

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS W. WINSLOW,)	CASE NO. _____
)	
Plaintiff,)	
)	
v.)	COMPLAINT, JURY DEMAND, AND
)	DESIGNATION OF PLACE OF TRIAL
RICHARD T. SMITH, in his official and)	
individual capacities; DEP. BURDETTE)	
SEARCEY, in his official and individual)	
capacities; DEP. GERALD LAMKIN, in his)	
official and individual capacities;)	
DEP. KENT HARLAN, in his official and)	
individual capacities; DEP. MARK MEINTS)	
in his official and individual capacities;)	
SHERIFF JERRY O. DEWITT, in his official)	
and individual capacities; WAYNE R.)	
PRICE, PhD, in his official and individual)	
capacities; GAGE COUNTY SHERIFF'S)	
OFFICE, a Nebraska political subdivision;)	
GAGE COUNTY ATTORNEY'S OFFICE,)	
a Nebraska political subdivision, and,)	
THE COUNTY OF GAGE, NEBRASKA,)	
a Nebraska political subdivision.)	
)	
Defendants.)	

Thomas W. Winslow, plaintiff in the above-captioned matter, by and through his counsel of record, for his causes of action against defendants, states the following.

PRELIMINARY STATEMENT

This is a civil rights case arising out of the deprivation of WINSLOW's constitutional rights by defendants in a state criminal proceeding. WINSLOW brings this case for monetary damages for violation of his civil rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the federal Constitution. At issue are the policies, procedures, practices and customs of the County of Gage, Nebraska, by the through the Gage County Sheriff's Office and the Gage County Attorney's Office.

WINSLOW was unconstitutionally arrested, imprisoned and prosecuted for a rape and murder that he did not commit. Defendants solicited, fabricated, manufactured and coerced evidence of an ever-changing story, which rarely, if ever, coincided with the immutable physical evidence at the scene of the crime. Defendants' objective was to place WINSLOW among a gang of six substantially unconnected individuals accused of perpetrating the brutal rape and murder of Helen Wilson.

Defendants willfully and recklessly ignored the obvious inconsistencies in the claims of various witnesses made in 1989, four years after the occurrence of the Wilson homicide, when compared to the known immutable and undisputed facts uncovered during the investigation that occurred immediately after discovery of the homicide on February 6, 1985. Defendants willfully and recklessly caused witnesses and WINSLOW's alleged accomplices to provide false evidence and testimony against WINSLOW by providing each such person, each and every necessary fact that defendants deemed incriminating, and by conducting all interviews with overtly leading and suggestive questioning, clearly designed to produce a story consistent with the false narrative defendants decided was the story of the homicide that would be presented in court. WINSLOW, as well as each of his alleged accomplices, was told that they could either provide evidence consistent with defendants' adopted false narrative of the Wilson homicide, or they would face prosecution for first-degree murder and life imprisonment or execution in the electric chair.

WINSLOW has always maintained that he was not involved in the Wilson homicide, and he did not testify for the prosecution at the trial of Joseph E. White.

Nonetheless, on December 8, 1989, WINSLOW pled no contest to a charge of aiding and abetting second-degree murder. WINSLOW's plea was solely the result of defendants' coercion. WINSLOW knew that White had been convicted of first-degree murder based on fabricated and manufactured evidence, as well as false testimony and confessions. WINSLOW knew, and was told by defendants, that the same evidence used to convict White would be used to convict him of first-degree murder if he did not accept a plea deal. WINSLOW accepted the plea bargain offered by SMITH solely to avoid conviction for first-degree murder, and the possible punishment of life imprisonment or death by electrocution. Consistent with his claim of actual innocence, WINSLOW, along with White, made an application for relief under the DNA Testing Act, the results of which completely exonerated WINSLOW of any involvement in the Wilson homicide.

Defendants acted in flagrant disregard of the truth, as well as WINSLOW's constitutional and other legal rights, when they willfully, and in reckless disregard of the immutable physical evidence, devised an entirely false narrative of the rape and murder of Helen Wilson, and then set out to coerce WINSLOW's alleged accomplices to adopt the defendants' false story, or face execution in the electric chair. Defendants knew that some of WINSLOW's alleged accomplices were of low intelligence, diagnosed with personality disorders, and had received counseling, psychological services, or special educational services in the past. Defendants used their knowledge of such mental conditions to overbear their will and coerce false testimony against WINSLOW. Acting in concert, defendants ignored all exculpatory evidence

while fabricating, soliciting, manufacturing and coercing false testimony and confessions.

WINSLOW seeks damages for defendants' reckless, intentional and conspiratorial actions that deprived him of nineteen years and seven months of freedom, and inflicted profound personal suffering on him, which continues to this day.

THE PARTIES

1.

Plaintiff Thomas W. Winslow is a United States citizen and resident of Douglas County, Nebraska.

2.

Defendants Sheriff Jerry O. DeWitt, Deputy Burdette Searcey, Deputy Gerald Lamkin, Deputy Mark Meints, and Deputy Kent Harlan are sued in their individual and official capacities. At all times relevant to this case, DEWITT, SEARCEY, LAMKIN, MEINTS and HARLAN were agents and employees of the Gage County Sheriff's Office, where DEWITT was the elected Sheriff for Gage County and the direct supervisor of SEARCEY, LAMKIN, MEINTS and HARLAN.

3.

Defendant Wayne R. Price, Ph.D. is sued in his individual and official capacities. At all times relevant to this case, PRICE was an agent of the Gage County Sheriff's Office, acting in the capacity of reserve deputy and consulting psychologist.

4.

Defendant Richard T. Smith is sued in his individual and official capacities. At all times relevant to this case, SMITH was the Gage County Attorney and actively participated in and directed the investigation of the homicide of Helen Wilson.

5.

