

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION**

DeWAYNE DUNN,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
CITY OF ELKHART, MICHAEL SIGSBEE,)	
DEAN MARKS, SCOTT WAGNER, VICKI)	
E. BECKER, in their individual capacities,)	
)	
Defendants.)	JURY TRIAL DEMANDED
)	
)	

Introduction

1. In September 2008, Angel Torres tragically died after falling from a second-floor apartment balcony.
2. The tragedy of Mr. Torres’ death was compounded by Mr. Dunn’s wrongful conviction for Torres’ accidental death.
3. Mr. Dunn did not cause Mr. Torres’ death.
4. But more than 19 months later, Mr. Dunn found himself charged with Mr. Torres’ murder.
5. After a three-day jury trial, Mr. Dunn was convicted of murder in February 2011.
6. The only evidence supporting charges against Mr. Dunn was fabricated expert opinions.
7. At 48-years-old, Mr. Dunn was sentenced to 58 years’ imprisonment.
8. Mr. Dunn spent more than 12 years incarcerated before he was exonerated in 2022.

Jurisdiction

9. 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 and Title VII of the Civil Rights Act.

10. This Court has jurisdiction of Plaintiff's federal claims pursuant to 28 U.S.C. § 1331 and § 1343.

11. Venue is proper under 28 U.S.C. § 1391(b). The majority of Defendants reside in this district and the events and omissions giving rise to Plaintiff's claims occurred in this district.

Parties

12. DeWayne Dunn is a 62-year-old resident of South Bend, Indiana.

13. Vicki Becker served as a deputy prosecutor in Elkhart County from 1998 until 2016, when she was elected Elkhart County Prosecutor. She is sued in her individual capacity and acted under color of law and within the scope of her employment during the investigation at issue. At the time of her involvement, Ms. Becker's employment falls under the purview of the State of Indiana.

14. At all relevant times, Defendant Michael Sigsbee was a police officer in the Elkhart Police Department. He is sued in his individual capacity and acted under color of law and within the scope of his employment during the investigation at issue.

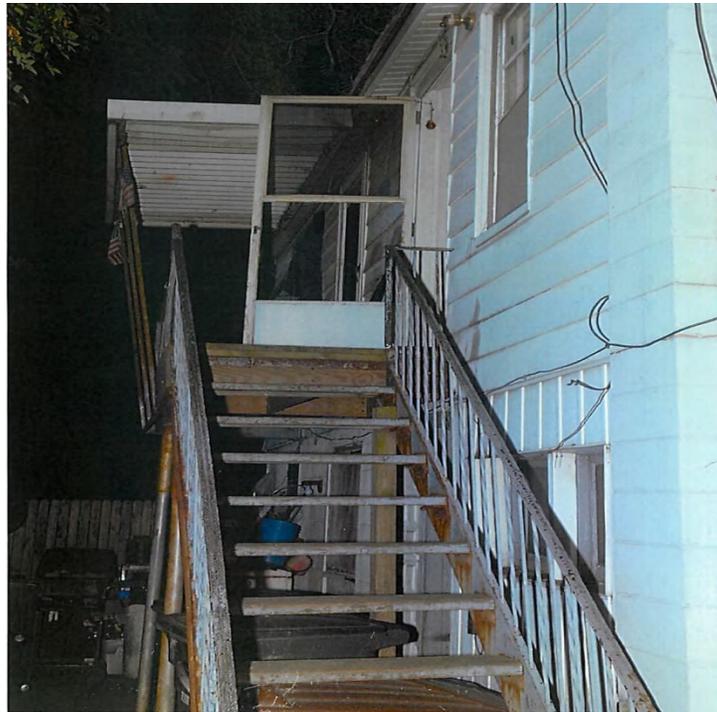
15. At all relevant times, Defendant Dr. Scott Wagner worked as a forensic pathologist in Fort Wayne, Indiana. He is sued in his individual capacity and acted under color of law and within the scope of his employment during the investigation at issue.

