

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

SHAWNNON HALE,

Plaintiff,

v.

ERIC DUVALL, in his individual capacity; and
BRIAN PIROT, in his individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

SHAWNNON HALE, by and through his attorneys, David A. Lane and Eudoxie (Dunia) Dickey, of KILLMER, LANE AND NEWMAN, LLP, respectfully alleges for his Complaint and Jury Demand as follows:

I. INTRODUCTION

1. This case arises from Defendants Denver Police Department (DPD) crime lab investigators Eric Duvall's and Brian Pirot's reckless and/or grossly negligent statements made in an evidentiary report which falsely claimed that vaginal DNA samples taken from a victim's rape kit allegedly matched that of the Plaintiff, when in fact it did not. Defendants' false statements resulted in Plaintiff's false arrest/ unlawful seizure, the filing of totally unjustified false rape felony charge and two months of unjustified pretrial incarceration in violation of Plaintiff's federally protected rights under the Fourth Amendment to the U.S. Constitution, causing him severe damages.

II. JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States, and is brought pursuant to Title 42 U.S.C. § 1983.

3. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331.

4. Jurisdiction supporting Plaintiff's claim for attorney's fees and costs is conferred by 42 U.S.C. § 1988.

5. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado, and all of the parties were residents of the State at the time of the events giving rise to this litigation.

III. PARTIES

Plaintiff:

6. At all times relevant to this Complaint, Plaintiff Shawnon Hale was a citizen of the United States and a resident of and domiciled in the State of Colorado.

Defendants:

7. At all times relevant to this Complaint, Defendants Eric Duvall and Brian Pirot were each citizens of the United States, residents of and domiciled in the State of Colorado and were each acting under color of state law in their respective capacities as employees of the Denver Police Department (DPD).

IV. FACTUAL BACKGROUND

8. Plaintiff Shawnon Hale is a 26-year old African-American man residing in Denver, Colorado.

9. On July 5, 2014, [REDACTED] a woman living in the LoDo section of Denver, reported to the Denver Police Department that she had been the victim of a rape and burglary occurring sometime between July 4, 2014 and July 5, 2014.

10. The victim informed the police that she met a stranger on the street while walking her dog on July 4, 2014 and that the stranger invited her to have drinks with him at a nearby bar, to which she agreed.

11. The victim and the stranger had a few rounds of drinks at the bar before she invited him and some of his friends up to the rooftop deck of her apartment where they began to drink more alcohol and smoke cigarettes.

12. The victim eventually passed out and woke up the next morning with her underwear off, vaginal pain, and no recollection of what had occurred after leaving the apartment rooftop.

13. On July 5, 2014, after reporting the incident to police, the victim was taken to the hospital for a rape kit (“SANE exam”) to be administered, which included vaginal swabs, labia swabs, and lips/chin swabs.

14. The Denver Crime Lab subsequently completed a lab report advising that male DNA was detected on the vaginal swabs, labia swabs, and lips/chin swabs taken from the victim. Spermatozoa were identified on the vaginal swabs, but not the lips/chin swabs.

15. As part of the investigation, the police also gathered numerous cigarette butts, a drinking glass, the victim’s underwear, the victim’s dress, the victim’s bedding, and a pair of shorts, all of which were tested for DNA.

16. The police also gathered surveillance footage from the victim's apartment complex. The surveillance footage showed more than half a dozen young men and women, including Plaintiff, coming and going from the victim's apartment rooftop throughout the course of the night.

17. The surveillance footage also showed the victim leaving the apartment rooftop with a white male at approximately 3:00 am. Nevertheless, the Denver Police Department ("DPD") chose to focus its investigation on the stranger, a black male, whom the victim had met earlier that night.

18. The stranger, later identified as [REDACTED] was shown on the surveillance videos from the victim's apartment leaving the apartment complex with a rectangular object concealed underneath his tank top.