This action is also brought against the County of Gage, Nebraska (GAGE), a Nebraska political subdivision, the Gage County Sheriff's Office (GCSO), a Nebraska political subdivision, and the Gage County Attorney's Office (GCAO), a Nebraska political subdivision.

6.

At all times, defendants DEWITT, SEARCEY, LAMKIN, MEINTS and HARLAN were acting in the course and scope of their employment with the GCSO and GAGE. At all times, defendant PRICE was acting in the course and scope of his employment as a reserve deputy and consulting psychologist with the GCSO and GAGE. At all times, defendant SMITH was acting in the course and scope of his employment with the GCAO and GAGE. At all times, defendants were acting under the color of state law.

JURISDICTION AND VENUE

7.

This lawsuit involves the deprivation of plaintiff's constitutionally guaranteed rights by defendants under color of state law. It is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343. The rights sought to

be enforced include plaintiff's rights guaranteed him under the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution.

8.

The events at issue in this case transpired primarily, but not exclusively, in and around Gage County, Nebraska. Venue is proper in Lincoln, Nebraska.

HISTORY OF UNDERLYING CRIMINAL CASE

9.

At approximately 9:30 a.m. on February 6, 1985, Helen Wilson's sister discovered her body in the living room of her apartment located at 212 N. 6th Street, Beatrice, Nebraska. The Beatrice Police (BPD) initiated an examination of the crime scene, and an investigation of the circumstances of Wilson's death. The GCSO became involved in the investigation of Wilson's death on this same day. Eventually, the Nebraska State Patrol (NSP) and the Federal Bureau of Investigation (FBI) would become involved in the investigation. SMITH and his office, the GCAO, worked closely with both the BPD and the GCSO during this initial investigatory phase.

10.

Examination of Wilson's apartment building indicated that the assailant gained entry to Wilson's apartment by prying the doorstop from the doorframe and slipping the lock. The residents of the apartment building reported that the hall lights for the building were always on. However, on the morning of February 6, the hall lights were off and the furnace to one of the apartments was not working. Examination of the basement utility room indicated that the hall lights had been turned off at the fuse box in the basement. The two of the apartment residents recalled coming home and

seeing the hall lights on around 12:15 a.m. on February 6. The last known person to see Helen Wilson alive was her son Darrell Wilson, who left Wilson's apartment at approximately 9:45 p.m. on February 5.

11.

Examination of Wilson's apartment indicated that a struggle occurred in her bedroom, as evidenced by considerable disarray and a large amount of dried blood. However, in the living room where Wilson's body was discovered, there was little evidence of a struggle and virtually no evidence of dried blood. There were defensive cuts to Wilson's hands, and a steak knife similar to knives found in Wilson's kitchen was found in the bedroom. Wilson was discovered lying on her back on the floor near the sofa with an afghan wrapped tightly around her face, and her hands loosely bound in front of her with a towel. Her nightgown was pulled up exposing her from the waist down. Her underpants had been removed without damage and placed on the sofa. Wilson was wearing booties and calf-length nylons that had been neatly rolled down to her ankles. Found in the apartment was a significant amount of cash -- \$1,180.00 in twenties, fifties and one hundred dollar bills, as well as checks and several large money market certificates.

12.

Wilson's autopsy indicated that the cause of death was suffocation due to the afghan wrapped tightly around her head and stuffed into her mouth. She also suffered a fractured sternum, fractured left fifth and sixth rib, and a fractured left humerus near her elbow. Wilson had been sexually assaulted, both vaginally and anally, with penetration occurring most likely after Wilson's death. An FBI analysis of

the crime scene evidence and investigation concluded that robbery was not the motive for the crime. The FBI report also concluded; "We can state with almost total certainty that this crime was committed by one individual acting alone."

13.

Examination of the blood recovered from Wilson's bedroom and the semen recovered from Wilson's body indicated that the assailant had type B blood and was a non-secretor of blood group substances in his bodily fluids. DNA testing was not available at the time of Wilson's murder. As such, the blood and semen collected at the crime scene was subject to serological testing alone. Only two blood groups and serological profiles were identified -- type O blood consistent with Wilson, and blood consistent with a type B non-secretor.

14.

Under SMITH's direct supervision, the BPD, the GCSO and the NSP interviewed every individual in the Beatrice vicinity with a known history of sexual assault behavior. The interviews eventually expanded to include virtually anyone who was known to law enforcement, or anyone who may have been the subject of one of the many rumors circulating around Beatrice regarding who may have committed the Wilson rape and murder. WINSLOW and many, if not all, of those individuals who were later accused of being his accomplices were interviewed by the BPD or GCSO during the 1985 phase of the Wilson murder investigation. WINSLOW, as well as all of those later accused as his accomplices, were never considered to be serious suspects by the BPD, the GCSO or the NSP during the 1985 phase of the Wilson homicide investigation.

15.

In 1985, SEARCEY was not a member of the GCSO. Nonetheless, SEARCEY conducted his own interviews, falsely advising the interviewees that he was a private investigator working on the Wilson homicide. WINSLOW was one of those who SEARCEY interviewed as part of his private investigation. SEARCEY made no contemporaneous records or reports of his interviews, including his interview with WINSLOW. None of SEARCEY's interviews were recorded. SEARCEY went so far as to ask his friends at the BPS for access to the crime scene reports and photographs to assist him with his private investigation. The BPD refused SEARCEY's request.

16.

SEARCEY joined the GCSO as a deputy sheriff in January 1987, and almost immediately asked for, and received, access to the 1985 Wilson homicide investigation file. In January 1989, SEARCEY re-interviewed Lisa Podendorf, who SEARCEY claimed provided evidence of WINSLOW's culpability, as well as the culpability of Joseph White and Ada Joann Taylor, for the Wilson rape and murder during his 1985 private investigation.

