

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JONATHAN GRAYSON,)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
THE CITY OF AURORA, ILLINOIS,)	
Aurora Police Sergeant KEARBHEY,)	
Aurora Police Investigators WALLERS)	
SOTO, KINNEY, and ROBERTSON,)	
Aurora Police Detectives WEST, THOMPSON)	
GUMZ, and as-yet Unknown Current or Former)	
City of Aurora, Illinois Employees)	
and /or as-yet Unknown Aurora Police)	
Department Employees,)	JURY TRIAL DEMANDED
)	
Defendants.)	

COMPLAINT

NOW COMES Plaintiff, JONATHAN GRAYSON, by his attorneys, LOEVY & LOEVY, and complaining of Defendants THE CITY OF AURORA, ILLINOIS, Aurora Police Sergeant T. KEARBHEY (Star 454), Aurora Police Investigators ROBB WALLERS (Star 279), ALVIN SOTO (Star 210), KINNEY (Star 109), and R. ROBERTSON (Star 225), Aurora Police Detectives DAN WEST (Star 245), J. THOMPSON (Star 309), and MICHAEL GUMZ (Star 165), and as-yet Unknown Current or Former City of Aurora, Illinois Employees and /or as-yet Unknown Current or Former Aurora Police Department Employees, and states as follows:

Introduction

1. Plaintiff Jonathan Grayson, a teenager at the time of his arrest, spent more than eleven years in prison for a murder he did not commit. Mr. Grayson’s wrongful conviction rested solely on fabricated evidence and false testimony that the Defendants secured through manipulation and coercion. Now exonerated, Mr. Grayson brings this lawsuit seeking redress.

Jurisdiction and Venue

2. This action is brought pursuant to 42 U.S.C. §1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution.

3. This Court has jurisdiction pursuant to 28 U.S. C. §§1331 and 1367.

4. Venue is proper under 28 U.S.C. §1391(b). Mr. Grayson currently resides within this judicial district, the events giving rise to the claims asserted herein occurred in this judicial district, and Defendant City of Aurora, Illinois is a municipal corporation located herein.

The Parties

5. Plaintiff Jonathan Grayson is, and at all times relevant to this Complaint was, a citizen and resident of the state of Illinois. Mr. Grayson now resides with his family in Aurora, Illinois.

6. At all relevant times, Defendant Aurora Police Sergeant T. Kearbey (Star 454) was employed by Defendant City of Aurora, and was acting within the scope of his employment.

7. At all relevant times, Defendants Aurora Police Investigators Robb Wallers (Star 279), Alvin Soto (Star 210), Kinney (Star 109), and R. Robertson (Star 225) were employed by Defendant City of Aurora, and were acting within the scope of their employment.

8. At all relevant times, Defendants Aurora Police Detectives Dan West (Star 245), Thompson (Star 309), and Michael Gumez (Star 165) were employed by Defendant City of Aurora, and were acting within the scope of their employment.

9. Defendants Kearbey, Walles, Soto, Kinney, Robertson, West, Thompson, and Gumez are referred to collectively as "Defendant Officers."

10. At all relevant times, the City of Aurora, Illinois was the employer of all of the individual defendants named herein. Defendant City of Aurora is responsible for the policies, practices, and customs of the Aurora Police Department.

Factual Allegations

11. During the early morning hours of August 24, 2000, two men, both members of the Latin King street gang, decided to “go out and kill some rival gang members.”

12. These two gang members went to a Laundromat located in Aurora, Illinois which had windows positioned in such a way that a person in the rear of the building could see through the business and out the front window onto the street. There, they waited until two rival gang members stopped in front of the building. The shooter then walked from around the Laundromat and started firing shots.

13. As a result, one of the victims, Shawn Miller, was killed. The other victim, Leroy Starks, was shot, but survived. The shooting, however, has left him paralyzed.

14. Plaintiff was not involved in this crime, and had nothing to do with it.

15. After the shooting, the two perpetrators then ran to the alley behind the Laundromat to a girlfriend’s apartment. There, they stood on an enclosed porch and watched the police officers comb the area for evidence of the shooting.

16. The two perpetrators were questioned by an officer, but this questioning was not memorialized by any officer in a police report, or, alternatively, their statement was memorialized but later suppressed by the Defendant Officers.

