

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN; MATTHEW WILSON; and
BRECK ARCHER,

Plaintiffs,

v.

DUKE UNIVERSITY; DUKE UNIVERSITY POLICE
DEPARTMENT; AARON GRAVES; ROBERT DEAN;
LEILA HUMPHRIES; PHYLLIS COOPER; WILLIAM F.
GARBER, II; JAMES SCHWAB; JOSEPH FLEMING;
JEFFREY O. BEST; GARY N. SMITH; GREG
STOTSENBERG; ROBERT K. STEEL; RICHARD H.
BRODHEAD, Ph.D., PETER LANGE, Ph.D.; TALLMAN
TRASK, III, Ph.D.; JOHN BURNES; LARRY MONETA,
Ed.D.; VICTOR J. DZAU, M.D.; ALLISON HALTON;
KEMEL DAWKINS; SUZANNE WASIOLEK; STEPHEN
BRYAN; MATTHEW DRUMMOND; DUKE
UNIVERSITY HEALTH SYSTEMS, INC.; PRIVATE
DIAGNOSTIC CLINIC, PLLC; JULIE MANLY, M.D.;
THERESA ARICO, R.N.; TARA LEVICY, R.N.; THE
CITY OF DURHAM, NORTH CAROLINA; MICHAEL B.
NIFONG; PATRICK BAKER; STEVEN CHALMERS;
RONALD HODGE; LEE RUSS; STEPHEN MIHAICH;
BEVERLY COUNCIL; EDWARD SARVIS; JEFF LAMB;
MICHAEL RIPBERGER; LAIRD EVANS; JAMES T.
SOUKUP; KAMMIE MICHAEL; DAVID W. ADDISON;
MARK D. GOTTLIEB; BENJAMIN W. HIMAN;
LINWOOD WILSON; RICHARD D. CLAYTON; DNA
SECURITY, INC.; RICHARD CLARK; and BRIAN
MEEHAN, Ph.D.

Defendants.

Civil Action No. 1:07-cv-00954

COMPLAINT

JURY TRIAL DEMAND

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SUMMARY OF THE ACTION

1. This action arises out of a combination of actors and entities that, from time to time, we refer to herein as the Consortium. The Consortium included a world-renowned University, its faculty, its police department, its medical center, and a SANE nurse; a city, its city manager, its police department, and a rogue officer; a private DNA lab, its lab director, and its owner; and a prosecutor who was disbarred, and subsequently convicted of contempt and incarcerated for certain of his acts in furtherance of the Consortium's conspiracy.

2. Plaintiffs' claims arise out of the Consortium's conspiracy to railroad 47 Duke University students as either principals or accomplices based upon the transparently false claim of rape, sexual offense, and kidnapping made by a clinically unreliable accuser on March 14, 2006. The conspiracy was facilitated by overt acts and by the refusal to intervene on the part of those in the Consortium who knew of the wrongs conspired to be done to Plaintiffs, had the power and authority to intervene, and refused to do so.

3. The conspiracy's vehicle was the false accusation of rape made under circumstances akin to duress, by a woman with a long, troubling psychiatric history. When the duress was removed, Mangum quickly recanted the rape claim. However, in the hands of the Consortium, Mangum's recanted accusation of rape morphed into a brutal gang rape, the horror of which grew in each retelling. It

would never be the same story twice. Her claim was taken virtually from her lips and fashioned into a weapon in the hands of those who would leverage outrage was animated by racial was unleashed at once on 47 of them.

4. The Consortium's conspiratorial objectives in the matter of 610 N. Buchanan Blvd. were motivated by a racial animus and also by an animus based upon Plaintiffs' their perceived status as non-citizens of the state of North Carolina. The defendants retaliated against the team members for having the temerity to reach for the protections of the United States Constitution, the only thing that could keep them safe from wrongful convictions upon false allegations of the most horrific kind and from a rogue prosecutor and a rogue police officer who wanted and needed to prove they were true.
5. Over the course of the 13 month investigation into Mangum's false accusations, defendants conspired to achieve the retaliatory purposes of their conspiracy by, among other things, agreeing to conceal the overwhelming evidence of innocence they found or knew to exist very early on; agreeing to fabricate forensic medical evidence, including the falsification of medical records associated with Mangum's Sexual Assault Examination, agreeing to conceal from Plaintiffs powerful exculpatory DNA evidence to which Plaintiffs were entitled by law before indictments in the matter were handed down; agreeing to fabricate witness testimony from the State's witnesses, and to harass, intimidate and threaten the witnesses who would prove Mangum's claims a lie; and by agreeing to make

consciously parallel public false statements impeaching the character and credibility of the accused 47 members of the men's lacrosse team.