17.

On February 15, 1989, SEARCEY interview WINSLOW at the Lancaster County Corrections Center. WINSLOW and Clifford Shelden were being held for an assault occurring in Lancaster County. SEARCEY falsely advised WINSLOW that he did not believe that WINSLOW was involved in the Wilson homicide, but that he had information that might aid in the investigation. WINSLOW was told his cooperation with SEARCEY would be a consideration for reducing the Lancaster County assault

charges. SEARCEY's interview of WINSLOW on this occasion consisted of leading questions and suggested testimony directed at corroborating Lisa Podendorf's statement and implicating White and Taylor in the Wilson homicide. Notwithstanding SEARCEY direction, WINSLOW was unable to corroborate any of the material claims in Podendorf's statement. For example, Podendorf told SEARCEY that she and Taylor were watching the police cars around the Wilson apartment building at 7:30 a.m. on February 6 when Podendorf claimed Taylor told her that Taylor and White had murdered Wilson the night before. However, WINSLOW claimed that White and Taylor were in his apartment at 7:30 a.m. on February 6, cleaning up and fixing themselves breakfast. In addition, Podendorf told SEARCEY that she saw WINSLOW, White, Taylor and Beth Johnson Winslow get out of WINSLOW's automobile at 10:18 p.m. on February 5, and go into Wilson's apartment building. However, WINSLOW told SEARCEY that he loaned his automobile to White and Taylor the evening of February 5, and that they returned his automobile the next morning. Contrary to Podendorf's statement, WINSLOW claimed he spent the evening of February 5 playing cards with his wife, Beth, at Charlotte Bishop's apartment.

18.

Purporting to rely on the statements by Podendorf and WINSLOW, as well as a statement by Charlotte Bishop, on March 14, 1989, SEARCEY with assistance from SMITH prepared an affidavit for an arrest warrant for White and Taylor. SMITH and SEARCEY falsely represented in SEARCEY's affidavit that Podendorf was a credible informant, and that her information was corroborated by Thomas Winslow, when in fact, Winslow's statements to SMITH and SEARCEY contradict Podendorf.

19.

SEARCEY, with SMITH's assistance with under SMITH's direction, filed his affidavit, and a subsequent addendum thereto, in the Gage County Court on March 14, 1989. The affidavit and addendum both contained several false or misleading statements, and claims inconsistent with the immutable evidence from 1985. For example, SEARCEY claimed Podendorf, who he identified as CI #1, told him that "within 24 hours of the Wilson homicide's (sic) discovery", Joann Taylor told Podendorf that the police cars at Wilson's apartment building were there because Taylor and WHITE murdered Helen Wilson. This is purposely misleading in order to disguise the fact that Podendorf's claim is false. Podendorf actually told SEARCEY that Taylor made this statement to her at around 7:30 a.m. on February 6, 1985, while they were watching the police cars at Wilson's apartment building. However, the immutable fact is that Wilson's body was not discovered until 9:30 a.m., and as such, no police cars would have been at the apartment building until at least 9:30 a.m. It is undeniable that Podendorf's statement to SEARCEY was not truthful, and SEARCEY would know that Podendorf's statement was not truthful with a simple review of the investigatory file. SMITH and SEARCEY, acting together, deliberately misled the County Court by reciting in the affidavit that Taylor made the statement to Podendorf "within 24 hours" of the discovery of Wilson's body, when in fact, Podendorf claimed Taylor made her statement before Wilson's body was discovered.

20.

SMITH and SEARCEY falsely represented in SEARCEY's affidavit that Podendorf was a reliable informant because she knew from Taylor about "the binding

of Mrs. Wilson's body when found . . .” This is a false statement. Podendorf told SEARCEY that Taylor told her Wilson would be found with her hands tied behind her back, when in fact Wilson's hands were loosely bound in front. In addition, Podendorf said nothing in her recorded statement about the afghan wrapped tightly around Wilson's head.

21.

After falsely averring to the County Court that WINSLOW's statement corroborated Podendorf, SMITH and SEARCEY recognized that WINSLOW's story, in fact, contradicted Podendorf's story. SMITH and SEARCY then arranged to take a second statement from WINSLOW, who was in custody in Lancaster County for an unrelated assault. WINSLOW was promised use immunity as to the Wilson homicide, a reduction of the Lancaster County assault charge, and a reduction of his bond in return for his statement. SMITH, SEARCEY, DEWITT and HARLAN were present for WINSLOW's statement along with WINSLOW's counsel. WINSLOW initially told SEARCEY a story similar to his first story -- that he loaned his car to White and Taylor on the evening of February 5. SEARCEY told WINSLOW that he did not believe him, that WINSLOW must be having memory problems, and that WINSLOW knew more than what he was telling. SEARCEY then provided WINSLOW with the information SEARCEY was looking for by way of suggestion, leading questions, and by directly telling WINSLOW what SEARCEY expected WINSLOW to say. For example, it was only after SEARCEY told WINSLOW that someone identified him going into the Wilson apartment building that WINSLOW agreed with SEARCEY that he went into the building. When WINSLOW could not “remember” whether he went up the stairs or

down the stairs to get to Wilson's apartment, SEARCEY suggested, "Could you have had to go up some stairs?" to which WINSLOW replied, "Yea, we could have [but] I don't remember." SEARCEY suggested to WINSLOW that WHITE raped Wilson anally, to which WINSLOW replied "I think he might have said something about rectum." Based solely on this second interview, SMITH and SEARCEY provide the County Court with an addendum to SEARCEY's affidavit claiming now that Podendorf's statement is totally corroborated by WINSLOW's new statement. However, in fact, WINSLOW's statements to SEARCEY and SMITH were the product of coercion, leading questions, suggested answers to questions, and the promise of very favorable treatment in exchange for a story that conformed to what SEARCEY and SMITH wanted to hear

22.