17. Once the officers finished processing the crime scene, the men buried the gun in a backyard and left the area.

18. In front of the Laundromat where the murder occurred, the on-scene officers were tending to the victims and taking the initial statements of witnesses.

19. Marilou Alvarado, a woman who called 911 and alleged to have been a witness, was questioned by one or more of the Defendant Officers while she was on-scene.

20. Alvarado stated that she observed two men, one black and one Hispanic, and that the black man was the shooter. Alvarado stated that she got a good look at the shooter. She then described the shooter by stating that he “looked like Flip, but was taller.” Alvarado, in other words, was claiming to know Flip, but was further claiming that the shooter was someone who was not Flip, but rather someone else who resembled his appearance, but was taller.

21. Flip was Plaintiff’s nickname given to him by his mother, and he was known throughout the community by that name.

22. Rather than do the police work necessary to properly solve the crime, the Defendant Officers immediately seized upon Alvarado’s statement that the shooter looked like Flip, and focused their attention on gathering evidence through manipulation and coercion to reach their end goal of making a case that the shooter was in fact Flip.

23. For example, one or more of the Defendant Officers improperly caused the surviving victim, Leroy Starks, to be told while in the ambulance that the shooter was the Plaintiff. Starks was familiar with Plaintiff from the community and knew what he looked like.

24. One or more of the Defendant Officers also improperly coerced Melissa Matthews, who was friends with Marilou Alvarado, and who was not present at the time of the shooting, to state that Alvarado told her that the shooter was “Flip.” At the time Matthews made this statement to the Defendant Officers, Matthews had been arrested for drug possession and was incarcerated in the local jail.

25. The police later interviewed Carolos Aguilera, an independent witness to the crime. Aguilera told the police that he was outside his apartment, in the alley behind the Laundromat, at the time of the shooting. He told police that when the shooting stopped, two men—one black, and one Hispanic—ran past him. The police showed him a photo array that included Plaintiff, and Aguilera did not pick Plaintiff from the photo array. The police did not record any further interviews with Aguilera; or alternatively, the police did record further interviews with Aguilera and the Defendant Officers suppressed them.

26. Alvarado was later transported to the police station for further questioning in relation to the shooting. Once again, Alvarado stated that the shooter “looked like Flip, but was taller” and denied that Plaintiff was actually the shooter. Alvarado was shown a book of potential suspects, which included a picture of Plaintiff, and Alvarado did not pick out Plaintiff as the person who committed the shooting.

27. There was no physical evidence tying Plaintiff to the crime. Nor was any incriminating evidence of any kind ever discovered in Plaintiff’s possession. Moreover, Alvarado clearly stated multiple times that she observed two men, and that the man who did the shooting was not Plaintiff.

28. Despite this, the police secured a photo identification from Starks, who had previously been told that the shooter was Plaintiff, and relied solely on the resulting improper identification as probable cause for an arrest warrant.

29. Solely on the basis of Starks’ false and suggestively-procured identification, an arrest warrant was issued for Plaintiff. He was arrested on August 26, 2000.

30. Plaintiff was questioned at length by one or more of the Defendant Officers and truthfully stated that he had no knowledge of the crime, and was at a friend’s house on the night

of the shooting. One or more of the Defendants kept questioning Plaintiff and, because of his lack of knowledge of the crime, began feeding him details. As Plaintiff repeated back details of the crime to the Defendants, the Defendants then video recorded those portions of the statements, and claimed that Plaintiff had incriminated himself.

31. Pleading in the alternative, the Defendant Officers who interrogated Plaintiff proceeded to improperly overcome his will through improperly coercive and suggestive means, thereby procuring what the State later claimed was a partial confession. Further pleading in the alternative, to the extent that anything Plaintiff said during the interrogation could be construed as self-incriminating, the Defendant Officers violated Plaintiff's rights in procuring any such statement.

32. The only person who actually identified Plaintiff as the shooter was Starks, and that identification was false in the manner described more fully above. In fact, Starks, who was found in possession of narcotics at the time he was transported to the hospital, received a deal on his criminal case in consideration for naming Plaintiff as the shooter.