19. [REDACTED] was arrested, but after the DPD conducted questioning and DNA comparisons, he was excluded as the source of the male DNA found in the victim's rape kit.

20. During questioning, [REDACTED] informed DPD detectives that the victim had left the apartment rooftop with a Caucasian-looking male named "Nate". However, the DPD did not have enough evidence to arrest either [REDACTED] or any of his friends who had attended the July 4th party on the victim's apartment rooftop.

21. After nearly five months of investigation, Defendants Eric Duvall and Brian Pirot falsely claimed that the Combined DNA Index System ("CODIS") returned a hit on the interpreted male DNA from the SANE exam performed on the victim, and falsely claimed that the DNA found inside the victim belonged to Plaintiff, a black male.

22. Based upon the alleged DNA “hit”, an arrest warrant was issued for Plaintiff. The affidavit in support of the warrant read:

On November 26, 2014 Eric Duvall and Brian Pirot of the Denver Crime Lab authored a report indicating that male DNA from the vaginal swabs had been matched to Shawnon Hale...Based on the aforementioned facts, your affiant requests that a warrant be issued for the arrest of Shawnon Hale for the crime of sexual assault...

23. On December 5, 2014, Plaintiff was arrested and questioned by Denver police. Plaintiff repeatedly admitted that he was at the party on the rooftop but vehemently denied any sexual contact with the victim. When informed by DPD investigators that his DNA had allegedly been found inside the victim, Plaintiff unequivocally denied this possibility by responding, “No, I’m sorry, that’s not possible.”

24. Plaintiff also informed DPD investigators that the victim took a Caucasian male into a room while on the apartment rooftop and performed oral sex on him. Plaintiff told DPD investigators the victim “was ‘lovey dovey’ towards [the Caucasian male] as they were leaving and she asked if he wanted to come back to her apartment and he said, ‘Yeah, let’s go.’” Plaintiff also stated that he never went to the victim’s apartment because the victim only invited the Caucasian male back to her apartment.

25. Moreover, Plaintiff was seen on surveillance footage leaving the apartment complex with four other individuals at 3:41 A.M., while a sixth person, who had arrived with Plaintiff and others earlier that night, was seen leaving alone at 5:19 A.M.. Nevertheless, as a result of Defendants’ false statements that Plaintiff’s DNA had matched with the victim’s rape kit, Plaintiff was jailed unjustly and without justification for sixty-one days for his alleged sexual assault of the victim.

26. Throughout the duration of his detainment, Plaintiff steadfastly maintained that he never touched the victim and was suspicious of the alleged DNA results. As such, Plaintiff requested that DPD rerun the necessary tests in order to confirm the results.

27. Based on the Defendants' false statements that there was an alleged DNA "hit" of Plaintiff's DNA in the victim's rape kit, DPD Detective Franklin presented the case to the District Attorney's Office on December 9, 2014, which was accepted for filing after review.

28. Plaintiff was represented by the Colorado Public Defender's office. At a preliminary hearing in February of 2015, based on the false statements of Defendants, the court found probable cause existed for Plaintiff's arrest and bound the case over to district court for trial.

29. Approximately two days after the preliminary hearing, it was exposed that one or both of the Defendants had mislabeled Plaintiff's DNA evidence with reckless disregard or gross negligence with respect to Plaintiff's constitutional right to be free from false arrest or unlawful seizure. It was revealed that Plaintiff was, in fact, innocent as he had claimed all along. In fact, Mr. Hale's DNA matched DNA found on a cigarette at the scene by DPD investigators but did not match the DNA found inside the victim.

30. The Denver District Attorney's office moved to dismiss the case against Plaintiff on February 4, 2015. In a pleading signed by Deputy District Attorney Jason Kramer, he wrote "The People are unable to prove this case beyond a reasonable doubt." Following his totally unjustified two-month detention, the People's Motion to Dismiss was granted and Plaintiff was finally released from jail.