16. At all relevant times, Defendant Dean Marks worked in the crime scene division for the Indiana State Police. He is sued in his individual capacity and acted under color of law and within the scope of his employment during the investigation at issue.

17. At all times relevant to this action, each of the named individual Defendants acted individually and/or collectively, under the color of the laws, regulations, and customs of the State of Indiana. Each Defendant's actions constituted "state action" as defined under federal law.

Angel Torres' Fall

18. DeWayne Dunn and Mr. Torres lived in adjacent second-floor apartments.
19. Mr. Dunn lived with Letha Sims and her teenage son, Jamar "Willie" Sims.
20. The two apartments shared a balcony and an exterior staircase, depicted below:



21. Mr. Dunn, Mr. Torres, and Letha Sims were friends and sometimes socialized together.

22. Late in the evening on September 3, 2008, Mr. Dunn and Mr. Torres had an argument.

23. During the argument, Mr. Torres hit Mr. Dunn with a baseball bat.

24. Willie Sims heard Mr. Dunn tell Mr. Torres to stop hitting him with the bat.

25. Letha Sims informed EPD officers at the scene that she had heard a “thud” and that when she went outside, she saw Mr. Torres at the bottom of the stairs.

26. Mr. Dunn did not push Mr. Torres down the stairs.

27. Mr. Dunn never attacked Mr. Torres.

28. After Mr. Torres fell, Mr. Dunn tried to assist him.

29. Elkhart Police Department officers responded to the scene, after a passerby called police.

30. Two days later, Mr. Torres died from his injuries.

No Probable Cause Supported Charges Against Mr. Dunn

31. Early in the investigation, law enforcement learned that toxicology testing showed Mr. Torres was heavily intoxicated when he arrived at the hospital.

32. Mr. Torres also had health problems that made him more susceptible to injuries from a fall.

33. The balcony and staircase were narrow and rickety.

34. After Mr. Torres’ fall, Mr. Dunn had injuries consistent with having been struck by a bat.

35. The bat was found underneath Mr. Torres at the bottom of the stairs.

36. Willie Sims observed Mr. Torres fall down the stairs.

37. Neither Willie nor Letha observed Mr. Dunn strike Mr. Torres with any object.

38. That is because Mr. Dunn never struck Mr. Torres with anything.

39. All the evidence at the scene—Mr. Torres’ injuries, Mr. Dunn’s injuries from the baseball bat, the baseball bat underneath Mr. Torres, eyewitness accounts, and the small amount

of blood on Mr. Dunn—was consistent with an accidental fall and Mr. Dunn trying to assist Mr. Torres afterward.

40. Non-Defendant Elkhart Officers conducted the initial investigation. In that investigation, the officers pursued leads, conducting a serious investigation into the manner of death. Based on all the evidence obtained in the initial investigation, the officers believed that Mr. Torres' death was not the result of a homicide, but instead, was the product of an accidental fall by an intoxicated person.

41. The initial investigation took into account the autopsy conducted by Dr. Blair Chrenka. That autopsy concluded that the manner of death was undetermined.

42. As a result, Mr. Dunn was not charged with any crimes.

Defendant Sigsbee Fabricates Statement from Letha Sims

43. Letha Sims was a witness to the events leading to Mr. Torres' death.

44. During the initial investigation, Letha repeatedly confirmed Mr. Dunn's innocence to law enforcement.

45. At the scene, Letha reported hearing Mr. Dunn tell Mr. Torres to stop hitting him with the bat.

46. Letha never reported seeing Mr. Dunn attack Mr. Torres.

47. That is because Mr. Dunn never attacked Mr. Torres.

48. By 2009, Defendant Sigsbee was desperate to close the investigation and frame Mr. Dunn for a crime he did not commit.

49. To do so, Defendant Sigsbee sought out Letha Sims.

50. In March 2009, Defendant Sigsbee fed Letha false information and coerced her into repeating it.

51. Defendant Sigsbee pressured Letha into repeating that Letha had seen Mr. Dunn kick Angel Torres.

52. Defendant Sigsbee manufactured this false statement – and coerced Letha into repeating it - knowing that it was false.

