

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LARNELL WASHINGTON,

Plaintiff,

v.

Case No. 24-C-290

CITY OF MILWAUKEE, KATHERINE
HEIN SPANO, and GILBERT HERNANDEZ,

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT,
AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COME the Defendants, Katherine Hein Spano, Gilbert Hernandez, and the City of Milwaukee, by their attorney, Tearman Spencer, City Attorney, represented by Deputy City Attorney Jennifer L. Williams and Assistant City Attorney Clint B. Muche, and, as and for their answer to the plaintiff's complaint, admit, deny, allege and state as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. § 1343 and 28 U.S.C. § 1367.

RESPONSE: This paragraph contains statements and conclusion, legal or otherwise, to which no response is required.

2. Plaintiff Larnell Washington is a resident of the State of Washington and brings this claim for malicious prosecution under 42 U.S.C. § 1983.

RESPONSE: Defendants admit only, based on plaintiff's representation, that he is a resident of the State of Washington and state that the remainder of this paragraph contains statements and conclusion, legal or otherwise, to which no response is required.

3. Defendants Katherine Hein Spano and Gilbert Hernandez were, at all relevant times, acting under color of their authority and within the scope of their employment as police officers of the City of Milwaukee. Plaintiff sues Spano and Hernandez in their individual capacities.

RESPONSE: Defendants admit that their actions related to investigating the homicide of Annette Love were done in the scope of their employment as Milwaukee police officers, but lack knowledge or information as to what plaintiff means by “all relevant times” and therefore deny the allegations in this paragraph and put plaintiff to his proof.

4. Defendant City of Milwaukee is a municipal corporation. Plaintiff sues Milwaukee under 42 U.S.C. § 1983 for damages he incurred as a result of the municipal policy adjudicated in *Avery v. City of Milwaukee*, 11-cv-408 (E.D. Wis.), *reinstating jury verdict* 847 F.3d 433 (7th Cir. 2017). Plaintiff also sues Milwaukee as the potential indemnitor for actions taken by the individual defendants in the course of their employment.

RESPONSE: This paragraph contains multiple allegations; defendants admit that the City of Milwaukee is a municipal corporation, lack knowledge or information as to what plaintiff means by “the municipal policy adjudicated in *Avery v. City of Milwaukee*,” and therefore deny the same and put plaintiff to his proof; the third sentence of this paragraph contains a statement and conclusion, legal or otherwise, to which no response is required.

5. In July 1990, a woman named Annette Love was murdered in Milwaukee, Wisconsin.

RESPONSE: Admit.

6. In February 2023, police officers took plaintiff from Lacey, Washington, where he lived with his wife for more than ten years, and transported plaintiff to Milwaukee where he was charged with the murder of Annette Love.

RESPONSE: Defendants admit only that Plaintiff was criminally charged in relation to the murder of Annette Love in February 2023, but lack knowledge or information about the remaining allegations in this paragraph and therefore deny the same and put plaintiff to his proof.

7. Plaintiff remained continuously in custody until he was released on October 6, 2023, when the prosecutor, after becoming aware of the fabricated evidence described below,

dismissed the criminal case. Plaintiff was then reunited with his spouse after nearly nine months of forced separation.

RESPONSE: Defendants lack knowledge or information sufficient to form a belief as to truth of the matters asserted in this paragraph, and therefore deny the same and put plaintiff to his proof.

8. Plaintiff was wrongfully prosecuted and wrongfully imprisoned because defendants Spano and Hernandez fabricated evidence against him.

RESPONSE: Defendants deny each and every allegation in this paragraph, and affirmatively assert that all of their conduct related to the criminal investigation of the murder of Annette Love and resultant prosecution of plaintiff was undertaken in good faith, without malice, and pursuant to their duties as Milwaukee police officers.

