

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
File No. 1:17-cv-477**

DARRYL HOWARD,

Plaintiff,

v.

CITY OF DURHAM; DARRELL DOWDY, in his individual and official capacities; E.E. SARVIS, in his individual and official capacities; MICHELE SOUCIE, in her individual and official capacities; SCOTT PENNICA, in his individual and official capacities; MILTON SMITH in his individual and official capacities; and OTHER AS-YET-UNKNOWN JOHN AND JANE DOE OFFICERS & SUPERVISORS 1-10, in their individual and official capacities.

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Darryl Howard, through his attorneys at the law firms of Neufeld Scheck & Brustin, LLP and Patterson Harkavy LLP, alleges as follows:

INTRODUCTION

1. In the early morning hours of November 27, 1991, 29-year-old Doris Washington and her 13-year-old daughter, Nishonda, were found raped and murdered inside their apartment in the Few Gardens housing complex in Durham.
2. The crimes were drug-related and committed by members of the “New York Boys” gang, but the Durham Police Department (DPD) decided to focus on an easier target who had nothing to do with that gang or those crimes: Plaintiff Darryl Howard.

3. With internal and public pressure mounting to solve the crimes, DPD lead investigator Darrell Dowdy engaged in a pattern of witness tampering and other misconduct designed to build a false case against Howard and bury the truth of his innocence. For example:

- a. Dowdy ignored and suppressed early evidence that the New York Boys were responsible for the crimes.
- b. Dowdy repeatedly fed information to various people and pressured them into signing or otherwise making false statements to bolster the false narrative of Howard's guilt.
- c. Despite recognizing obvious signs that Doris and Nishonda were sexually assaulted, Dowdy falsely told the prosecution that sexual assault was never suspected in the investigation. He later provided similar false testimony to the jury.
- d. When pre-trial analysis revealed male DNA in 13-year-old Nishonda's vagina and rectum that excluded Howard, Dowdy understood that it was powerful evidence of Howard's innocence. He countered that exculpatory evidence by falsely telling prosecutors that his investigation confirmed that Nishonda spent the week before the murders with her boyfriend. Dowdy later provided similar false testimony to the jury, allowing the prosecution to argue that the unidentified male DNA found in Nishonda was the result of consensual sex with a boyfriend.

4. Howard's testimony, his alibi witness, and his effort to persuade the jury that the physical evidence (and lack thereof) proved his innocence were insufficient to overcome DPD's mountain of false evidence and other misconduct that robbed him of a fair trial. Howard was wrongfully convicted of second-degree murder and arson and sentenced to 80 years in prison.

5. While in prison, Darryl Howard continued to fight to prove his innocence. In 2010, previously undetected semen was identified on the vaginal swabs taken from Doris, and DNA testing excluded Howard as her rapist. The DNA was a match to Jermeck Jones—a member or associate of the New York Boys who had no connection to Darryl Howard.

6. Despite the new DNA evidence, DPD continued its pattern of suppressing evidence of Howard's innocence, causing him to spend four-and-a-half more years in prison fighting for his freedom.

7. In December 2011, after the DNA match to Jones, DPD Sergeant Scott Pennica and Investigator Michele Soucie questioned Jones about the Washington crimes. Jones made multiple statements that were inculpatory, contradictory, and inconsistent with the DNA evidence. All of the statements were recorded. But despite a September 2011 Superior Court order to disclose all information related to Jones, DPD did not reveal the recording of Jones to prosecutors and Howard's defense until July 2016.

8. Shortly after receiving the Jones recording, Howard's counsel presented it to the Superior Court, along with the DNA evidence. After a hearing in August 2016, the Superior Court overturned Howard's conviction. The Court found that Howard was innocent and released him from prison.

9. Howard spent 23 and a half years incarcerated for crimes he did not commit. Through this civil rights action, Mr. Howard seeks justice and redress for the years of his life that he lost as a result of his unjust conviction.

JURISDICTION AND VENUE

10. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Darryl Howard's rights as secured by the United States Constitution.

11. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

12. Supplemental jurisdiction over Mr. Howard's state law claims exists pursuant to 28 U.S.C. § 1367(a).

13. Venue is properly laid in the Middle District of North Carolina under U.S.C. § 1391(b), in that this is the District in which the claim arose.