53. At the time of the fabrication, Defendant Sigsbee had reviewed the investigative file and was aware of what Letha had truthfully informed law-enforcement before.

54. During the coercive questioning that led to the fabricated statement, Letha repeatedly informed Defendant Sigsbee that she did not see what he was falsely telling her to repeat.

55. Letha told Defendant Sigsbee that she had observed Mr. Dunn trying to assist Mr. Torres after his fall.

56. Despite Letha's repeated assertions that she did not see what Defendant Sigsbee was falsely telling her to state, Defendant Sigsbee plowed forward with his fabrication.

57. Defendant Sigsbee knew that the statement he fabricated for Letha was false, but fabricated the statement so that Defendants could prosecute Mr. Dunn for murder.

Defendant Becker Conspires to Fabricate Expert Opinions

58. Defendant Becker conspired with Defendants to fabricate false expert opinions.

59. Defendant Becker did so in an investigative capacity prior to the manufactured probable cause existed to charge Mr. Dunn with a crime.

60. At the time of their conspiracy to frame Plaintiff, Defendants Sigsbee, Becker, Wagner, and Marks knew that Dr. Chrenka—who conducted the autopsy—concluded that the manner of Mr. Torres' death was uncertain.

61. With no probable cause to initiate charges, Defendant Becker enlisted Defendant Wagner to manufacture a false opinion.

62. Defendant Wagner was a pathologist in Fort Wayne, Indiana.

63. Defendant Wagner fabricated an opinion that Mr. Torres' injuries could not have been caused by a fall down the stairs.

64. Defendant Wagner fabricated an opinion that the manner of Mr. Torres' death was homicide.

65. Defendant Wagner fabricated his opinion at the behest of Defendant Becker so that she could initiate charges against Mr. Dunn.

66. Defendant Becker also enlisted Defendant Dean Marks from the Indiana State Police.

67. According to Defendant Marks' report, blood from the scene was consistent with a bloody instrument having been swung or flung at Mr. Torres after he fell.

68. Defendants knew that this opinion was false.

69. Defendant Marks' report was fabricated at the behest of Defendant Becker so that she could manufacture charges against Mr. Dunn.

70. The only evidence supporting probable cause against Mr. Dunn were fabricated opinions from Defendants Marks and Wagner and a fabricated statement by Defendant Sigsbee from Letha Sims.

71. Defendant Becker's involvement in fabricating these expert opinions happened before probable cause was manufactured.

Plaintiff is Prosecuted for Murder

72. Based on the fabricated evidence recounted above, Mr. Dunn was charged with murder on April 20, 2010.

73. Mr. Dunn was charged with murder more 19 months after Mr. Torres' death.

74. The only evidence supporting the charges was fabricated reports from Defendant Wagner and Defendant Marks and a fabricated statement from Defendant Sigsbee for Letha Sims.

75. Defendants knew that there was no probable cause that Mr. Dunn had murdered Mr. Torres.

76. The State's theory of the case was that Mr. Dunn beat Mr. Torres to death at the bottom of the stairs with some unknown object that was never found.

77. This theory was inconsistent with eyewitness testimony from Letha and Willie Sims.

78. Willie testified that Mr. Torres had lost his balance and fallen to the bottom of the stairs.

79. Letha testified that when she exited her apartment, she saw DeWayne trying to help Mr. Torres at the bottom of the staircase.

80. Letha and Willie both testified that Mr. Dunn never struck Mr. Torres.

81. The State's case relied solely on Defendants Wagner and Marks, and impeaching Letha with her fabricated statement from Defendant Sigsbee.

82. To discredit the eyewitnesses, Defendant Becker argued that Letha and Willie Sims—who are Black—were a couple of liars, invoking racist language designed to inflame prejudice against them:

But all this tells us that the witnesses are not telling us the truth. People lie. It happens. And, you know, we can use terms like you don't find swans in a sewer. This area where they're living, the lifestyle they're living, we can't pick our witnesses. We're stuck with what we've got. And if that means I've got to put Jamar and Letha on the stand to give you their perspectives, then that's what I'm going to do because you deserve to know. You deserve to have that information when you, the ultimate evaluators of this evidence, make your decisions.