White was arrested by the Cullman, Alabama police late at night on March 15, and questioned by SEARCEY, BPD detective Stevens, and PRICE beginning around 12:10 a.m. on March 16. White denied all involvement in the Wilson homicide, and denied having any knowledge about who may have committed the Wilson homicide. During the course of White's interrogation, SEARCEY repeatedly lied about the case against White by stating or implying that witnesses had made statements about White's involvement, when in fact no such statements had been made, and by claiming that these fabricated witness statements were corroborated by the physical evidence at the crime scene. For example, SEARCEY repeatedly told White that Joann Taylor had been arrested and made multiple statements to SEARCEY personally, implicating White in Wilson's rape and murder. In truth, Taylor was

arrested in North Carolina at approximately the same time as White, and as such, Taylor had never given any kind of statement to SEARCEY at any time. SEARCEY told White that he left a torn five dollar bill at Wilson's apartment, and implied that it had White's fingerprints on it, when in truth no prints were recovered from the torn five dollar bill found in Wilson's apartment. SEARCEY told White that Taylor, WINSLOW and Beth Winslow were all telling the same story, when in truth, Taylor had yet to tell SEARCEY anything, WINSLOW had been coerced to tell several different stories in order to have pending assault charges and his bond reduced, and Beth Winslow denied all involvement and knowledge of the Wilson homicide. SEARCEY told White that he had been seen by many people pulling into the parking lot of Wilson's building, when in truth, only Podendorf claimed to have seen White, but Podendorf's boyfriend, who Podendorf said was with her at the time, could not verify Podendorf's claim.

23.

When SEARCEY failed to obtain a confession or any inculpatory statements from White, he went to North Carolina, along with BPD Sergeant Stevens, to interrogate Ada Joann Taylor. Taylor was arrested just before midnight on March 15, the same day as White, at her home in Buncombe County, North Carolina, pursuant to the same materially false affidavit and addendum for arrest warrant used to arrest White. The North Carolina police interrogated Taylor upon arrest, while SEARCEY and Stevens were still in Alabama with White. The North Carolina police told Taylor that White was under arrest and had implicated her in the rape and murder of Helen Wilson. Taylor then attempted to describe for the North Carolina police where, when and how the Wilson homicide occurred. Taylor failed to provide a story that comported

with even one known fact of the case. For example, Taylor said that Wilson lived in a house and that White went to Wilson's house to do yard work or trim some trees. She said that another boy that she did not know accompanied White, and he drove a baby blue small car. She said that the assault occurred around dusk, 5:30 to 6:00 p.m., and that White stabbed Wilson with a knife.

24.

SEARCEY and Stevens interrogated Taylor on March 16, beginning around 8:17 p.m. Taylor at first repeated the same factually implausible story she told the North Carolina police. SEARCEY and Stevens then began to purposely and systematically supply Taylor with information consistent with the actual evidence of the Wilson homicide, as well as information consistent with the false narrative of the Wilson homicide adopted by SEARCEY. For example, SEARCEY repeatedly suggested to Taylor that Wilson lived in an apartment, and not in a light-colored house as she initially indicated. SEARCEY and Stevens suggested that White did not go to Wilson's house to do yard work given that the homicide occurred in February. SEARCEY and Stevens suggested who accompanied White and Taylor to Wilson's apartment, as well as who did not accompany them when Taylor selected the wrong person for SEARCEY's false narrative. SEARCEY suggested that they stop recording the interrogation so that Taylor could take a break and think about some things, at which point there is a nineteen-minute gap in the videotape of the interrogation. Upon resumption of the videotape, SEARCEY and Stevens continued to ask only leading questions and provide Taylor with all the information SEARCEY deemed necessary for Taylor to recite a story of the Wilson homicide consistent with SEARCEY's false

narrative, but with one exception. SEARCEY tried to get Taylor to name WINSLOW as the boy who accompanied White to Wilson's apartment. Although Taylor knew WINSLOW well, she could not come up with WINSLOW's name, but told SEARCEY she could recognize his photograph.

25.

Taylor waived extradition and flew back to Beatrice with SEARCEY and Stevens on March 17. Once back in Beatrice, SEARCEY arranged to show Taylor a photo lineup so that Taylor could identify the boy she knew, but whose name she could not remember. The photo lineup contained six photographs, but four of the individuals were persons unknown to Taylor. The remaining two photographs were WINSLOW and Mark Goodson. However, SEARCEY had already told Taylor that Goodson was not involved in the Wilson homicide. Accordingly, the only person who Taylor could identify in this lineup was WINSLOW. Taylor was also interrogated again on March 17, with SEARCEY and Stevens using leading questions, suggesting all pertinent facts, and correcting Taylor when she failed to adopt a fact or circumstance that fit SEARCEY's false narrative of the Wilson homicide. For example, Taylor agreed with Stevens when he suggested that WINSLOW anally raped Wilson. Taylor agreed with Stevens when he suggested that Wilson was dead when she was raped. Taylor agreed with SEARCEY and Stevens when they suggested that one of the two boys had been hurt, and added that one of the boys had a bloody nose. Taylor agreed with SEARCEY when he suggested that the hall lights had been turned off.

26.

SMITH and SEARCEY knew that in 1984, while living in Beatrice, Taylor had received psychological counseling from PRICE. PRICE knew that Taylor had a limited education, frequently abused alcohol and illegal drugs, had a diagnosed personality disorder, and was prone to magical thinking. PRICE used his knowledge of Taylor's mental deficiencies to assist SMITH and SEARCEY in building the false narrative of Wilson's rape and homicide.

27.