JURY DEMAND

14. Plaintiff respectfully demands a trial by jury on all issues and claims set forth in this Complaint, pursuant to the Seventh Amendment of the United States Constitution and Fed. R. Civ. P. 38(b).

PARTIES

15. Plaintiff Darryl Howard is and was at all times relevant to this complaint a citizen and resident of the State of North Carolina. On March 31, 1995, Mr. Howard was wrongfully convicted of the murders of Doris and Nishonda Washington and a related arson. As a result, Mr. Howard spent over 23 years in jail and prison until newly discovered evidence led to his exoneration. He was finally released in August 2016.

16. Defendant Darrell Dowdy was at all times relevant to this Complaint a duly appointed and acting police investigator and corporal of DPD, acting under color of law and in his individual capacity within the scope of employment, pursuant to the statutes, ordinances, regulations, customs, and usage of the City of Durham and DPD. He is sued in his individual and official capacities.

17. Defendant Michele Soucie was at all times relevant to this Complaint a duly appointed and acting police investigator of DPD, acting under color of law and in her individual capacity within the scope of employment, pursuant to the statutes, ordinances, regulations, customs, and usage of the City of Durham and DPD. She is sued in her individual and official capacities.

18. Defendant Scott Pennica was at all times relevant to this Complaint a duly appointed and acting sergeant of DPD, acting under color of law and in his individual capacity within the scope of employment, pursuant to the statutes, ordinances, regulations, customs, and usage of the City of Durham and DPD. He is sued in his individual and official capacities.

19. Defendant Milton Smith was at all times relevant to this Complaint a duly appointed and acting fire marshal and investigator for the Durham Fire Department, acting under color of law and in his individual capacity within the scope of employment, pursuant to the statutes, ordinances, regulations, customs, and usage of the City of Durham and the Durham Fire Department. He is sued in his individual and official capacities.

20. Defendant Captain E.E. Sarvis was at all times relevant to this Complaint a duly appointed and acting captain of the DPD, acting under color of law and in his individual capacity within the scope of employment, pursuant to the statutes, ordinances, regulations, customs, and usage of the City of Durham and DPD. He is sued in his individual and official capacities.

21. Defendant City of Durham is a municipal entity organized under the laws of the State of North Carolina.

22. Defendant Does #1 through 10, whose actual names Plaintiff has been unable to ascertain notwithstanding reasonable efforts to do so, but who are sued herein by the fictitious designations "John Doe" and "Jane Doe," represent those officers, investigators, supervisors, and/or other agents and employees of DPD, acting under color of law and in their individual and official capacities within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of Durham, who participated in the misconduct described herein.

23. Upon information and belief, Defendants are insured by one or more policies of liability insurance purchased pursuant to N.C. Gen. Stat. § 153A-435, § 160A-485, or other applicable state law with respect to all acts and omissions complained of herein, or participate in a government risk pool pursuant to N.C. Gen. Stat. § 58-23-5, or maintain a funded reserve and to such extent, Defendants have waived any official, sovereign, qualified or governmental

immunity to which they might otherwise be entitled in their official capacities. To the extent that may be required by law, Plaintiff hereby waives the right to a jury trial on all issues of law or fact relating to insurance coverage.

FACTS

Doris Washington and her daughter Nishonda are brutally raped and murdered.

24. Between midnight and 1 a.m. on November 27, 1991, Jermeck Jones and an additional unknown perpetrator sexually assaulted and killed 29-year-old Doris Washington and her 13-year-old daughter, Nishonda, in their home in Few Gardens, a public housing complex in Durham. Doris was raped, forcefully sexually assaulted with an object, strangled, and ultimately killed by a blunt force hit to her stomach that ruptured her liver. Nishonda's death was equally heinous: the 13-year-old was sodomized, raped, beaten, and strangled to death by ligature. After killing Doris and Nishonda, Jones and his co-assailant lit a fire in the apartment and fled the scene.

25. When news spread of the killings, Few Gardens community members were outraged. A gang known as the "New York Boys" had taken over the housing project and was running an organized crime and drug-dealing operation there. The Washington homicides were a breaking point. Few Gardens residents planned a rally to protest DPD's lackluster response to the neighborhood's crime, which was spiraling out of control.