83. Defendant Becker's argument confirms that Defendants' conspiracy to frame Plaintiff was, in part, racially motivated.

84. Defendant Becker would not have made the same comments about similarly situated white individuals.

85. Defendants targeted Mr. Dunn because he is a Black male.

86. Consistent with Elkhart Police Department policies and practices, Defendant Sigsbee targeted Mr. Dunn and Letha Sims because of their race.

87. Mr. Dunn was wrongfully convicted of murder based on false and fabricated evidence.

88. He was sentenced to 58 years' imprisonment.

Plaintiff's Exoneration

89. Mr. Dunn filed a post-conviction petition in 2016.

90. During post-conviction proceedings, a forensic pathologist—Dr. Thomas Sozio—concluded that Mr. Torres' injuries were consistent with a fall from height, not from a beating.

91. In August 2022, the Seventh Circuit Court of Appeals granted Mr. Dunn's habeas petition.

92. The State dropped charges against Mr. Dunn on November 7, 2022, ending the prosecution against Mr. Dunn.

93. Mr. Dunn stands before this Court as Elkhart's sixth exoneree.

**Defendant City of Elkhart Has a Pattern and Practice
of Systemic Police Misconduct**

94. Defendant City of Elkhart has a longstanding pattern and practice of police misconduct.

95. Dating back to 1993, the Board of Public Safety issued a report “Regarding [the] Investigation of Police Officers Found Liable by a U.S. District Court of Using Excessive Force.” The Board of Public Safety’s 1993 report found that some of the officers used “brutality,” and more importantly, that the Department failed to implement proper discipline of officers who commit misconduct.

96. The Board not only expressed frustration regarding efforts to hamper the City Administration’s investigation attempts, but it likewise set forth the Report’s goal: “to eradicate brutality as practiced by some of our police officers.” The Board linked this misconduct to the Elkhart Police Department failing to properly implement progressive discipline of officers. The Board reasoned that, “[a]ctually if progressive, corrective discipline had been practiced in the cases of Hill and Ambrose[,] either they would be cops today who know how to follow proper procedure or they would not be working here. We tend to believe that failure to point out weakness early in the officers career does no one a favor...”

97. The Board of Public Safety reiterated that “[t]he problem appears to be in a system that is secured in privacy and protected by a code of silence further protected by state law...”

98. The Board recommended that “the Department must find a way to better conduct internal investigations.”

99. By 2023, these reforms were still not implemented, thus allowing Defendants to continue committing misconduct without fear of any meaningful discipline or consequences.

100. Defendant City's failure to implement and follow proper policies and procedures enabled Defendants to violate Plaintiff's constitutional rights.

101. To this day, systemic misconduct and a code of silence exist at the Elkhart Police Department.

102. This custom, pattern, and practice of police misconduct contributed to the wrongful convictions of Keith Cooper, Christopher Parish, Mack Sims, Lana Canen, DeWayne Dunn, and Andrew Royer.

103. It likewise contributed to scores of other wrongfully convicted individuals who remain incarcerated to this day.

The Systemic Police Misconduct at the Elkhart Police Department Enabled a Group of Officers to Create a Gang Referred to as "the Wolverines," Who Were Known to Prey on People of Color

104. As Plaintiff reveals, the Elkhart Police Department remains one of the most corrupt law-enforcement agencies in America.

105. It has been this way for decades on end.

106. For instance, by the early 1990's, the culture of misconduct within the Elkhart Police Department was so rampant that a number of white officers formed a group called the "Wolverines."

107. This group was well-known to others within the Elkhart Police Department, including the Chief of Police: J.J. Ivory. According to Mr. Ivory, the Wolverines were a "group of officers, mostly FOP [Fraternal Order of Police] members -- or possibly all of them were members of the FOP during that time frame, -- and they were of the consensus, of a belief of 'One for all and all for one' as far as their dealings with citizens of Elkhart, especially the people in the south-central side of Elkhart."