33. One or more of the Defendant Officers then improperly secured an identification from Alvarado, who after receiving a deal on a pending drug possession case, changed her story and said that Flip, actually, was the shooter. Despite the Defendants' knowledge that this fact was not true, Defendants relied upon their coercion and manipulation of Plaintiff and the witnesses, to secure the conviction of Plaintiff.

34. In 2001, prior to Plaintiff's criminal trial, an Aurora Latin King gang member was arrested for a homicide that involved the same gun used in the shooting for which Plaintiff had wrongfully charge. That Latin King gang member traced his purchase of the gun back to the

Confidential Source, also a Latin King gang member, who was one of the real perpetrators in the crime for which Plaintiff was wrongfully convicted.

35. In 2002, Mr. Grayson stood trial for the murder of Shawn Miller and the attempted murder of Leroy Starks.

36. As complaining witnesses, one or more of the Defendant Officers testified falsely at Mr. Grayson's criminal trial about Mr. Grayson's purported guilt and about the veracity of other witnesses' prior statements.

37. As a result of the above-described misconduct on the part of the Defendant Officers, Mr. Grayson was convicted of two counts of first degree murder, two counts of attempted first degree murder and aggravated battery with a firearm.

38. On November 7, 2002, a Kane County Judge sentenced Mr. Grayson to what amounted to a life sentence. Mr. Grayson was to serve all of a 38-year sentence for the murder of Miller, and at least 85 percent of a 37-year sentence for shooting Starks, totaling at least 75 years. All post-trial motions and appeals were denied.

39. Throughout his incarceration, Mr. Grayson maintained his innocence and pursued all possible avenues to prove it.

40. In April 2011 a Confidential Informant approached members of the Aurora Police Department and requested to speak to them about old cases. Based on the information the Confidential Informant provided, the Aurora Police Department began to reinvestigate circumstances that led to Mr. Grayson's wrongful conviction. The Commander in charge of the reinvestigation stated that "in his personal opinion [Mr. Grayson] was an innocent man and [they] should have cut him loose, yesterday." The Aurora Police Department then forwarded the results of their reinvestigation to the Kane County State's Attorney.

41. On or about March 6, 2012, Mr. Grayson's conviction was vacated, and he was granted his freedom.

Plaintiff's Damages

42. Jonathan Grayson spent more than eleven years in harsh prison conditions for a crime that he did not commit. He must now attempt to make a life for himself outside of prison without the benefit of over a decade of life experiences, particularly during his twenties, a time which normally equip adults for that task.

43. Additionally, the emotional pain and suffering caused by losing these formative years has been substantial. During his incarceration, he was stripped of the various pleasures of basic human experience, from the simplest to the most important, which all free people enjoy as a matter of right. Mr. Grayson missed out on the ability to share holidays, births, funerals, and other life events with loved ones, the opportunity to have girlfriends, to fall in love, to marry, and the fundamental freedom to live one's life as an autonomous human being.

44. As a result of the foregoing, Jonathan Grayson has suffered tremendous damage, including but not limited to physical harm, mental suffering, and loss of a normal life, all proximately caused by Defendants' misconduct.

**Count I - 42 U.S.C. § 1983
Due Process**

45. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

46. As described more fully above, all of the Defendants, while acting individually, jointly, and in conspiracy, as well as under color of law and within the scope of their employment, deprived Mr. Grayson of his constitutional right to a fair trial.

47. In the manner described more fully above, the Defendants deliberately withheld exculpatory evidence, and fabricated false reports, false testimony, and other evidence. Defendants also improperly coerced statements that they later claimed were self-incriminating on the part of Plaintiff. Absent all of this misconduct, the prosecution of Mr. Grayson could not and would not have been pursued.

48. The Defendants' misconduct also directly resulted in the unjust criminal conviction of Mr. Grayson, thereby denying him his constitutional right to a fair trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

49. As a result of this violation of his constitutional right to a fair trial, Mr. Grayson suffered injuries including but not limited to emotional distress, as is more fully alleged above.

50. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally and with willful indifference to Mr. Grayson's constitutional rights.