26. In the face of this considerable external pressure, DPD was motivated to solve the Washington homicides quickly. The department immediately offered a \$1200 reward to anyone who could provide information leading to an arrest.

Defendants quickly establish that Doris and Nishonda were sexually assaulted.

27. Defendant Darrell Dowdy was the lead investigator in charge of the Washington homicide investigation and had a decade of experience with the DPD at the time he was assigned to the case. Defendant E.E. Sarvis was a DPD captain at the time of the investigation; Dowdy updated Sarvis on developments throughout the course of the investigation and Sarvis served as liaison to the press regarding DPD's efforts to solve the crimes.

28. From the outset, it was obvious that the crimes included sexual assaults. The bodies were found nude and face-down on the same bed. Recently deposited sperm heads were identified in Nishonda's rectum. The pathologist also found redness at Nishonda's vaginal opening and a cream-colored fluid in her vagina. At Doris's autopsy, the pathologist noted blood-tinged fluid in her vagina and a ½-inch vaginal tear caused by the insertion of an object or instrument in the vagina near the time of her death.

29. Dowdy received the autopsy results within 12 hours of the crimes and, that same day, requested that rape kits be prepared for each victim and transferred to the state crime lab.

30. The first day of the investigation also included processing of the crime scene. DPD investigators noted a console TV pulled away from the wall and a dust pattern suggesting that a VCR or similar appliance had been taken from atop the TV.

Defendants immediately develop reliable leads implicating the New York Boys.

31. At the time of the crimes, the New York Boys were a gang that brought drugs from New York and distributed them in Durham. DPD investigators knew the New York Boys were running a drug-dealing operation at Few Gardens.

32. Early in the investigation, Dowdy and other DPD investigators developed reliable information that the New York Boys were responsible for the crimes. A few days after the

crimes, DPD investigators received the following informant tip that inculpated the New York Boys: “drug dealers from either Philadelphia or New York” offered some Few Gardens residents \$2,000 a week to use their apartments; they had raped and killed Doris Washington because \$8,000 worth of drug packages had gone missing from her apartment; and they killed Doris’s daughter because she walked in on Doris’s murder.

33. Defendant Captain E.E. Sarvis transferred the tip to Dowdy with the following note: “Dowdy, there may be something to this. I don’t remember any public info on the rape.”

34. The tip was consistent with other early leads Dowdy had developed that pointed to the New York Boys as the perpetrators. Multiple witnesses told DPD investigators that Doris sold crack cocaine for the New York Boys and allowed them to use her apartment for their drug operation. A friend who had been with Doris the day of the murders told Dowdy that Doris had been expecting a drug package delivery the night she was killed.

35. Because Dowdy later falsely reported to prosecutors that his investigation proved the victims had engaged in unrelated consensual sex before they were murdered, the tip was never disclosed to the defense, the court, or the jury at Howard’s criminal trial.

Darryl Howard is arrested on unrelated charges and questioned about the Washington homicides.

36. At the time of the crimes, Plaintiff Darryl Howard was friendly with some residents of Few Gardens, including Doris Washington.

37. The evening of November 26, 1991, Howard was at another friend’s apartment in Few Gardens, a short walk from Doris’s building, with one of his brothers and his girlfriend, Natasha Mayo. Late that night—at around 4 a.m. on November 27, 1991—a neighbor informed everyone at the apartment, including Howard, that Doris and Nishonda had been found dead.

38. The next morning, while driving in Few Gardens, DPD Officer Robby Davis stopped

Howard on suspicion of trespass at Few Gardens. Trying unsuccessfully to talk his way out of an arrest, Howard initiated a conversation with Officer Davis about Doris and Nishonda's deaths.

Officer Davis charged him with trespass and driving without a license and took him into custody.

39. Howard was released, but Davis informed Dowdy that Howard had made suspicious statements pertaining to the Washington homicides.

40. A few hours later, around 12:30 p.m., DPD officers again arrested Howard on unrelated charges and brought him to the police station, where investigators, including Dowdy, interrogated Howard regarding the Washington crimes. Howard truthfully denied involvement in the crimes, reported his whereabouts the night before, and shared his belief that Doris was involved with a member of the New York Boys. After the interrogation, Howard was released without charge.