108. As former Chief Ivory understood, this meant that Wolverines “would all stick together and regardless on whatever the issue might be, and that whatever it took, more or less, made me feel they would lie, cheat, defraud, or whatever it took to uphold their cause.” The Wolverines likewise followed their own code of silence.

109. Members of the Wolverines included “officers who were alleged to be racist and belonging to possibly subversive groups,” like the Ku Klux Klan.

110. Mr. Ivory discovered the Ku Klux Klan involvement as he heard “people just idly chitchatting, making comments, saying that we had officers who were card-carrying members of the [KKK at the] Elkhart Police Department...” Confirming their prejudices, Mr. Ivory heard members of the Wolverines use racial slurs:

I heard some of the members use the “N” word when they didn't know I was around. I walked around a corner, I could walk in on conversations periodically and -- excuse me -- and I heard, I believe it was Mr. Ambrose use the "N" word one time as far as dealing with a citizen in south central Elkhart. And, of course, as soon as they saw me when I walked around the corner, the conversation ceased.

111. The Wolverines espoused racist beliefs and targeted people of color. The Wolverines had a reputation within the Department for being “very proactive officers as far as their work within the south-central area.” Given their penchant for misconduct, Mr. Ivory came to question the legitimacy of any investigation conducted by members of the Wolverines.

112. Defendant City never conducted any investigation into the Wolverines.

113. The former Internal Affairs (“IA”) Lt. Paul Converse reveals that he believed a “cop gang” existed within the Elkhart Police Department.

114. As Mr. Converse revealed, even though he was on notice of a “cop gang” and the Wolverines, he never conducted a formal nor informal investigation into either.

115. Even though the Chiefs of Police were on notice of the existence of the Wolverines, a “cop gang,” none requested that a formal nor informal investigation be conducted. So, nothing was done.

116. That failure directly led to Plaintiff’s constitutional rights being violated.

117. Defendant City’s current Assistant Chief of Police, Todd Thayer, was a member of the Wolverines.

118. Defendant City’s continued employment of Mr. Thayer, and promotion of Mr. Thayer to Assistant Chief of Police, is evidence of the widespread culture of misconduct that infects the Elkhart Police Department.

119. Defendants’ retaliation against Plaintiff is part and parcel to this widespread systemic pattern of police misconduct that infects the Elkhart Police Department.

A Federal Jury Has Already Determined that Defendant City of Elkhart Violated Christopher Parish’s Constitutional Rights

120. A federal jury has already determined that Defendant City’s failures led to the violation of a citizen’s constitutional rights.

121. On September 24, 2007, Christopher Parish filed a federal civil-rights action arising from his wrongful conviction against Elkhart Police Officer Defendants Rezutko, Ambrose, Cutler, and the City of Elkhart. *See Parish v. City of Elkhart, et al.*, Case No. 07-cv-452 at Dkt. No. 1.

122. In that suit, Mr. Parish alleged that various defendants, including Defendant City of Elkhart, violated his constitutional right to a fair trial and due process of law by fabricating evidence, coercing witnesses, conducting photo-arrays that were improper and unduly suggestive, and by withholding exculpatory evidence.

123. Mr. Parish alleged that the defendant officers engaged in such misconduct pursuant to the policies, practices and customs wrongfully maintained by the Defendant City of Elkhart.

124. Mr. Parish was ultimately afforded a trial on his claims against Defendants City of Elkhart and Stephen Rezutko.

125. Mr. Parish presented three *Monell* theories before a jury in his federal civil trial: 1) that the policy maker, Chief Bechtel, turned a blind eye to misconduct and did nothing about it, thus allowing Defendant Rezutko to violate Mr. Parish's constitutional rights; (2) that the City of Elkhart failed to train its employees, thus allowing an untrained Defendant Rezutko to violate Mr. Parish's constitutional rights; and (3) that the City of Elkhart had a custom and practice of withholding exculpatory information, thus causing the violation of Mr. Parish's constitutional rights.