SEARCEY asked White, Taylor and WINSLOW their blood types during the course of their interrogations. White and Taylor both said they were type O, and WINSLOW said he was type A. SMITH and SEARCEY knew that a significant amount of type B blood was found in Wilson's bedroom, and that Wilson was type O. Thus, SMITH and SEARCEY knew that Wilson's assailant must have type B blood, and that the suspects they had in custody did not. SEARCEY, at SMITH's direction, began contacting and interviewing every person known to have been associated with White, Taylor or WINSLOW in 1985. SEARCEY and Stevens contacted Debra Shelden at her home in Lincoln on March 24, 1989. Debra Shelden was one of Taylor's roommates in early 1985. Debra Shelden told SEARCEY that she had no direct knowledge of the Wilson homicide, but that her husband, Clifford Shelden, received a letter from Taylor sometime after the Wilson homicide in which Taylor said that she and White were responsible for Wilson's murder.

On April 12, SEARCEY and LAMKIN interviewed Clifford Shelden. Clifford Shelden was confined at the Lancaster County Corrections Center, waiting sentencing for his role in the assault he committed with WINSLOW. Clifford Shelden had given two prior statements to Lincoln Police Detective Tim Domgard regarding his knowledge of the Wilson homicide, neither of which provided any meaningful evidence. SEARCEY and LAMKIN began the interview with Clifford Shelden at around 1:30 p.m., but did not begin recording the interview until 4:55 p.m. During the recorded portion of the interview, Clifford Shelden told SEARCEY and LAMKIN that Taylor sent him a letter in which she said that she, White and WINSLOW were responsible for the Wilson homicide. This claim is inconsistent with Clifford Shelden's prior statements to LPD Detective Domgard. Additionally, and for the first time, Clifford Shelden claimed that WINSLOW told him in specific detail all about Wilson's rape and murder. WINSLOW's story, according to Clifford Shelden was that White, Taylor and WINSLOW all participated in Wilson's murder and sexual assault. SEARCEY asked if another person was involved, and Clifford Shelden said WINSLOW told him Clifford's wife, Debra, was there. Clifford Shelden went on to say that WINSLOW claimed that White pushed Debra against a dresser causing the attached mirror to break and cutting the back of Debra's head. SEARCEY and LAMKIN knew that Clifford Shelden's claim about what WINSLOW told him was completely inconsistent with, and contrary to, the immutable physical evidence found at the homicide. For example, there was no broken mirror in Wilson's apartment. Clifford Shelden said White, WINSLOW and Taylor ransacked Wilson's apartment looking for

money, where in fact Wilson's apartment was not ransacked at all. Clifford Shelden said that White tore Wilson's clothes off her, when Wilson's clothes, in fact, had not been torn off. Clifford Shelden said that Wilson's hands were bound with her underpants, or with a bandana from White's back pocket, when in fact Wilson's hands were loosely bound with a towel. Moreover, there were several aspects of Clifford Shelden's description of Wilson's murder that were new or unique to his story. For example, Clifford Shelden said that WINSLOW performed oral copulation on Wilson after White vaginally raped her. No one else had previously made this sensational claim. In addition, Clifford Shelden was the first to add the detail about Debra Shelden bleeding from the back of her head, the first to contend that Taylor placed a pillow over Wilson's face, and the first to contend that Wilson's apartment was ransacked in a search for money.

29.

On April 13, SEARCEY and LAMKIN reinterviewed Debra Shelden. This interview began around 3:00 p.m., but once again, SEARCEY and LAMKIN did not begin recording the interview until 7:12 p.m. Debra Shelden now claimed she was present when White, WINSLOW and Taylor raped, robbed and murdered Wilson. Debra Shelden's story on this occasion was similar to the story told by her husband Clifford the day before. Debra Shelden included the same unique claims that Clifford made regarding WINSLOW's oral copulation, Taylor using a pillow to cover Wilson's face, and the claim that Debra sustained a cut to the back of her head. SEARCEY and LAMKIN knew that Debra Shelden's story was false because Debra claimed that Wilson was raped and murdered between 8:00 and 9:30 p.m. However, the 1985

investigation positively established that Wilson's son Darrell was with her until approximately 9:45 p.m. on the evening of the murder. Notwithstanding, SEARCEY and LAMKIN placed Debra Shelden under arrest for the murder of Helen Wilson. Shelden agreed to provide a blood sample on the morning of April 14, which demonstrated that Shelden's blood type was not type B.

30.

In her April 13 interview, Shelden unequivocally told SEARCEY and LAMKIN that only White, WINSLOW, Taylor and herself were involved in the Wilson homicide, and that she had left nothing out of her statement regarding the occurrence of the murder. However, on the morning of April 14, after SEARCEY learned that Shelden was not blood type B, SEARCEY and LAMKIN interviewed Debra Shelden for the third time in three weeks. SEARCEY began the interview by suggesting that yet another person was involved in the Wilson homicide, and that person was James Leroy Dean. Debra Shelden agreed with SEARCEY's suggestion. With SMITH's cooperation and direction, a warrant was obtained for Dean's arrest. Dean was arrested on April 15, and was interrogated by SEARCEY and LAMKIN on April 16. This interrogation was not recorded. Dean denied all involvement in the Wilson homicide and volunteered to provide a blood sample, which demonstrated that his blood type was type O.

31.

On April 24, PRICE evaluated Debra Shelden at the request of Shelden's lawyer. PRICE had evaluated Shelden in 1978 on the referral of the Gage County Probation Office. PRICE knew that Shelden received special education services as an adolescent, she had low intelligence, acted impulsively, and lacked an awareness

of the consequences or social ramification of her actions. PRICE counseled Shelden about how to better remember the events of the Wilson homicide. PRICE told Shelden that she was traumatized by the violence she witnessed to Wilson and was repressing her memories of the event. PRICE instructed Shelden that if she could relax she would recall more of the details of the homicide, and that she might recall more of the homicide in her dreams rather than when awake. Following her meeting with PRICE, Shelden started to claim that all of her memories of the Wilson homicide came to her in dreams and nightmares, some going back to 1985.