41. DPD officers found no evidence connecting Howard to the crimes in the vehicle Howard was driving that morning, at the crime scene, or in the Few Gardens apartment where he had spent time the night before.

Dowdy fabricates evidence against Howard.

42. Within the first few days of his investigation, Dowdy spoke with Roneka Jackson about the Washington crimes. Jackson was 17 years old and lived in Few Gardens. She served as a DPD informant and was known to associate with the New York Boys, one of whom later fathered her child.

43. Jackson's connections to the New York Boys are beyond dispute: after Howard's wrongful conviction, in retaliation for Jackson's cooperation with the police in an unrelated murder, the New York Boys murdered Jackson by strangling her. They also lit her on fire, as they had attempted to do to Doris and Nishonda Washington.

44. Three nights after the Washington crimes, Dowdy met with Jackson in the Durham Magistrate's Office after midnight. There, Dowdy used coercion and other improper tactics to manipulate the 17-year-old into making a tape-recorded statement falsely incriminating Darryl Howard.

45. Dowdy knew Jackson's statement was unreliable, false, and insufficient to close the case, so he met with other malleable people to obtain similarly manufactured witness statements implicating Howard and corroborating Jackson.

46. For example, Dowdy met with Dwight Moody Moss and Kevin Best, two men who had been standing outside in Few Gardens around the time of the crimes, and again used improper tactics, including suggestion and coercion with Moss, to induce them to sign fabricated statements that Dowdy himself had written for them in his own handwriting. In exchange for their signatures, Dowdy promised Moss and, upon information and belief, Best that they would receive reward money and favorable treatment with respect to their own pending criminal charges. Consistent with that promise, the State dismissed a murder charge against Moss before he testified against Howard.

47. To make the fabricated statements from Moss and Best appear more reliable, Dowdy included details that were not in Jackson's statement, but which he knew or otherwise believed to be true, and inserted Howard into those details. For example, because he knew Doris had likely been killed because of a drug dispute, he wrote that Howard was arguing with Doris over money and drugs. Because Dowdy knew that Howard had been near Doris's building with his girlfriend around the time of the crimes, he wrote that Howard and his brother had entered Doris's apartment on the night of the crimes with an unidentified woman.

48. Orally and in writing, Dowdy affirmatively misrepresented that Jackson, Moss, and Best

volunteered the information in the statements without coercion or suggestion, and otherwise hid his misconduct with respect to the statements from prosecutors, the defense, and the court. But these witnesses were so obviously unreliable that Dowdy knew he could not move forward with a charge against Darryl Howard without more.

49. After Dowdy secured the fabricated statements implicating Howard from Jackson, Moss, and Best, Dowdy attempted to obtain a statement incriminating Howard from Howard's girlfriend, Natasha Mayo.

50. Dowdy twice interrogated Mayo about her and Howard's whereabouts on the night of the crimes. He prepared fake arrest warrants for murder and arson and laid them on the table for Mayo to view. He badgered her, claiming he knew she was present when Howard killed Doris and Nishonda. Mayo repeatedly and honestly told Dowdy the truth: she and Howard were together in Few Gardens that night, and neither of them had anything to do with the murders or the fire. Dowdy intentionally omitted his interrogations of Mayo from his investigative report, thus withholding evidence of Howard's innocence and concealing evidence of his own coercive treatment of witnesses, and only disclosed them to the prosecution after being caught by the defense at trial.

51. Shortly after Dowdy's failed attempts to coerce a false statement from Mayo, his investigation into the Washington homicides stalled.

52. On February 13, 1992, DPD Chief Trevor Hampton formally requested that the State Bureau of Investigation (SBI) establish a \$5,000 or \$10,000 reward for information related to the Washington crimes. Chief Hampton wrote that, after three months of extensive investigation, "no leads have been developed in reference to a possible suspect." The Governor granted the request for a \$10,000 reward.

53. Nothing happened in the investigation for another four months.

54. In June 1992, Dowdy contacted Howard, who at the time was in the hospital recovering from serious injuries, ostensibly to see if Howard had information relating to two other homicides.