6. All of the foregoing conspiracies depended for their continuation upon an overarching conspiracy between Duke University and its co-defendants to conceal the fact that, at all times relevant to this action, the investigation of Mangum's claims was the Duke Police Department's investigation. Mangum alleged she was raped and sexually assaulted at a residence that was within the Duke Police Department's jurisdiction, and, by statute and agreement, Duke University Police had the primary responsibility to "initiate and conclude" an investigation of Mangum's allegations.
7. The fact of Duke Police Department's jurisdictional obligation to investigate Mangum's false accusations was kept secret through another overarching conspiracy among all Defendants to publicly and privately conceal it.
8. So great was the damage done the 47 Duke University students on the men's lacrosse team that even the unequivocal exoneration after a re-investigation led by two of this State's most revered respected prosecutors could not repair it. For 13 months, the defendants and others not yet named in this action conspired and colluded to subject plaintiffs and their teammates to public outrage and condemnation before a national and international audience, day after day. Throughout this affair, those who had the power to destroy Ryan, Matt, Breck, and

their teammates acted to destroyed them; and Duke University, with the statutory authority and power to intervene to prevent the wrongs being committed upon their own students, refused to intervene.

9. It was not until North Carolina's Attorney General's Office and its special Special Prosecutors, Senior Deputy Attorney General James J. Coman and Special Deputy Attorney General Mary D. Winstead obtained jurisdiction that the truth of what happened at 610 N. Buchanan became the aim of the investigation in this matter.
10. The word "innocent" does not trip lightly off the tongue of a prosecutor. Coman and Winstead, with State Bureau of Investigation ("SBI") Agents DeSilva and Tart, sought the truth, found the truth, and insisted upon a declaration of innocence. On April 11, 2007, the North Carolina Attorney General declared Plaintiffs and their teammates innocent. For the tireless work of Special Prosecutors Coman and Winstead, SBI Agents DeSilva and Tart, and the Attorney General's declaration that Mangum's allegations were a hoax, Ryan, Matt, and Breck are enormously grateful. This case is not about them, nor is it about the justice system in North Carolina. This case is a reckoning; it is an accounting of those who were willing to obstruct and pervert justice to serve their own selfish aims, those who had the power to intervene and did not, and the damage they have done.

THE PARTIES

I. THE PLAINTIFFS

11. Plaintiff Ryan McFadyen is a citizen and resident of New Jersey.
12. Plaintiff Matthew Wilson is a citizen and resident of North Carolina.
13. Plaintiff Breck Archer is a citizen and resident of New York.
14. When Crystal Mangum falsely claimed that she was sexually assaulted, the Plaintiffs were students in good standing at Duke University and members of the 2005-2006 Duke University Men's Lacrosse Team.

II. THE DEFENDANTS

A. Duke University Defendants

15. DUKE UNIVERSITY. Duke University is an educational institution formed under the laws of North Carolina, with its primary place of business in Durham, North Carolina. At all times relevant to this action, the Defendants identified herein as the Duke Police Defendants, Duke Officials Defendants and the SANE Defendants, were constituent entities, agents and/or employees of Duke University. Further, at all times relevant to this action, Plaintiffs were enrolled as students at Duke University pursuant to enrollment agreements entered into between them.

1. Duke Police Defendants

16. DUKE UNIVERSITY POLICE DEPARTMENT. The Duke Police Department is a North Carolina law enforcement agency authorized and existing under the North Carolina General Statutes. Duke Police officers are commissioned under North Carolina General Statutes without limitation; they have the full range of police authority that the State grants to all other municipal law enforcement officers in their respective jurisdictions. The Duke Police Department has primary police jurisdiction over, among other things, crimes reported to have occurred on property owned or controlled by Duke University, including adjacent streets and roadways, within the Durham city limits. The Duke Police Department's duties include providing comprehensive law enforcement services throughout its territorial jurisdiction including, but not limited to the academic campus, a large medical center complex, an 8,000 acre research forest, and all property owned or controlled by Duke University within the Durham city limits. The Duke Police Department has 176 authorized positions, including 67 commissioned Police Officers, 83 Security Officers, 12 Emergency Communications and Records Officers, a 24-hour 911 center, Criminal Investigations Unit, and various administrative support personnel.

a. Duke Police Supervising Defendants

17. AARON GRAVES is, and at all times relevant to this action, was Duke University's Associate Vice President for Campus Safety & Security. In that capacity, Graves served in a supervisory and policymaking role for the Duke Police Department. At all relevant times to this action, Graves' duties included developing and supervising the implementation of a strategic law enforcement plan for the Duke Police Department's territorial jurisdiction and strategies and initiatives for enhanced safety and security at the University and DUHS. Upon information and belief, Graves is, and at all times relevant to this action, was a citizen and resident of North Carolina.

18. ROBERT DEAN is, and at all times relevant to this action, was the Director and Chief of the Duke Police Department. Dean reported directly to Duke University's Associate Vice President for Campus Safety and Security, Defendant Graves. In his capacity as Director and Chief of Police, Dean served in a supervisory and policymaking role for the Duke Police Department. Dean's primary responsibilities include directing and supervising the day-to-day management of the Duke Police Department, and directing a senior Department management team composed of the Commander of the Duke Police Department's Uniform Patrol Division (a police Major), the Commander of the Duke Police Support Division (a police Major); and the Manager of Medical Center Affairs. Upon information and

belief, Dean is, and at all times relevant to this action, was a citizen and resident of North Carolina.