51. The misconduct described in this Count was undertaken pursuant to a routine practice of the Aurora Police Department to pursue wrongful convictions through profoundly flawed investigations and coerced evidence. In this way, the Defendant City of Aurora violated Mr. Grayson's rights by maintaining policies and practices that were the moving force driving the foregoing constitutional violations.

52. These widespread practices, so well-settled as to constitute *de facto* policy in the Aurora Police Department, were able to exist and thrive because municipal policymakers with authority over the Department exhibited deliberate indifference to the problem, thereby effectively ratifying it.

53. The widespread practices described in the preceding paragraphs were allowed to flourish because the municipal defendants declined to implement sufficient training and/or enforce legitimate oversight and punishment.

**Count II – 42 U.S.C. § 1983
Supervisory Liability**

54. Each paragraph of this Complaint is incorporated as if restated fully herein.

55. The unfair trial, wrongful conviction, and continued wrongful detention of Plaintiff were caused by the deliberate indifference and recklessness of supervisory defendants, including but not limited to Defendant Aurora Police Sergeant T. KEARBNEY, when he failed to adequately train and supervise the individual Defendants.

56. Specifically, Sergeant T. KEARBNEY was personally involved in the case against Plaintiff and knew or, in the absence of his deliberate indifference and recklessness, should have known of his subordinates' unconstitutional actions and related misconduct in the case.

57. Furthermore, Sergeant T. KEARBNEY failed to supervise the individual defendants in constitutionally adequate law enforcement practices, particularly those which concerned interviews of suspects and the production of exculpatory evidence, thereby encouraging and/or permitting these employees and other defendants to coerce and fabricate false inculpatory evidence and to withhold exculpatory and impeachment evidence, which caused the constitutional deprivations suffered by Plaintiff.

58. These interview techniques, failures in producing exculpatory evidence, fabrications and other investigative procedures were contrary to accepted methods used by law enforcement agencies. The fact that the defendant supervisors failed to train and supervise their subordinates to ensure that they employed proper investigation procedures demonstrates deliberate indifference and reckless disregard for Plaintiff's constitutional rights.

59. The personal involvement of Sergeant T. KEARBNEY, through his actions and omissions, proximately and directly caused the constitutional deprivations and grievous personal injuries suffered by Plaintiff, including the above-mentioned injuries and damages.

60. The misconduct described in this Count was objectively unreasonable, and was undertaken intentionally, with malice, willfulness, and deliberate indifference to Plaintiff's clearly established constitutional rights.

Count III - 42 U.S.C. § 1983
Failure to Intervene

61. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

62. In the manner described above, during the constitutional violations described above, one or more of the Defendants stood by without intervening to prevent the misconduct, despite having a reasonable opportunity to do so.

63. As a result of the Defendants' failure to intervene to prevent the violation of Mr. Grayson's constitutional rights, Mr. Grayson suffered pain and injury, as well as emotional distress.

64. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally and with willful indifference to Mr. Grayson's rights.

65. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Aurora Police Department in the manner described more fully in preceding paragraphs, and was tacitly ratified by policymakers for the municipal defendants with final policymaking authority.

Count IV—42 U.S.C. § 1983
Conspiracy to Deprive Constitutional Rights

66. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

67. After Mr. Miller died in surgery, and the investigation became one of homicide, the Defendants reached an agreement amongst themselves to frame Mr. Grayson for the crime, and to thereby deprive Mr. Grayson of his constitutional rights, all as described in the various Paragraphs of this Complaint.

68. In this manner, the Defendants, acting in concert with other unknown co-conspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means.

69. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

70. As a direct and proximate result of the illicit prior agreement referenced above, Mr. Grayson's rights were violated, and he suffered financial damages, as well as severe emotional distress and anguish, as is more fully alleged above.

71. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

72. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Aurora Police Department in the manner described more fully in preceding paragraphs, and was tacitly ratified by policymakers for the municipal defendants with final policymaking authority.

**Count V – State Law Claim
Malicious Prosecution**

73. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

74. Through their actions as described above, the Defendants caused Mr. Grayson to be improperly subjected to a prosecution for which there was no probable cause. These judicial proceedings were instituted and continued maliciously, resulting in injury, and all such proceedings were ultimately terminated in Mr. Grayson's favor.