55. Dowdy and Howard had a conversation in Howard's hospital room. Having heard that Dowdy was trying to pin the Washington crimes on him, Howard truthfully told Dowdy that he had nothing to do with them and was in Few Gardens that night with his girlfriend, Natasha Mayo. Howard also told Dowdy that, on the night of the murders, a member of the New York Boys named "June Bug" came by the apartment where Howard was and traded a VCR and other items for cocaine.

56. Four months after his bedside interview with Howard—and eleven months into the investigation—Dowdy still lacked sufficient basis to close the case. Knowing the fabricated witness statements were not enough to charge Howard, Dowdy turned his attention to another vulnerable person he could convert into a witness.

57. Angela Oliver, a prostitute with a lengthy history of prior arrests and aliases, was in custody at the Durham County Jail on solicitation charges when DPD investigators approached her to talk about the Washington crimes. Dowdy and other DPD investigators used impermissible suggestion, pressure, and coercion to induce Oliver to make a statement implicating Howard in the crimes, including details consistent with the DPD's theory of the crimes:

- Doris was killed because of a drug debt;
- Doris was beaten;
- Doris and Nishonda were murdered upstairs in their apartment;
- One of Howard's brothers assisted him;

- Howard intended to burn the bodies; and
- Property was taken from the apartment during the crimes.

58. Motivated to cooperate and receive favorable treatment on her pending charges, Oliver agreed to make a recorded statement that Dowdy started taping shortly after midnight on October 10, 1992.

59. Oliver's recorded statement was false, and her allegations about Howard were manufactured by Dowdy. Dowdy stopped and restarted the tape several times to feed Oliver fabricated details, which Oliver then repeated on the tape recording.

60. Although Oliver's aggregate statement was only seven to ten minutes long, Dowdy took forty-six minutes to make the tape recording, which then went missing after Howard's trial.

61. Dowdy understood that Oliver's taped statement was still not enough to proceed with charges against Howard. Not only did Oliver have a lengthy criminal history and every incentive to exchange her statement against Howard for leniency in her pending charges, but not a single witness had identified Oliver as having been with Darryl Howard in Few Gardens, or at or near the Washington apartment, on the afternoon or evening of the crimes.

62. So Dowdy re-contacted his "witnesses" and used coercion, suggestion, or other improper tactics to secure new false statements from them that contradicted their earlier fabricated statements, but corroborated the story he had secured from Angela Oliver.

63. For example, Dowdy re-contacted Roneka Jackson, the unreliable DPD informant and New York Boys associate whom he had pressured to implicate Howard nearly a year before. This time, Dowdy used improper tactics to induce Jackson to identify a photo of Oliver from a photo array, even though Jackson's previous statement made no reference to seeing Howard with a woman. Additionally, as a result of Dowdy's improper tactics, although Jackson's initial statement indicated she had seen Howard with a different brother, Jackson changed her account

to identify the brother recently identified by Oliver. In exchange for her cooperation, Dowdy promised Jackson a \$10,000 reward.

64. Dowdy affirmatively misrepresented in oral and written reports that Oliver's taped statement and Jackson's identifications were obtained without coercion or suggestion. Dowdy and other investigators hid his misconduct from prosecutors, the defense, and the court.

Darryl Howard is arrested for the Washington murders.

65. On the evening of November 12, 1992, nearly a year after the Washington crimes, on the basis of the evidence fabricated by Dowdy, Howard was arrested on first-degree murder and arson charges.

66. At the police station, DPD officers, including Dowdy, questioned Howard about the crimes. He maintained his innocence and said he had nothing to do with them.

67. Later that night, Howard told Defendant Milton Smith, a fire marshal and investigator, that he had been in Few Gardens with his brother Kenney, not his brother Harvey, on the night of the Washington crimes. In written and oral reports, Smith mischaracterized that clarification as an admission by Howard that Kenney had been with him *when he committed the crimes*.

68. On information and belief, DPD supervisors, investigators, and officers, including Does #1 through #10, played an active role in the investigation of the Washington homicides, were aware of the misconduct of the officers in the investigation, including Dowdy and Smith, and knowingly participated in that misconduct or knowingly ignored their duty to intervene. Upon further information and belief, the Doe supervisors' misconduct included signing off on oral and written reports containing falsehoods and misrepresentations.