126. On October 27, 2010, a jury found in favor of Mr. Parish and against Defendant Rezutko. On Mr. Parish's policy and practice claim against Defendant City of Elkhart, the jury once again found in favor of Mr. Parish.

127. The Seventh Circuit Court of Appeals affirmed the jury's liability determinations against Defendants Rezutko and the City of Elkhart on December 20, 2012. *See Parish v. City of Elkhart*, 702 F.3d 997 (7th Cir. 2012).

The City of Elkhart Failed to Provide Sufficient Training and Supervision and Has Exhibited Deliberate Indifference

128. The constitutional injuries Plaintiff suffered were caused by the policies and practices of the Elkhart Police Department.

129. Indeed, within the Elkhart Police Department, there was a policy and practice of taking shortcuts to close criminal investigations, including fabricating statements, coercing

witnesses and/or suspects during interrogations, and withholding exculpatory and impeachment evidence.

130. Policymakers and supervisory personnel were aware of and failed to curb the improper investigative practices that led to the numerous *Brady* violations.

131. The problems that Defendants engaged in were common knowledge at the Elkhart Police Department. This includes the Department's most senior leadership.

132. This policy and practice repeated itself in numerous criminal investigations at the Elkhart Police Department.

133. Nonetheless, and despite notice to (and often involvement of) policymakers in the above-described unconstitutional policies and practices, there was no effort to rectify any such misconduct. Defendants were permitted to act with impunity in criminal investigations.

134. The City of Elkhart and officials within the Department failed to act to remedy the abuses described in the preceding paragraphs, despite actual knowledge of the pattern of misconduct.

135. They thereby perpetuated the unlawful practices and ensured that no action would be taken (independent of the judicial process) to remedy Plaintiff's ongoing injuries.

136. The policies and practices described in the foregoing paragraphs were consciously approved by City of Elkhart policymakers who were deliberately indifferent to the violations of constitutional rights described herein.

137. Those policies and practices were the proximate cause of the constitutional injuries that Plaintiff sustained, as described more fully above.

138. Moreover, the City's failure to train its officers effectively condones, ratifies, and sanctions the kind of misconduct that the Defendant Officers committed against Plaintiff in this case.

139. Constitutional violations such as occurred in this case are encouraged and facilitated as a result of the City's practices and *de facto* policies, as alleged above.

Mr. Dunn's Damages

140. Mr. Dunn was charged with murder on April 20, 2010.

141. His life has never been the same since.

142. Based on fabricated evidence, a jury convicted Mr. Dunn of murder on February 22, 2011.

143. On March 17, 2011, Mr. Dunn was sentenced to 58 years' imprisonment.

144. In February 2013, Mr. Dunn filed a *pro se* petition for post-conviction relief.

145. In January 2017, Mr. Dunn had an evidentiary hearing about his petition for post-conviction relief.

146. Defendant Becker represented the State during post-conviction proceedings.

147. The court denied Mr. Dunn's post-conviction petition on April 4, 2017.

148. In March 2018, Mr. Dunn filed a federal habeas petition.

149. On December 23, 2020, the federal district court granted Mr. Dunn's petition.

150. On August 12, 2022, The Seventh Circuit affirmed the district court's decision granting habeas relief.

151. The case against Mr. Dunn was dismissed in November 2022.

152. Mr. Dunn spent more than 12 years in prison for a crime he did not commit.

153. Mr. Dunn suffered injuries every day of his wrongful incarceration.

154. Mr. Dunn's arrest and wrongful conviction caused Mr. Dunn to lose his job, and his future job prospects, skills, and income he would have acquired during his wrongful detention and after his release.

155. During his wrongful incarceration, Mr. Dunn 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. He missed out on the ability to raise his child, share holidays, births, funerals, and other life events with loved ones, and the fundamental freedom to live one's life as an autonomous human being.

156. Mr. Dunn also suffered physical injuries during his incarceration. Those injuries included the lack of adequate medical care. Those struggles caused Mr. Dunn to suffer on a daily basis.

