

Wisconsin Awards David Turnpaugh \$822 For Wrongful Solicitation & Bail Jumping Convictions

David R. Turnpaugh was awarded compensation of \$822 by the Wisconsin Claims Board on November 25, 2013 for his wrongful convictions in 2006 for soliciting prostitution and bail jumping. The award resulted from Turnpaugh's third petition to the Claims Board for compensation, and came more than four years after he filed his first petition in July 2009.

In March 2006 Turnpaugh was convicted of soliciting prostitution from a police decoy in Milwaukee, Wisconsin and jumping bail. He was sentenced to 60 days in jail on the solicitation conviction to be served by 3 days in jail and 57 days on electronic monitoring, and he was sentenced to one year on probation for the bail jumping conviction.

Turnpaugh appealed on the ground the prosecution introduced insufficient evidence to prove two essential elements of his solicitation conviction: He didn't offer the policewoman any money, and he didn't proposition her to have sexual intercourse. He also argued his bail jumping conviction should be overturned because it was based on his solicitation conviction.

In September 2007 the Wisconsin Court of Appeals reversed Turnpaugh's solicitation conviction based on the prosecution's failure to introduce evidence proving he offered the policewoman money for sex, and it also reversed his bail jumping conviction that was premised on his solicitation conviction. See, [*State v. Turnpaugh*](#), 741 N.W.2d 488, 2007 WI App 222 (2007). The Circuit Court subsequently entered a judgment of acquittal on his solicitation and his bail-jumping convictions.

Wisconsin state law provides for the payment of a maximum of \$5,000 for each year or part thereof an innocent person spends in custody. (Wis. Stats. § 775.05(1))

Turnpaugh filed a claim with the State of Wisconsin Claims Board for \$5,000 -- that covered the one-year he was in custody for both convictions. He also requested an award of \$13,682.89 reimbursement for his attorneys' fees related to his trial defense, his appeal, and his Claims Board claim.

After a hearing on December 10, 2010 the Claims Board [denied Turnpaugh's claim](#). The Board ruled he "has not presented clear

and convincing evidence that he was innocent of the crime for which he was convicted," and that he "has failed to show that he was imprisoned." (State of Wisconsin Claims Board, Hearing of December 10, 2010, No. 4 -- David R. Turnpaugh)

Turnpaugh appealed to the Circuit Court, which affirmed the Claims Board's decision.

Turnpaugh then appealed to the Wisconsin Court of Appeals, which on May 22, 2012 reversed the Claims Board's decision. The appeals court ruled in [*Turnpaugh v. Claims Board*](#), No. 2011AP2365 (WI Ct of Appeals) that "there was **no** evidence in support of his conviction, and he was innocent as a matter of law." and, the Board's conclusion Turnpaugh wasn't imprisoned "flies in the face of the statute ..." The case was remanded to the Claims Board for an assessment of what "will equitably compensate" Turnpaugh.

The Claims Board reconsidered Turnpaugh's claim on December 12, 2012. He was again seeking \$5,000 for his year in custody, but he increased his claim for attorney's fees to \$23,201.20, for a total claim of \$28,201.20.

On December 19 the five-member Claims Board [released their 4-1 decision](#) that Turnpaugh was "equitably compensated" with an award of \$00.00. The Claims Board's majority decision was based on their finding that although Turnpaugh "is innocent as a matter of law," he "contributed to his convictions" that were based on the policewoman's testimony he wanted to watch her masturbate -- which is not illegal. The Claims Board [ruled that](#) "as a matter of equity" Turnpaugh's legal conduct "discount[ed] any compensation to which he may have been entitled."

Turnpaugh appealed to the Milwaukee County Circuit Court that on June 12, 2013 issued its ruling in *Turnpaugh v. Wis. Claims Bd*, No. 13-CV-000789 (WI Cir Ct). The [Court ruled](#) the Claims Board's finding that Turnpaugh "contributed to his convictions" was absurd because he didn't commit any crime or engage in any illegal activity, and thus by the Board's twisted "logic, almost no one would be eligible for compensation under the statute." In reversing the Board's decision Judge Paul Van Grunsven ruled "it is ordered that this case is REMANDED back to the Claims Board so that they may determine the specific amount of money to be paid as compensation to Petitioner."