When post-arrest, pre-trial DNA testing excludes Howard as the source of the sperm in Nishonda Washington, Dowdy fabricates more evidence to ensure a conviction.

69. Despite recognizing obvious signs of sexual assault of both victims—e.g., they were

found nude together face down on the same bed, Doris suffered vaginal tearing, sperm was found in Nishonda's rectum, and rape kit items were collected—Dowdy did not seek DNA testing of the rape kits before charging Howard with their murders.

70. In February 1993, Howard's trial counsel requested DNA testing of the rape kits.

71. In response to the request for DNA testing by Howard's defense counsel, the SBI laboratory identified sperm-fraction DNA on Nishonda's vaginal and rectal smears and conclusively excluded Howard as the source of both.

72. At that time, the SBI did not detect the sperm that would later be identified on Doris Washington's vaginal swabs.

73. Following the exculpatory DNA test results, the Durham County District Attorney's Office authorized a bond reduction to \$10,000, conceding that the State did not have sufficient evidence to prosecute first-degree murder. While Howard was out on bond, the State reduced the murder charges to second-degree.

74. Dowdy fully understood the powerfully exculpatory nature of the post-arrest DNA test results *and* that it risked exposing his pattern of fabricating inculpatory evidence during the pre-charge investigation. So he fabricated a false story to account for the exculpatory results of the DNA testing of Nishonda's rape kit.

75. To cover up his own misconduct and ensure a wrongful conviction of Darryl Howard, Dowdy fabricated and misrepresented to prosecutors, and later falsely testified at trial, that he had investigated 13-year-old Nishonda's whereabouts before the crimes and found out that she had been away from home with an alleged boyfriend for a week before the murders, having only returned home the night she was killed. On information and belief, Dowdy also fabricated and falsely reported to prosecutors that the sperm found in Nishonda at the time of her death was

from consensual sex with the alleged boyfriend.

76. In truth, Nishonda spent the days before her murder at a friend's house and was afraid to return home, because she knew her mother was in trouble with drug dealers. She also contacted social services and pleaded for help, saying she feared for her life. Dowdy either knew these facts and deliberately lied to prosecutors about them, or he intentionally failed to investigate Nishonda's whereabouts and entirely manufactured the boyfriend story to account for the exculpatory DNA.

77. Defendant Captain E.E. Sarvis and, on information and belief, other DPD Supervisors, including Defendant Does #1 and #2, played an active role in the investigation of the Washington homicides, were aware that Dowdy fabricated evidence regarding Nishonda's whereabouts before her death, and were aware of their duty to intervene, but did not.

Based on fabricated and coerced evidence, Darryl Howard is wrongfully convicted.

78. Relying on Dowdy's fabrication that 13-year-old Nishonda Washington had been away with a boyfriend having anal and vaginal sex up until the night of her death, the prosecution went forward with the trial of Darryl Howard for the Washington murders and arson.

79. Howard's jury trial began on March 27, 1995, and lasted five days.

80. The State presented the testimonies of the witnesses Dowdy had recruited to make false statements against Howard, including Dwight Moss, who testified that he did not remember making some of the statements attributed to him by DPD, and Roneka Jackson, whose status as a DPD informant and New York Boys associate was never disclosed to the defense or prosecution. Rhonda Davis, a friend of Doris interviewed by Dowdy early in the investigation, added a dramatic false statement to her trial testimony that, upon information and belief, Dowdy suggested, fabricated, or coerced: that she actually saw Darryl Howard in the window of the

Washington apartment on the night of the crimes. Angela Oliver, who testified only after Dowdy threatened to charge her with accessory to murder and obtained a material witness order, recanted her incriminating statements on the stand and was declared an adverse witness, allowing the State to introduce her prior false and fabricated tape-recorded statement. The State also called Milton Smith, who falsely testified that Howard had made an inculpatory statement on the night of his arrest.

81. To explain away the obviously exculpatory pre-trial DNA testing, Dowdy falsely testified that the murders were never investigated as involving sexual assaults and that Nishonda had been away with a boyfriend for almost a week before her death. Based on Dowdy's untruthful statements and testimony, the prosecution argued in closing that the case was never about sexual assault and that the sperm and DNA in Nishonda's rape kit belonged to a boyfriend.