157. As a result of his wrongful incarceration, Mr. Dunn must now attempt to rebuild his life at the age of 60 years old.

158. Mr. Dunn has suffered tremendous damage, including physical sickness and injury and emotional damages, all proximately caused by Defendants' misconduct.

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

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

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

161. In the manner described more fully above, the Defendants conducted a reckless investigation, withheld exculpatory evidence, withheld impeachment evidence, destroyed evidence, and fabricated false reports, false testimony, and other evidence. Absent this misconduct, the prosecution of Mr. Dunn could not and would not have been pursued.

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

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

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

165. The misconduct described in this Count was undertaken pursuant to a routine practice of the Elkhart Police Department to pursue wrongful convictions through reckless and profoundly flawed investigations, provision of false evidence and reports, coerced evidence, and failure to properly supervise employees knowing that those employees were providing false evidence. In this way, the municipal defendants violated Mr. Dunn's rights by maintaining policies and practices that were the moving force driving the foregoing constitutional violations.

166. These widespread practices, so well-settled as to constitute *de facto* policy in the Elkhart Police Department, were able to exist and thrive because municipal policymakers with authority over the Division of Police exhibited deliberate indifference to these problems, thereby effectively ratifying them.

167. 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
Deprivation of Liberty Without Probable Cause
Fourth and Fourteenth Amendments
All Defendants

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

169. As described more fully above, the Defendants, individually, jointly and in conspiracy with each other, as well as under color of law and within the scope of their employment, deprived Mr. Dunn of his constitutional right to be free from unlawful prosecution and continued detention without probable cause.

170. In the manner described more fully above, the Defendants made, influenced and/or participated in the decision to prosecute Mr. Dunn for these crimes, for which prosecution there was no probable cause and which caused Mr. Dunn to suffer a deprivation of liberty. Their misconduct included falsifying evidence and withholding exculpatory evidence.

171. The Defendants' misconduct directly resulted in the unlawful prosecution and incarceration of Mr. Dunn, thereby denying each of his constitutional right to liberty in violation of his constitutional rights.

172. As described more fully above, the prosecution was ultimately resolved in Mr. Dunn's favor.

173. Because of this violation of his constitutional rights, Mr. Dunn suffered injuries, including but not limited to bodily harm and emotional distress, as is more fully alleged above.

174. The Defendants' misconduct, as described in this Count, was objectively unreasonable and was undertaken intentionally with malice and willful indifference to Mr. Dunn's constitutional rights.

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

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

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

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

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

179. 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.

180. Because of the Defendants' failure to intervene to prevent the violation of Mr. Dunn's constitutional rights, Mr. Dunn suffered pain and injury, as well as emotional distress.

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

182. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Elkhart Police Department in the manner described more fully in the 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: All Defendants

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

184. After Mr. Torres' death, the Defendants reached an agreement amongst themselves to frame Mr. Dunn for the crime and to thereby deprive him of his constitutional rights and liberty to be continuously taken away from him, all as described in the various Paragraphs of this Complaint.

185. 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.

186. In furtherance of the conspiracy, each of the co-conspirators committed overt acts as described in this Complaint and was an otherwise willful participant in joint activity.

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

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

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

Count V – 42 U.S.C. 1983
Equal Protection: All Defendants

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

191. As described more fully above, the Defendants denied Plaintiff equal protection of the law.

192. Specifically, these Defendants actively participated in or personally caused misconduct in terms of conducting investigations in a manner calculated to deprive minority suspects of their due process rights by withholding material exculpatory evidence and fabricating false evidence of those suspects' guilt. Said misconduct was motivated by racial

animus and constituted purposeful discrimination; it also affected minorities in a grossly disproportionate manner vis-a-vis similarly-situated Caucasian individuals.

193. As a result of this violation, Plaintiff, a Black male, suffered injuries, including but not limited to emotional distress.

194. The misconduct by the Defendants described in this Count was undertaken pursuant to the policy and practice of the Elkhart Police Department in the manner described more fully above.