32.

SMITH requested, and Dean, through defense counsel, agreed to submit to a polygraph examination. Prior to the date of the polygraph examination, SEARCEY provided the examiner, Paul Jacobson, with copies of statements from Clifford Shelden and Debra Shelden. On April 29, HARLAN transported Dean to Lincoln for the polygraph examination. Dean again denied all involvement in the Wilson homicide. However, Jacobson told Dean that he did not do well on the polygraph examination. Jacobson told Dean that he needed to level with his attorney, and consider pleading to a lesser charge rather than face conviction for first-degree murder and execution in the electric chair. On May 2, SMITH and DEWITT, with consent of Dean's counsel, arranged for Dean to meet with PRICE. PRICE characterized this meeting as an emergency; however, no psychological emergency existed at this particular time. PRICE interviewed Dean, and determined that Dean lacked education, had low intelligence, was easily influenced, and had a significant psychiatric history including instances of institutional treatment. PRICE told Dean that

he failed the polygraph examination, and that this revealed at a subconscious level his involvement in the Wilson homicide. PRICE, pretending to be Dean's therapist, counseled Dean that he was traumatized by the violence he witnessed to Wilson and was repressing his memories. PRICE counseled Dean that if he relaxed, lay down on his bunk in his jail cell, and tried to picture Wilson's apartment, his memory of the Wilson murder would come back to him. Thereafter, Dean would tell SMITH, DEWITT, HARLAN, SEARCEY, MEINTS and LAMKIN that he was remembering pieces of the Wilson homicide, mostly in dreams. Dean eventually began reciting a story similar to the false narrative of the Wilson homicide first proposed by Clifford Shelden, and later adopted by Debra Shelden and the defendants. At all times while in the Gage County Jail, Dean had in his possession copies of the statements made by Cliff Shelden and Debra Shelden, and had access to newspaper and television accounts of the Wilson case.

33.

SMITH, SEARCEY and the other defendants realized that they still did not have a suspect in custody whose blood was type B. In early May, DEWITT, HARLAN, LAMKIN, MEINTS and SEARCEY contacted both Shelden and Dean while both were confined in the Gage County Jail, and suggested to both that another person was involved in the Wilson homicide. The defendants suggested to both Shelden and Dean, on multiple occasions that Kathy Gonzalez was also involved in Wilson's homicide. SEARCEY obtained a photograph of Gonzalez from the BPD and showed both Shelden and Dean this photograph in his effort to get both to actually name Gonzalez as a participant in the homicide. On May 24, both Shelden and Dean

provide statements to SEARCEY and LAMKIN reciting that Kathy Gonzalez was a participant in the Wilson homicide. Both Sheldon and Dean claimed that a nightmare, dream, or simply by relaxing, consistent with the direction of PRICE, caused their memory to return so that they could “remember” Gonzalez’s participation.

34.

On May 25, Kathy Gonzalez was arrested at her place of employment in Denver, Colorado. Upon her arrest, Gonzalez was interrogated by SEARCEY, DEWITT and LAMKIN, and denied all knowledge of, and involvement in, the murder of Helen Wilson. On May 26, PRICE and MEINTS interrogated Gonzalez in the Gage County Jail. Gonzalez again denied all knowledge of, and involvement in the murder of Helen Wilson. PRICE repeatedly told Gonzalez that he believed she was suppressing her memory of the Wilson homicide, which Gonzalez consistently denied. For example, PRICE asked Gonzalez if she still had nightmares about the homicide, to which Gonzalez replied that she has never had nightmares about the homicide. PRICE asked Gonzalez if she ever had memory problems before, and told her how it must be terrible to have memory problems. Gonzalez replied that she has never had memory problems and that she can remember the worst things that have happened to her. PRICE then attempted to employ the same strategy he used with Sheldon and Dean, and told Gonzalez that her memory of the homicide would come back to her in dreams. Gonzalez, however, continued to reject PRICE’s unrelenting suggestions that she needed to remember something that never occurred.

35.

Gonzalez voluntarily provided defendants with a blood sample. The NSP serologist determined that Gonzalez's blood type was type B. However, an examination of the complete serological profile of Gonzalez's blood clearly demonstrated that the type B blood found in Wilson's apartment was not consistent with Gonzalez's blood, in that they differed as to one key enzyme. Defendants deliberately and purposefully ignored this evidence clearly demonstrating that Gonzalez could not be tied to the Wilson homicide with physical evidence.

36.

SMITH reduced the charges against Shelden, Dean, and Taylor in exchange for their agreement to testify at White's trial consistent with the false narrative of the Wilson homicide constructed by the defendants.

37.

From June through October, defendants continued to suggest new evidence for Shelden, Dean, and Taylor to "remember" that supported the false narrative of Wilson's homicide constructed by defendants to convict White of first-degree murder.

38.

Trial of White's matter began November 3, 1989, and concluded November 8. Debra Shelden, Dean and Taylor testified against White, reciting the false narrative of the Wilson murder constructed by the defendants. White was convicted by a jury of first-degree murder, and on February 16, 1990, White was sentenced to life in prison.

39.

Following White's conviction, SMITH offered WINSLOW a plea agreement where WINSLOW could plead no contest to aiding and abetting second-degree murder. WINSLOW knew that the same false evidence used to convict White of first-degree murder would be used against him if he rejected SMITH's plea deal. As such, on December 8, 1989, WINSLOW accepted SMITH's plea deal. The court accepted WINSLOW's plea and sentenced him to fifty years imprisonment. WINSLOW's sentence was significantly longer than were the ten-year sentences given Shelden and Dean for their guilty pleas to second-degree murder. This disparity of sentencing was due entirely to the false testimony at White's trial regarding WINSLOW's claimed participation in the murder.