The Claims Board held its regularly scheduled hearing on September 11, 2013 during which attorney Todd T. Nelson presented Turnpaugh's claim for compensation. State law requires the Board to issue its findings within 20 days of a hearing, and on October 1 the Claims Board issued its findings in all the cases it heard except for Turnpaugh's case.

On October 25 [Turnpaugh filed](#) a "Motion For Contempt And Request For A Writ Of Mandamus" that sought a court order compelling the Board to comply with the law by issuing its findings in his case. He also requested an order for reimbursement of his attorney's fees in filing the motion. The motion was docketed to be heard on December 4.

In response to Turnpaugh's motion the Claims Board issued its [four-page Decision](#) on November 25. The Board rejected considering Turnpaugh's year on probation as "imprisonment" under the statute, and determined he was imprisoned for 60 days (three days in custody and 57 days on electronic monitoring). The Board also determined the pro rata rate of compensation is \$13.70 per day of imprisonment (\$5,000 year/365 days = \$13.70). The Board thus concluded he was entitled to \$822 compensation from the State of Wisconsin. The board also determined Turnpaugh's request for \$36,025.89 in legal fees, costs, and disbursements was justified. The total award it authorized was for \$36,847.89.

Claims Board member Pat Strachota, who is a Wisconsin state representative (R-West Bend), expressed the board's anger at Turnpaugh, and at the Court of Appeals and the Circuit Court for deciding in his favor, [by filing bill](#) AB 534 on the same day the Board issued its ruling in Turnpaugh's case. If enacted, AB 534 would radically alter Wisconsin's compensation statute by making the Board's rulings final and unappealable to a court, and it would exclude compensation for electronic monitoring or types of confinement other than in a prison.

[Strachota told](#) the *Wisconsin Law Journal* when she was questioned about AB 534, "We [the Claims Board] didn't feel the circuit court had that authority" to order compensation for Turnpaugh. Strachota also took a swipe at the appeals court's ruling Turnpaugh qualified for "equitable" compensation under the statute because he was legally "innocent," in stating, "We [the Claims Board] are not a court of law and we have different rules. I think it's hard for

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Rapper Klay BBJ Acquitted Of Insulting Police By Appeals Court

Ahmed Ben Ahmed, also known as the rapper Klay BBJ, has [been acquitted](#) by a Tunisian appeals court of his conviction of insulting the police during a concert.

Ahmed is a rapper in his native Tunisia under the stage name of Klay BBJ. On August 22, 2013 Ahmed's performance at the International Festival of Hammamet included songs critical of the police and government authorities. Hammamet is a resort town of about 60,000 people on the Mediterranean Sea about 45 miles southeast of Tunisia's capital of Tunis.

Shortly after Ahmed's performance he was arrested along with another rapper, Alaa Eddine Yaakoubi whose stage name is Weld El 15, who performed his song "Cops Are Dogs" at the concert. After their arrest the two rappers were [beaten by police](#) wielding batons, and they had to be taken to a hospital emergency room for treatment before they were transported to jail.

The rappers were released after several hours, but they were charged with "insulting the police," defamation of public officials, and harming public morals, under articles 125, 226 bis, and 247 of Tunisia's penal code.

A week after the concert Ahmed and Yaakoubi were convicted *in absentia* on August 30 of all the charges by the First Instance Criminal Tribunal of Hammamet. Both rappers were sentenced to 21 months in prison.



Ahmed Ben Ahmed, aka Klay (AFP)

Ahmed appealed and he was granted a new trial on the grounds he wasn't present during his trial. Yaakoubi didn't appeal his conviction and went underground to hide from the authorities.

After Ahmed's retrial on September 18, 2013 he was again convicted of "insulting the police." Ahmed was immediately taken into custody after he was sentenced on September 26 to six months in prison.

During the October 17, 2013 hearing of Ahmed's appeal before the Grombalia First Instance Court his lawyer argued he had not insulted the police and even if he had, his songs are artistic creations protected by the right to freedom of expression under Tunisian and international law. His lawyer cited a case in France in which an appeals court acquitted members of the rap group Sniper of the charge of incitement to violence. That court determined rap songs are by their nature provocative and sometimes crude and that they must be respected and protected as a form of freedom of speech.