Count VI - 42 U.S.C. § 1983
Monell Claim Against Defendant City of Elkhart

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

196. The actions of the Elkhart Police Officers in withholding material exculpatory information from Mr. Dunn and his counsel were undertaken pursuant to the policies and practices of the Elkhart City Police, described above, which were created, maintained, or ratified by policymakers for the City of Elkhart with final policymaking authority.

197. The policies and practices described in this Count were maintained and implemented by the City of Elkhart with deliberate indifference to Mr. Dunn's constitutional rights.

198. As a direct and proximate result of the City of Elkhart's actions, Mr. Dunn's constitutional rights were violated and he suffered injuries and damages, as set forth in this Complaint.

199. The City of Elkhart is therefore liable for the misconduct committed by its officers.

Count VII - State Law Claim
City of Elkhart's Breach Of Duty in Hiring, Training and Supervising – Negligence

200. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

201. The Defendant City of Elkhart and its police department at all times relevant had a duty to exercise due care in hiring police officers, and had a duty to properly train, supervise, and discipline Elkhart Police Department Officers in relation to their duties, including their actions in criminal investigations.

202. The City of Elkhart and its police department breached those duties by failing to exercise due care in hiring and then failing to properly train, supervise, and discipline the officers involved in the misconduct in criminal investigations.

203. As a direct and proximate result of the City of Elkhart's failing to exercise due care in hiring and failing to train and supervise, Defendants were able to secure Mr. Dunn's wrongful conviction.

Count VIII - State Law Claim
City of Elkhart's Breach of Duty in Hiring – Willful and Wanton Conduct

204. Each of the foregoing Paragraphs is incorporated as if restated fully herein.

205. The City of Elkhart and its police department at all times relevant had a duty to refrain from willful and wanton conduct in hiring police officers.

206. The City of Elkhart and its police department breached that duty by engaging in willful and wanton conduct in hiring Defendant Sigsbee.

Count IX
Respondeat Superior

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

208. In committing the acts alleged in the preceding paragraphs, the Police Defendants were members and agents of the Elkhart Police Department, acting at all relevant times within the scope of their employment. Defendant City of Elkhart is liable as principals for all state law torts committed by their agents.

209. In committing the acts alleged in the preceding paragraphs, Defendant Sigsbee was a member and agent of the Elkhart Police Department, acting at all relevant times within the

scope of his employment. Defendant City of Elkhart is liable as principals for all state law torts committed by their agents.

COUNT X
Intentional Infliction of Emotional Distress: All Defendants

210. Mr. Dunn hereby incorporate by reference the foregoing paragraphs and further allege as follows.

211. Defendants intentionally and/or recklessly, directly and proximately caused Mr. Dunn, an innocent man, to be falsely arrested, maliciously prosecuted, and wrongly imprisoned, in breach of the duties they owed to Mr. Dunn to refrain from a) destroying evidence, b) fabricating evidence, c) withholding material, exculpatory and impeachment evidence, d) failing to conduct a constitutionally adequate investigation, e) maliciously prosecuting, causing Mr. Dunn's false arrest and imprisonment.

212. The Defendants' actions caused Mr. Dunn to suffer physical harm, including physical ailments and unauthorized physical contact resulting from the circumstances and duration of his wrongful incarceration, and to fear for his physical safety throughout the period of his pretrial and post-conviction incarceration.

213. The Defendants' actions caused Mr. Dunn to experience severe emotional distress, including, but not limited to humiliation, embarrassment, degradation, loss of trust, permanent loss of natural psychological development, and ongoing depression.

WHEREFORE, Plaintiff DeWAYNE DUNN, respectfully requests that this Court enter judgment in his favor and against, MICHAEL SIGSBEE, VICKI BECKER, DR. SCOTT WAGNER, AND DEAN MARKS in their individual capacities, and the Defendants CITY OF ELKHART and the STATE OF INDIANA 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, DeWAYNE DUNN, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Respectfully submitted,

/s/ Margaret Campbell
One of Plaintiff's Attorneys

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