9. **Made-up Statements Attributed to Detra King**

RESPONSE: Defendants assert that this numbered paragraph appears to be a section heading (to which no response is required) and not a factual assertion, but if response is required they deny that statements attributed to Detra King were “made-up.”

i. Defendant Spano prepared a police report, dated October 19, 2010, containing a story she made up about statements purportedly made to her by Detra King, the daughter of the deceased.

RESPONSE: Defendants admit that Defendant Spano authored a report, dated October 19, 2010, containing statements made by Detra King, but deny any allegation of improper or unlawful conduct on the part of the individual defendants, express or implied, regarding the same.

ii. Defendant Spano knew that her made-up story was false and provided a reason to believe that plaintiff killed Annette Love.

RESPONSE: Defendants admit that King’s statements provided reason to believe plaintiff killed Annette Love, but deny the remaining allegations in this paragraph.

iii. Defendant Spano communicated her made-up story to the prosecution; the made-up story was included in the criminal complaint that initiated the prosecution and was presented by the prosecutor to the judge who presided over the preliminary hearing.

RESPONSE: Defendants deny any allegation in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants.

10. Made-up Statements Attributed to Willie Jean Hampton

RESPONSE: Defendants assert that this numbered paragraph appears to be a section heading (to which no response is required) and not a factual assertion, but if response is required they deny that statements attributed to Willie Jean Hampton were “made-up.”

i. Defendant Spano prepared a police report, dated October 19, 2010, containing a story she and defendant Hernandez made up about statements purportedly made by Willie Jean Hampton, who had been plaintiff’s girlfriend.

RESPONSE: Defendants admit that Defendant Spano authored a report, dated October 19, 2010, containing statements made by Willie Jean Hampton, but deny any allegation of improper or unlawful conduct on the part of the individual defendants, express or implied, regarding the same.

ii. Defendants Spano and Hernandez knew that this made-up story was false and provided strong circumstantial evidence for the false claim that plaintiff killed Annette Love.

RESPONSE: Defendants admit that Hampton’s statements provided circumstantial evidence to believe plaintiff killed Annette Love, but deny the remaining allegations in this paragraph.

iii. Defendants Spano and Hernandez communicated their made-up story to the prosecution; the made-up story was included in the criminal complaint that initiated the prosecution and was presented by the prosecutor to the judge who presided over the preliminary hearing.

RESPONSE: Defendants deny any allegation in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants.

11. **Made-up Statements Attributed to Larnell Washington**

RESPONSE: Defendants assert that this numbered paragraph appears to be a section heading (to which no response is required) and not a factual assertion, but if response is required they deny that statements attributed to Larnell Washington were “made-up.”

i. On August 16, 2011, defendants Spano and Hernandez interviewed plaintiff Larnell Washington.

RESPONSE: Admit.

ii. Defendant Spano prepared a police report, dated August 22, 2011, containing a story she and defendant Hernandez had made up about statements purportedly made by plaintiff.

RESPONSE: Defendants admit that Defendant Spano authored a report containing statements made by plaintiff during the aforementioned interview, but deny any allegation of improper or unlawful conduct on the part of the individual defendants, express or implied, regarding the same.

iii. Defendants Spano and Hernandez knew that this made-up story was false and provided strong circumstantial evidence that linked plaintiff to the death of Annette Love.

RESPONSE: Defendants deny each and every allegation in this paragraph and put plaintiff to his proof.

iv. Defendants Spano and Hernandez communicated their made-up story to the prosecution; the made-up story was included in the criminal complaint that initiated the prosecution and was presented to the judge who presided over the preliminary hearing.

RESPONSE: Defendants deny any allegation, express or implied, in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants.

12. Plaintiff was wrongfully prosecuted because defendants Spano and Hernandez fabricated the evidence described above.

RESPONSE: Defendants deny any allegation, express or implied, in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants.

13. Defendants Spano and Hernandez undertook the above-described wrongful acts because of a policy of the City of Milwaukee to not adequately investigate homicides.