75. The Defendants accused Mr. Grayson of criminal activities knowing those accusations to be without genuine probable cause; fabricated evidence and withheld the manner in which that evidence was fabricated; and made statements and reports to the police and/or prosecutors with the intent of exerting influence to institute and continue the judicial proceedings.

76. The misconduct described in this Count was undertaken with malice, bad faith, and in a wanton and reckless manner, and was undertaken by the Defendants within the scope of their employment and/or official responsibilities.

77. As a result of this misconduct, Mr. Grayson suffered injuries, including bodily harm and emotional pain and suffering as more fully alleged above.

**Count VI – State Law Claim
Negligent Supervision**

78. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

79. The municipal defendants, as well as the supervisory defendant (Sergeant T. KEARBAY), had a duty to properly train and supervise officers, detectives, investigators and

supervisor employees of the Aurora Police Department, and to provide adequate policies to prevent the above conduct, including fabricating evidence, fabricating witness statements, and concealing material impeachment evidence.

80. The municipal defendants and Sergeant T. KEARBAY were grossly negligent and negligent in the training, supervision and discipline of the defendants, resulting in Mr. Grayson being deprived of his right to due process, and his right to be free from false arrest, false imprisonment, and wrongful conviction.

81. As a result of this misconduct, Mr. Grayson suffered injuries, including bodily harm and emotional pain and suffering as more fully alleged above.

**Count VII – State Law Claim
Conspiracy**

82. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

83. As described more fully in the preceding paragraphs, the Defendant Officers, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means.

84. In furtherance of the conspiracy, the Defendant Officers committed overt acts and were otherwise willful participants in joint activity.

85. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

86. As a proximate result of the Defendant Officers' conspiracy, Plaintiff suffered damages, including severe emotional distress and anguish, as is more fully alleged above.

**Count VIII – State Law Claim
Intentional Infliction of Emotional Distress**

87. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

88. As described more fully in the preceding paragraphs, by framing Mr. Grayson for a murder he did not commit, the Defendants intended to cause emotional distress, or knew or should have known that their actions would result in serious emotional distress.

89. In doing so, the Defendants' conduct was extreme and outrageous, going beyond all possible bounds of decency such that it can be considered completely intolerable in a civilized society, and this conduct caused Mr. Grayson to suffer serious emotional distress of the nature no reasonable man could be expected to endure.

90. The misconduct described in this Count was undertaken with malice, bad faith, and in a wanton and reckless manner, and was undertaken by the Defendants within the scope of their employment.

91. As a result of this misconduct, Mr. Grayson sustained injuries, including emotional pain and suffering, as is more fully alleged above.

**Count IX
Respondeat Superior**

92. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

93. In committing the acts alleged in the preceding paragraphs, the Defendants were members and agents of the Aurora Police Department, acting at all relevant times within the scope of their employment.

94. Defendant City of Aurora is liable as principals for all state law torts committed by their agents.

**Count X – State Law Claim
Indemnification**

95. Each of the Paragraphs of this Complaint is incorporated as if restated fully herein.

96. Illinois law provides that public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

97. The Defendant Officers are or were employees of the Aurora Police Department, who acted within the scope of their employment in committing the misconduct described herein.

WHEREFORE, Plaintiff, JONATHAN GRAYSON, respectfully requests that this Court enter judgment in his favor and against Defendants THE CITY OF AURORA, ILLINOIS, Aurora Police Sergeant T. KEARBEEY (Star 454), Aurora Police Investigators ROBB WALLERS (Star 279), ALVIN SOTO (Star 210), KINNEY (Star 109), and R. ROBERTSON (Star 225), Aurora Police Detectives DAN WEST (Star 245), J. THOMPSON (Star 309), and MICHAEL GUMZ (Star 165), and as-yet Unknown Current or Former City of Aurora, Illinois Employees and /or as-yet Unknown Current or Former Aurora Police Department Employees, awarding compensatory damages, attorneys' fees, and costs against each Defendant, and punitive damages against each of the individual Defendants, as well as any other relief this Court deems appropriate.

JURY DEMAND

Plaintiff, JONATHAN GRAYSON, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Respectfully Submitted,

s/ Julie Thompson
One of the Attorneys for Plaintiff

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