40.

On February 22, 2006, WINSLOW filed a motion for DNA testing pursuant to the DNA Testing Act. The district court denied WINSLOW's motion concluding that he had waived his right to DNA testing by entering his plea of no contest, and that in any event DNA testing would not result in noncumulative, exculpatory evidence relevant to any claim by WINSLOW for wrongful conviction or sentence. On November 2, 2007, the Nebraska Supreme Court reversed the district court concluding that WINSLOW had not waived his right to DNA testing regarding his wrongful sentencing claim, and if DNA testing showed the semen sample obtained from Wilson did not belong to WINSLOW or White, such evidence would undermine the credibility of Shelden, Dean and Taylor regarding WINSLOW's participation in the assault on Wilson, the key factor in the relative severity of WINSLOW's sentence. On remand, the district court determined that there was biological material retained under circumstances likely to

safeguard the integrity of its original physical composition and ordered DNA testing. The results of the testing conclusively demonstrated that WINSLOW and White were not the contributors of the semen. Further testing conclusively demonstrated that the sole contributor of the semen and blood found at the Wilson apartment was Bruce Allen Smith, an individual completely and totally unassociated with White, WINSLOW, Taylor, Dean, Shelden or Gonzalez. On October 17, 2008, WINSLOW was resentenced to a term of ten years for his no contest plea to aiding and abetting second-degree murder, and was given credit for time already served, resulting in his immediate release from incarceration. On January 26, 2009, the Nebraska Pardons Board granted WINSLOW a complete pardon.

41.

Defendants did not attempt to determine the actual truth in their investigation of the rape and murder of Helen Wilson. Instead, defendants were motivated by a desire to gain any conviction, at any cost, and considered WINSLOW to be essentially a disposable person. Defendants adopted a false narrative of the Wilson homicide and then used their collective interrogation skills to force their false narrative on individuals they knew to be mentally and intellectually challenged, very compliant to suggestion, and likely to be overborne by intimidation and threats of life imprisonment or execution in the electric chair.

42.

Defendants, individually and acting in concert, deliberately and with reckless disregard of the truth, solicited, fabricated, manufactured and coerced evidence they knew was false, fraudulent and profoundly lacking in reliability. In the course of these

actions, defendants filed false affidavits with the courts, prepared false investigative reports, repeatedly lied about the evidence during the course of all interrogations, and threatened everyone with life imprisonment or execution in the electric chair if they did not cooperate and recite defendants' false narrative of the Wilson homicide.

43.

Acting individually and in concert, defendants violated WINSLOW's constitutional right to be free from unreasonable seizure and false confinement. Defendants purposely and deliberately solicited, fabricated, manufactured and coerced evidence they knew to be false, fraudulent and profoundly unreliable. The arrest, prosecution, conviction, and confinement of WINSLOW for nineteen years and seven months violated WINSLOW's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the federal Constitution.

44.

The conduct of defendants as set forth above resulted in WINSLOW's unlawful arrest, prosecution, conviction, and confinement for nineteen years and seven months, caused him to suffer and endure false imprisonment and psychiatric injury, as well as caused him to suffer a loss of his right to personal privacy, and personal liberty. Defendants' conduct has caused WINSLOW to endure extreme mental anguish, humiliation, embarrassment, damage to his reputation, loss of earnings, and an impairment of his capacity to earn income, all to his special and general damage in an amount to be determined at trial.

45.

GAGE, GCSO, GCAO, SMITH and DEWITT are accountable under 42 U.S.C. § 1983 because they established policies and practices that were intended to and did encourage, endorse, and reward their agents and employees for violating WINSLOW's constitutional rights and the rights of similarly situated persons. At the very least, defendants acted with deliberate indifference to such constitutional rights.

COUNT I
42 U.S.C. § 1983 -- MALICIOUS PROSECUTION, FALSE
ARREST, USE OF UNRELIABLE AND FRAUDULENT
INVESTIGATORY TECHNIQUES, PROCUREMENT OF
UNRELIABLE AND FABRICATED EVIDENCE

46.

The illegal arrest, prosecution, conviction and confinement of WINSLOW was deliberately and purposefully brought about by defendants GAGE, GCSO, GCAO, SMITH, DEWITT, SEARCEY, LAMKIN, HARLAN, MEINTS and PRICE, and was the obvious and intended result of the investigation of the Wilson murder conducted so as to prove a case against WINSLOW despite his actual innocence, which was known or should have been known in the absence of defendants' deliberate indifference to WINSLOW's constitutional rights.

47.

Defendants solicited, fabricated, manufactured and coerced evidence that was demonstrably unreliable, misleading, false and failed to comport with the known immutable evidence of the Wilson homicide for the sole purpose of justifying the arrest, prosecution, conviction, and incarceration of WINSLOW, when if defendants had not been deliberately indifferent to WINSLOW's constitutional rights, would have

known that WINSLOW was actually innocent of any involvement in the murder of Helen Wilson.

48.

In their investigation, GAGE, GCSO, GCAO, SMITH, DEWITT, SEARCEY, HARLAN, LAMKIN, MEINTS and PRICE solicited, fabricated, manufactured and coerced evidence that was false, misleading and demonstrably unreliable for the deliberate purpose of:

- A) Providing probable cause for the arrest and confinement of WINSLOW, as well as Joseph White, Ada Joann Taylor, James Dean, Kathleen Gonzalez and Debra Shelden;
- B) Obtaining orders preventing WINSLOW from securing release on bond, as well as Joseph White, Ada Joann Taylor, James Dean, Kathleen Gonzalez and Debra Shelden; and
- C) Corrupting the judicial system so that WINSLOW could not possibly receive a fair trial, and thereby, coerce him to plead guilty to a crime he did not commit.