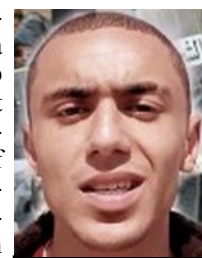
Ahmed's lawyer also argued the law against insulting the police (or any public servant) applies only to insulting an individual police officer and not the police as an institution, and he had been charged or convicted of insulting any particular officer. Six defense witnesses who attended the August 22 performance in Hammamet testified during the appeal hearing they had not heard Ahmed pronounce words or expressions insulting the police or other state institutions. Ahmed's lawyer argued his songs

denounce injustice and what he calls the authoritarianism of the current government.

After the hearing the appeals court announced it was [annulling Ahmed's conviction](#) and ordered his immediate release from custody. The court announced it would later release its ruling with its reasoning for overturning Ahmed's conviction.

After Ahmed was released Eric Goldstein, deputy Middle East and North Africa director at Human Rights Watch [told reporters](#): "It's great to see Klay BBJ free, but meanwhile he spent three weeks in prison and never should have been charged in the first place. Tunisia needs to stop arresting people for offending government officials or institutions and get rid of the laws that criminalize that kind of criticism. An artist should be able to offer critical and provocative work without fearing arrest and prosecution."

Since the Tunisian revolution in 2011 that was a part of the "Arab Spring," the government has repeatedly prosecuted speech criticism of the state it considers objectionable. The Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, a set of principles that many experts agree upon and is widely used, [states in principle 7\(b\)](#):



Alaa Eddine Yaakoubi, aka, Weld El 15

No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies or public officials, or a foreign nation state or its symbols, government, agency, or public official unless the criticism or insult was intended and likely to incite imminent violence.

Yaakoubi remains on the run to avoid arrest and begin serving his 21 month prison sentence. Yaakoubi was 15 when in March 2013 he released his video, "Cops Are Dogs." In addition to its provocative lyrics the video contains a montage of scenes showing Tunisian police hitting people. The video has received more than 3,150,000 hits on Youtube.com and can be [viewed by clicking here](#).

Source:

[Tunisia: Rapper Acquitted After 3 Weeks in Prison](#), *The Arabic Network for Human Rights Information* (Tunis), October 21, 2013

[Tunisian rapper Klay BBJ jailed for six months](#), *BBC News*, September 26, 2013

[Tunisian rapper Klay BBJ is freed from jail on appeal](#), *BBC News*, October 17, 2013

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people to understand that – especially in the legal profession."

Under AB 534 Turnpaugh wouldn't have been entitled to any compensation or award for attorney fees. When asked about AB 534 he told the *Wisconsin Law Journal* that the bill appeared to be intended to prevent a case such as his from occurring again. [Turnpaugh said](#), "If the state intends to put people through a process that sucks your soul out and makes you want to kill yourself, then the current law is perfect. And now they want to make it worse."

Although Turnpaugh's Motion scheduled to be heard on December 4 was rendered moot by the Board's Decision of November 25, Turnpaugh informed Justice Denied on De-

cember 2 that he intends to pursue recovering from the Board his attorney's fees and costs related to filing the Motion.

Turnpaugh's case up to the Court of Appeals' May 2012 ruling is set out in detail in *Justice Denied's* June 12, 2012 article, "[David Turnpaugh Owed Compensation For Wrongful Convictions Says Appeals Court](#)."

Sources:

[David Turnpaugh v. State of Wisconsin Claims Board](#), No. 13-CV-000789 (Milwaukee County Circuit Court, 6-12-2013)

[David R. Turnpaugh, State of Wisconsin Claims Board](#), Claim No. 2009-031-CONY

[David R. Turnpaugh vs. State of Wisconsin Claims Board](#), No. 13-CV-789 (Milwaukee County Circuit Court), Motion for Contempt and Request For A Writ Of Mandamus, filed on October 25, 2013

[Contempt and Writ of Mandamus Turnpaugh](#), By Dan Shaw, *Wisconsin Law Journal*, November 27, 2013