31. Upon information and belief, Plaintiff's DNA was indeed found at the scene of the alleged crime on a cigarette butt, however *none* of his DNA was found inside the victim.

32. The reckless and/or grossly negligent statements of the Defendants resulted in Plaintiff being charged for a crime carrying with it a potential sentence of life imprisonment.

33. The reckless and/or grossly negligent statements of the Defendants resulted in Plaintiff being incarcerated in the Denver County jail for a period of approximately two months. The reckless and/or grossly negligent statements of the Defendants resulted in a loss of income, a loss of freedom, and serious emotional distress to Plaintiff.

34. Defendants' conduct was engaged in with reckless disregard or gross negligence to the federally protected rights of Plaintiff, entitling him to punitive damages.

STATEMENT OF CLAIMS

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourth Amendment

Unlawful Seizure/ False Arrest

(Against Defendants Eric Duvall and Brian Pirot)

35. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

36. Defendants Duvall and Pirot were acting under color of state law in their actions and inactions that occurred at all times relevant to this action.

37. Defendants Duvall and Pirot acted with reckless disregard and/or gross negligence in handling the DNA evidence, which resulted in the mislabeling of Plaintiff's DNA evidence and the authoring of a report falsely claiming that Plaintiff's DNA matched with the victim's rape kit.

38. A reasonable crime lab analyst in Defendants Duvall's or Pirot's positions would not have mislabeled or otherwise mishandled the DNA evidence.

39. Defendants Duvall and Pirot acted recklessly and/or grossly negligently in making false statements regarding Plaintiff's DNA evidence. Defendants' reckless

and/or grossly negligence, false statements were included in the warrant affidavit and resulted in a finding of probable cause to wrongfully arrest and charge Plaintiff in violation of his Fourth Amendment right to be free of unreasonable search and seizure.

40. At no relevant time did Defendants Duvall or Pirot, or the DPD, have any evidence against Plaintiff other than the false DNA “hit”.

41. Defendants Duvall and Pirot’s false statements caused Plaintiff to be falsely arrested and unjustifiably incarcerated for sixty-one days. As such, the acts and omissions of each Defendant described herein were the legal and proximate cause of Plaintiff’s damages.

42. At no relevant time did Defendants Duvall or Pirot have probable cause or reasonable suspicion, or any other legally valid basis, to believe that Plaintiff had committed or was committing any violation of the law prior to seizing and continuing to illegally restrain his person.

43. As a direct result of Defendant Duvall’s and Defendant Pirot’s actions, Plaintiff was falsely arrested despite the Denver Police Department’s lack of any legally valid basis for their actions.

44. Defendant Duvall’s and Pirot’s actions were objectively unreasonable in light of the circumstances confronting them, and violated clearly established law of which reasonable officials in their positions would have known.

45. Defendants Duvall and Pirot engaged in their respective actions and inactions with reckless disregard and/or gross negligence.

46. Plaintiff has been and continues to be damaged by Defendants’ reckless and/or grossly negligent statements, which directly caused the DPD’s unreasonable

seizure of Plaintiff, causing him to suffer a loss of freedom, loss of income, reputational damage and mental and emotional distress.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants, and award him all relief as allowed by law and equity, including, but not limited to the following:

- a. Declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages as established at trial;
- c. Compensatory damages, including, but not limited to those for past and future pecuniary and non-pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, medical bills, and other non-pecuniary losses;
- d. Punitive damages for all claims as allowed by law in an amount to be determined at trial;
- e. Issuance of an Order mandating appropriate equitable relief, including but not limited to issuance of a formal written apology from each Defendant to Plaintiff;
- f. Pre-judgment and post-judgment interest at the highest lawful rate;
- g. Attorneys' fees and costs; and
- h. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 5th day of December 2016.

KILLMER, LANE & NEWMAN, LLP

s/ David A. Lane
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Eudoxie (Dunia) Dickey

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