheriff's Office as a deputy. Gutierrez then took a job with the

town of Windsor's Police Department, from which he was fired earlier this year after video footage showing him holding Army 2nd Lt. Caron Nazario — also of African American descent — at

gunpoint and pepper-spraying him during a Dec. 5, 2020, traffic that stop went viral online.

Nazario has filed a \$1 million

• **See FORCE, p. 6**

Force

• Continued from p. 1

lawsuit against Gutierrez and Windsor Police Officer Daniel Crocker, who was also involved in the Dec. 5, 2020, incident but remains on the force. The suit accuses both of racially motivated police brutality.

The two had pulled Nazario over for allegedly not having a rear license plate. Nazario had a temporary New York license plate displayed in his vehicle's rear window, but the officers said they didn't see it and accused the lieutenant of eluding police when he drove roughly a mile down Route 460 to a BP gas station before stopping.

The Times learned of the prior excessive force allegation from Gutierrez's time with the Sheriff's Office via an Oct. 27 court filing by Nazario's attorney, Jonathan Arthur. According to that filing, the Sheriff's Office concluded Gutierrez had committed a Level III violation of the agency's use-of-force policy when stopping the elderly Black driver, and chose to suspend him for 10 days without pay in lieu of firing him.

Arthur declined to provide the body camera

footage or internal affairs report to the Times to substantiate the allegations in his filing. The Times then submitted a Freedom of Information Act request on Nov. 11 to the Sheriff's Office for body camera footage, the incident report and the internal affairs report stemming from that traffic stop.

The Sheriff's Office responded to the Times' FOIA request on Nov. 18.

"We are in possession of this information you have requested," Deputy Paul Nash of the agency's Administrative Services Division wrote to the Times via email.

But "the Sheriff's Office has elected to withhold release of this information," Nash said, citing Virginia Code 2.2-3706, B.9.ii.

This section of code states "administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency" are "discretionary releases," and may be excluded from mandatory disclosure provisions.

According to Megan Rhyne, executive director

of the Virginia Coalition for Open Government, law enforcement agencies' use of this particular code section to deny FOIA requests for documents pertaining to alleged misconduct by officers is "pretty typical."

The problem, according to Rhyne, is that the code doesn't specify what constitutes "records" of "administrative investigations."

"Just like in the criminal investigative file arena, a record (recording, memo, photo, statement, email, etc.) is an administrative investigative record if the department says it is," Rhyne said via email. "And once they say it is, then this exemption can be used to deny access."

But there is nothing in the law that would require them to withhold those records either. Disclosure is discretionary, Rhyne clarified, "and so they are making a choice not to release it."

While Nash acknowledged that the Sheriff's Office indeed has the discretion to release or withhold the records, "our standard practice is not to release information from admin-

istrative investigations relating to allegations of wrongdoing by employees," he said.



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Attorney general files suit against Town of Windsor

By Tracy Agnew
Editor

In what is being termed a first-of-its-kind lawsuit, Virginia Attorney General Mark Herring has sued the Town of Windsor, alleging the Windsor Police Department has operated in a discriminatory and illegal manner by engaging in a pattern of unconstitutional and discriminatory policing.

A press release from Herring's office on Thursday stated that the months-long investigation, spurred by a traffic stop in which two Windsor police officers pepper-sprayed and held at gunpoint a Black and Latino man, had "revealed disturbing evidence of discriminatory, unconstitutional

policing" and that the police department "has operated in a way that led to discrimination against African Americans and violated their constitutional rights."

This is the first enforcement action against a law enforcement agency under a new state law empowering the attorney general to file suit to stop systemic violations of Virginians' civil rights.

The Town of Windsor issued a statement Thursday afternoon denying the allegations, questioning the data used and asserting the lawsuit, and its timing, are politically motivated.

The traffic stop of Lt. Caron Nazario happened Dec. 5, 2020, and came to light in April after Nazario filed suit. He was pulled

• **See LAWSUIT, p. 6**

Lawsuit

• Continued from p. 1

over on U.S. 460 for lack of a license plate, even though a temporary tag was displayed in the rear window. Officers Daniel Crocker and Joe Gutierrez both pulled their weapons, and Nazario was pepper-sprayed and knocked to the ground. After the video went viral, Gutierrez was fired, but Crocker remained on the force.

Herring's lawsuit states that "at no time did Lieutenant Nazario use or attempt to use force against the officers," and alleges other complaints in which force was improperly used against Black drivers, but without giving details of those other complaints.

"While our investigation was spurred by the egregious treatment against Lt. Nazario that we all saw in bodycam footage, we discovered that this incident was indicative of much larger problems within the department," Herring stated in the press release. "Our months-long investigation uncovered huge disparities in enforcement against African American drivers, and a troubling lack of policies and procedures to prevent discriminatory or unconstitutional policing. We even discovered evidence that officers were actually being trained to go 'fishing' and engage in pretextual stops. That is why I have now filed suit to ensure accountability and to protect Virginians' rights."

In his suit filed Thursday in Isle of Wight Circuit Court, Herring alleges that the Town of Windsor "violated the Virginia Human Rights Act ('VHRA') and the Virginia Public Integrity and Law Enforcement Misconduct Act ('VPLEM') in its provision of law enforcement services through the Windsor Police Department."