19. LEILA HUMPHRIES was, at all times relevant to this action, the Assistant Police Chief for the Duke Police Department. In that capacity, Humphries served in a supervisory and policymaking role for the Duke Police Department. Upon information and belief, Humphries is, and at all times relevant to this action, was a citizen and resident of North Carolina.
20. PHYLLIS COOPER is, and at all times relevant to this action, was a fully commissioned North Carolina law enforcement officer, with the rank of Major for the Duke Police Department, serving as the Department's PIO Commander and Commander for the Investigations Division. In that capacity, Cooper served in a supervisory and policymaking role for the Duke Police Department. Cooper's duties include maintaining the Police Department's accreditation and supervising special projects and investigations conducted by the Duke Police Department. In addition, Cooper was, at all relevant times, one of the Department's liaisons to CrimeStoppers. Upon information and belief, Cooper is, and at all times relevant to this action, was a citizen and resident of North Carolina.
21. WILLIAM F. GARBER, II is, and at all times relevant to this action, was the Medical Center Affairs Manager for the Duke Police Department. In that capacity, Garber served in a supervisory and policymaking role for the Duke Police Department. Garber's primary responsibilities include serving as liaison to

the medical center administration for police and security issues on the Duke University Medical Center campus. Upon information and belief, Garber is, and at all times relevant to this action, was a citizen and resident of North Carolina.

22. JAMES SCHWAB was, and at all time relevant to this action, a fully commissioned North Carolina law enforcement officer, with the rank of Major for the Duke Police Department. In that capacity, Schwab served in a supervisory and policymaking role for the Duke Police Department. Upon information and belief, Schwab is, and at all times relevant to this action, was a citizen and resident of North Carolina.

23. JOSEPH FLEMING is, and at all times relevant to this action, was a fully commissioned North Carolina law enforcement officer, with the rank of Lieutenant for the Duke Police Department, serving as the Department's Supervisor of Investigations. In that capacity, Fleming served in a supervisory and policymaking role for the Duke Police Department. Fleming's duties include supervising and directing the investigation of crimes alleged to have occurred within the Duke Police Department's jurisdiction, including any crime reported to have occurred inside the residence at 610 N. Buchanan. At all times relevant to this action, Fleming's duties included supervising Defendant Smith. Upon information and belief, Fleming is, and at all times relevant to this action, was a citizen and resident of North Carolina.

24. JEFFREY O. BEST is, and at all times relevant to this action, was a fully commissioned North Carolina law enforcement officer, with the rank of Lieutenant for the Duke Police Department and the Department's Commander of the Duke Patrol Division "B" Squad. Best's duties include supervising and directing the activities of the "B" Squad of the Duke Police Department's Patrol Division. In that capacity, Best served in a supervisory and policymaking role for the Duke Police Department. Best was the Duke Police Watch Commander on the evening and early morning hours of March 13, 2006. Best personally appeared at Duke University Medical Center when it became clear that Mangum's false claim of rape was alleged to have occurred at 610 N. Buchanan, a residence within Duke Police Department's jurisdiction. Upon information and belief, Best is, and at all times relevant to this action, was a citizen and resident of North Carolina.
25. DUKE POLICE SUPERVISING DEFENDANTS. Collectively, Graves, Dean, Humphries, Cooper, Garber, Schwab, Fleming and Best, are referred to herein as the "Duke Police Supervising Defendants."

b. Duke Police Investigator Defendants

26. GARY N. SMITH is, and at all times relevant to this action, was a fully commissioned North Carolina law enforcement officer, with the rank of First Sergeant, serving as an Investigator in the Duke Police Department. Smith's duties include supervising investigations of reports of criminal conduct reported to have occurred within Duke Police Department's jurisdiction, which, at all times

relevant to this action, included the residence at 610 N. Buchanan. Smith is a certified criminal investigator. In addition, Smith was, at all relevant times, one of the Department's liaisons to CrimeStoppers. Upon information and belief, Smith is, and at all times relevant to this action, was a citizen and resident of North Carolina.

27. GREG STOTSENBERG is, and at all times relevant to this action, was a fully commissioned North Carolina law enforcement officer, with the rank of First Sergeant in the Duke Police Department's "D" Patrol Squad. Stotsenberg's duties include conducting and coordinating investigative functions of the Duke Police Department. In addition, Stotsenberg was, at all relevant times, one of the Department's liaisons to CrimeStoppers. At all times relevant to this action, Stotsenberg coordinated several of the Duke Police Department's efforts to assist Defendants Gottlieb and Himan in the investigation of Plaintiffs and their teammates, including the failed attempt to induce all 47 members of the team to be interrogated by Durham police officers without counsel, where the students, unbeknownst to them, would be asked to voluntarily provide their DNA samples and mug shots for identification purposes. Upon information and belief, Stotsenberg is, and at all times relevant to this action, was a citizen and resident of North Carolina.