49.

Defendants' actions constitute unreasonable seizure of WINSLOW in violation of the Fourth and Fourteenth Amendments to the federal Constitution. Defendants' actions deprived WINSLOW of his liberty without due process of law in violation of the Fifth and Fourteenth Amendments to the federal Constitution. Defendants' actions deprived WINSLOW of his right to a speedy public trial by an impartial jury in violation of the Sixth and Fourteenth Amendments to the federal Constitution. Defendants'

actions constitute deliberate infliction of cruel and unusual punishment upon WINSLOW regarding his incarceration for nineteen years and seven months for a crime he did not commit in violation of the Eighth and Fourteenth Amendments to the federal Constitution.

50.

Defendants' actions were the direct and proximate cause of damage and harm to WINSLOW, including incarceration for nineteen years and seven months for a crime he did not commit, the attendant loss of freedom, companionship, income and earning capacity, as well as the attendant infliction of psychological and physical harm, anguish and fear, including the fear of being executed for a crime he did not commit.

COUNT II
42 U.S.C. § 1983 -- CONSPIRACY TO VIOLATE CIVIL RIGHTS

51.

Defendants, together and under the color of law, reached an understanding, engaged in a course of conduct and otherwise conspired among and between themselves to deprive WINSLOW, Joseph White, Ada Joann Taylor, James Dean, Kathleen Gonzalez and Debra Shelden of their constitutional rights, including their rights to free association and privacy, to be free from unreasonable arrest and seizure, to be free from wrongful imprisonment and punishment, to be free from malicious prosecution and abuse of process, to fair access to the courts, to effective assistance of competent counsel, to due process of law, and to be free from cruel and unusual punishment for a crime that WINSLOW and the others did not commit.

52.

Defendants, together and under the color of law, committed the overt acts set forth above, culminating in the wrongful arrest, prosecution and incarceration of WINSLOW. Defendants deliberately and purposely solicited false statements, fabricated evidence that did not exist, manufactured knowingly false evidence, coerced witnesses to provide false evidence under the threat of life imprisonment or death by electrocution, filed false or misleading investigative reports, and filed false affidavits with the court, all for the purpose of convicting WINSLOW of a crime he did not commit. Defendants either knew or, if they had not been deliberately indifferent to the truth and WINSLOW's constitutional rights, would have known that WINSLOW was in fact actually innocent of any involvement in the rape and murder of Helen Wilson.

53.

Defendants' acts violated WINSLOW's constitutionally protected rights. The conspiracy and overt acts in furtherance thereof have caused WINSLOW to suffer damages for deprivation of constitutional rights, psychological and emotional injury, incarceration, humiliation, embarrassment, loss of freedom, companionship, income, and the capacity to earn income.

COUNT III

42 U.S.C. § 1983 -- VIOLATIONS COMMITTED BY GAGE, GCSO AND GCAO

54.

GCSO, by and through its relevant final policy maker, the Gage County Sheriff, the GCAO, by and through its relevant final policy maker, the Gage County Attorney, and GAGE, by and through GCSO and GCAO, both before and at the time of the events

alleged in this complaint, had in effect policies, practices and customs that operated to deprive WINSLOW of his constitutional rights.

55.

The policies, practices and customs include, but are not limited to the following.

- A) A policy, practice and custom of failing to properly train and supervise officers in the techniques of investigating serious crimes.
- B) A policy, practice and custom of using interrogation techniques that had an extreme likelihood of obtaining false and unreliable information from suspects and witnesses.
- C) A policy, practice and custom of failing to discipline officers who violate the Constitution or law or otherwise act to violate the rights of criminal suspects during the course of a criminal investigation.
- D) A policy, practice and custom of investigating crimes in a manner designed to prove a case against a convenient suspect by procuring unreliable evidence and, when necessary, falsifying and fabricating evidence without regard to whether policies, practices and customs might result in the conviction of persons who are actually innocent.
- E) A policy, practice and custom of being deliberately indifferent to the violation of the rights of a suspect by an officer or employee.

56.

The policies, practices and customs, separately and together, were deliberately and purposefully implemented to deprive the targets of criminal investigations of their

constitutional rights, or at the very least, were implemented with a deliberate indifference to the rights of a target of a criminal investigation, and were a direct and proximate cause of the violation of WINSLOW's Constitutional rights and the injuries visited upon WINSLOW as set forth above.

57.

The actions of all defendants caused WINSLOW to suffer severe psychological harm, humiliation, embarrassment, and other damages for which WINSLOW is entitled to monetary relief. The intentional or reckless misconduct of the all the defendants, as set forth above, furthermore entitles WINSLOW to punitive damages in an amount to be determined at trial. Such actions were deliberate, reckless, wanton and cruel, with total and deliberate indifference to WINSLOW's rights as a citizen and human.

WHEREFORE, WINSLOW prays for judgment against the defendants as follows:

- A) Damages in an amount that will fairly and justly compensate him for the violation of his civil rights, his pain and suffering, his lost earnings, and the loss of his capacity to earn income;
- B) Punitive damages in an amount sufficient to adequately punish defendants and to deter future conduct of the kind inflicted upon WINSLOW;
- C) Attorneys fees pursuant to 42 U.S.C. § 1988;

- D) An order enjoining defendants from destroying any evidence in this matter and compelling them to preserve and not alter such evidence; and,
- E) The costs of this action and for such other and further relief as this Court deems equitable and proper.

JURY DEMAND AND DESIGNATION OF PLACE OF TRIAL

WINSLOW demands that this case be tried to a jury in Lincoln, Nebraska.

DATED this 15th day of July, 2009.

THOMAS W. WINSLOW, Plaintiff

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