RESPONSE: Defendants deny any allegation in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants, and deny that the Defendant City has or had “a policy … to not adequately investigate homicides.”

14. The jury in *Avery v. City of Milwaukee*, 11-cv-408 (E.D. Wis.) found that in 2004 the City of Milwaukee had a widespread practice or policy of not adequately investigating homicides, and that this policy caused Milwaukee police officers to fabricate material evidence against criminal defendants. The jury verdict, which had been set aside by the district judge, was reinstated by the United States Court of Appeals for the Seventh Circuit in *Avery v. City of Milwaukee*, 847 F.3d 433, 443 (7th Cir. 2017).

RESPONSE: Defendants admit that the jury in *Avery v. City of Milwaukee* found the Defendant City liable, but deny that the jury therein considered or made findings about causation as to criminal defendants generally and assert that the verdict therein was specific to a particular investigation involving a particular plaintiff.

15. This same policy was in force and effect at the time of the wrong-doing alleged in this complaint.

RESPONSE: Defendants deny any allegation in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants, and deny that the Defendant City has or had “a policy … to not adequately investigate homicides” during the cold case investigation into the murder of Annette Love.

16. Shortly before the scheduled trial, the prosecution learned that defendants Spano and Hernandez had fabricated the statements of King and Hampton. The prosecutor accordingly voluntarily dismissed the criminal case on October 6, 2023.

RESPONSE: Defendants admit only that criminal charges against plaintiff were dismissed on October 6, 2023, and lack knowledge or information sufficient to form a belief as to the reason or reasons the prosecutor took that action, and therefore deny the same and put plaintiff to his proof.

17. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States and suffered injuries from wrongful incarceration, including but not limited to loss of freedom.

RESPONSE: Defendants deny any allegation, express or implied, in this paragraph that purports to make a claim of improper or unlawful conduct on the part of the individual defendants and put plaintiff to his proof.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to Plaintiff's Complaint, the Answering Defendants, allege and state as follows:

1. The Answering Defendants allege each and every affirmative defense contained in the Federal Rules of Civil Procedure Rule 12 to avoid any claim of waiver in the event that discovery reveals a factual basis for these defenses, and further reserve the right to assert additional affirmative defenses that may become available as a result of future discovery in this lawsuit;

2. The City of Milwaukee is entitled to immunity for its legislative, quasi-legislative, judicial and quasi-judicial acts and it is further immune from liability for the discretionary acts of its employees;

3. The individual defendants acted in good faith, without malice, pursuant to their duties as law enforcement officers and therefore may be immune from liability to the plaintiff pursuant to the doctrine of qualified immunity;

4. Defendant's actions were objectively reasonable, and he/she is entitled to immunity and/or qualified immunity from claims, as well as limitations on actions and damages, as provided by Wisconsin statutes, by federal regulations, and by operation of state and federal common law;

5. The conduct attributable to the individual defendants did not constitute any violation of a cognizable constitutional right and this action must be summarily dismissed;

6. All of the acts of the individual defendants were undertaken in a good faith belief that the actions were lawful and were not in violation of any federal or state constitutional right, and their conduct was not motivated by malice or intent to harm;

7. The individual defendants are not liable under 42 USC § 1983 because their actions were constitutional under the circumstances or exigent circumstances and not compromise or deprive plaintiff of any rights;

8. Plaintiff is not entitled to punitive damages;

9. The City of Milwaukee may not be found vicariously liable under § 1983, and any claim against the City must be dismissed unless its policy, practice, or custom was the moving force behind plaintiff's injury;

WHEREFORE, the defendants demand judgment as follows:

1. Dismissing the complaint of the plaintiff on its merits and as a matter of law, together with costs and disbursements.

2. For such other relief as the court may deem just and equitable.

JURY DEMAND

Defendants demand a trial by jury of all issues so triable.

Dated at Milwaukee, Wisconsin this 26th day of March, 2024.

TEARMAN SPENCER
City Attorney

s/Jennifer L. Williams
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