Among the findings uncovered by Herring's investigation are:

- Disproportionate traffic stops of Black drivers — Black drivers accounted for approximately 42% of the department's traffic stops from July 1, 2020, through Sept. 30, 2021 (810 of 1,907 stops). During that time period, the town stopped Black drivers between 200% and 500% more often than would be expected based on the number of Black residents in the town or county.

- Disproportionate searches of Black drivers' vehicles — From July 1, 2020, through Sept. 30, 2021, the department searched more vehicles driven by Black drivers than White drivers, even though Black residents do not constitute the majority of the population of the town or the commonwealth.

- Discrepancy in data reported to the Town Council and state authorities — For many of the examined months — July 2020

through July 2021 — there was a significant discrepancy between the number of traffic stops and citations reported to the Town Council and the number reported to the Virginia State Police for tracking and reporting purposes. In all instances, the numbers reported to the state were lower than those shared with the Town Council, and the discrepancy has not yet been explained.

The Town of Windsor issued a statement Thursday afternoon stating the decision by Herring to file a lawsuit so late in his tenure was "clearly political" and that the reason for the lawsuit was "perhaps for the sake of headlines."

The statement said the town has practiced non-discriminatory policing both before and after the Nazario traffic stop, but has taken additional steps to increase training and accountability in recent months.

"None of those efforts are mentioned in the Herring lawsuit, even though his office and deputies were fully aware of them for several months," the town's statement reads. It states the town and attorney general's office met as recently as Dec. 10 to discuss these efforts.

The statement says that Herring's office issued an ultimatum just days after that meeting, "demanding immediate action or the threat of litigation." The statement also says the data on traffic stops and searches Herring used is questionable.

The statement adds that the Town of Windsor is "stunned" that the suit was filed on Dec. 30, just hours before courts closed for the year, and that the matter should have been left to the incoming attorney general to pursue, "if it indeed had merit in the first place."

The incoming attorney general, Jason S. Miyares, is a Republican and the state's first Latino attorney general.

"We look forward to having a reasonable conversation with the next Attorney General regarding the Town's law enforcement practices," the town's statement says in conclusion. "In the meantime, we reserve further comment until our attorneys and Town Council have had an opportunity to review Mr. Herring's eleventh-hour action and present a formal response."

Klarke Kilgore, spokesperson for Attorney General-elect Miyares, told The Smithfield Times: "Attorney General-elect Miyares has been reviewing all the cases being handled by the Attorney General. We look forward to reviewing the facts and applicable law for this suit once the Attorney General-elect takes office."

Joel Rubin, a public relations professional assisting the Town of Windsor with

the response to the lawsuit, said in response to questions that Windsor Police Chief Rodney Riddle and Town Manager William Saunders would not be providing their own statements or speaking with the media.

Rubin also provided details on the town's claim of minority representation within the Windsor Police Department. He stated in response to questions that the officer hired to replace Gutierrez is African American, and that there is also a Latino officer.

Valerie Butler, president of the Isle of Wight NAACP, welcomed the news of the lawsuit.

"We've been waiting a long time for this," she said in a telephone interview Thursday afternoon. "Based on the information the attorney general's office has pointed out as far as the racial profiling, the disproportionate stops of Black drivers ... that confirms the preliminary information we had gotten. This supports exactly what the policing has looked like in the Town of Windsor."

Butler said she hopes the lawsuit is the beginning of positive changes.

"I'm hoping it will bring positive changes as far as civil rights and human rights are concerned," she said. "I'm hoping going forward there will be some positive changes in the community in which I serve and the community in which I live."

Butler said the Town of Windsor has not been forthcoming to sit down with her group and discuss their concerns.

"One of my concerns has been the Town of Windsor has not been very receptive to sitting down and speaking with us, and I was really concerned that maybe they were not treating our issues seriously," she said. "I'm hoping this research that's been uncovered will let them know the severity of things that are happening in their police department and possibly open the doors for sit-down collaboration between the both of us."

The Isle of Wight NAACP also issued a written statement late Thursday night in which it called Windsor's statement a "knee-jerk response."

"The town's knee-jerk response to the lawsuit is a reflection of the practice and culture of the town of Windsor and their police department," the NAACP wrote. "Since the horrendous video of Lt. Nazario surfaced, the Town of Windsor has spent more time trying to salvage their image and reputation, instead of protecting the civil and constitutional rights of African Americans in the Windsor community."

The statement goes on to call upon Miyares to pursue the lawsuit and promises more communication:

"Unlike the Town of Windsor, it is our hope that Attorney General-elect Jason Miyares will focus on protecting the civil rights of African Americans and fully pursue this lawsuit once his office takes over in January.

"The NAACP will continue to communicate to the public our next steps regarding this matter in the coming days."

Herring's lawsuit seeks a court order barring the Windsor Police Department from engaging in discriminatory law enforcement activities, as well as court-ordered policy changes within the department, a court-ordered period of third-party monitoring of the department and a civil penalty of \$50,000 for each proven violation of the Virginia Human Rights Act.



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