82. Darryl Howard testified in his own defense, denied (as he had all along) involvement in the Washington crimes, and presented Natasha Mayo as an alibi witness. His counsel argued that the case *did* involve a sexual assault, and the evidence of that assault, as well as the lack of any evidence connecting Howard to the crimes, proved Howard's innocence. But it was not enough to overcome the fabrications and misconduct by Dowdy and the DPD upon which the State built its case.

83. Because DPD investigators never disclosed the critical exculpatory and impeachment evidence to the prosecution or Howard's defense counsel, the jury never learned that: witness statements and photo identifications were fabricated and/or the products of suggestion or coercion; Roneka Jackson was a DPD informant and known associate of the New York Boys; Dowdy's testimony about Nishonda's whereabouts preceding her death was false; and DPD investigators, including Sarvis and Dowdy, had suspected and investigated the homicides as

involving sexual assaults from the beginning.

84. On March 31, 1995, lacking this critical information, the jury convicted Howard of two counts of second-degree murder and one count of first-degree arson. He was sentenced to 80 years in prison.

DNA Testing in 2010 and 2011 shows that the victims were sexually assaulted by two different men, neither of whom was Darryl Howard.

85. After his wrongful conviction, Howard always maintained his innocence and never stopped fighting for his freedom.

86. Howard filed a direct appeal, but the North Carolina Court of Appeals affirmed his conviction in June 1996.

87. In 1997, Howard filed a pro se motion for appropriate relief (MAR) in North Carolina Superior Court. The petition was denied, as was Howard's petition for discretionary review to the North Carolina Supreme Court.

88. In 2009, after North Carolina created a statutory right to post-conviction DNA testing, Howard, represented by counsel from the Innocence Project, filed an unopposed motion for DNA testing on Doris and Nishonda's rape kits, which the Superior Court granted in 2010.

89. LabCorp, a private DNA lab, conducted the testing on the biological evidence from the rape kits, including the vaginal and rectal samples collected from Doris and Nishonda Washington at autopsy.

90. LabCorp identified a partial male DNA profile from sperm found on Nishonda's vaginal and rectal smears. Consistent with the pre-trial DNA testing, Howard was conclusively excluded as the source of the DNA.

91. LabCorp also, for the first time, identified on Doris's vaginal swabs sperm that had not previously been detected at the time of Howard's trial. DNA testing on the sperm resulted in the

identification of a male profile *different* than the male profile detected on Nishonda's vaginal and rectal smears. Howard was again excluded as the source of the DNA.

92. The male DNA profile identified on Doris Washington's vaginal swabs was eligible for submission and comparison to the FBI's national convicted offender DNA database ("CODIS").

93. The CODIS search identified Jermeck Jones, a convicted felon, as a match for the DNA. Subsequent lab testing on a known DNA sample from Jones would later confirm that he was a conclusive match.

94. On August 25, 2011, the SBI crime lab informed DPD Sergeant Scott Pennica that Jermeck Jones was the subject of the CODIS hit.

95. On September 15, 2011, the Superior Court entered an order directing the Durham Police Department to "immediately share with counsel for Mr. Howard any information it possesses about the man whose DNA was detected in Doris W.'s sexual assault kit."

96. On December 14, 2011, as directed by Sergeant Pennica, Investigator Michele Soucie obtained a search warrant to take Jones into custody for the purpose of obtaining a DNA sample. Soucie swore under oath that there was probable cause to believe Jones's DNA constituted evidence of the crime of murder and the identity of a participant in that murder. She provided details about the Washington crimes, the subsequent investigation, the arrest and conviction of Darryl Howard, and the post-conviction DNA testing and CODIS hit on Jones. She swore that her effort to obtain a DNA sample from Jones, and the need to test it against the Washington rape kits, were "part of this ongoing investigation into violations of North Carolina General Statutes." She even sought the right to use force to take a sample from Jones if he refused to provide one voluntarily. With that authority, Soucie arranged for Jones to be taken into custody so that his DNA sample could be collected for the confirmatory DNA testing.

97. Before Pennica and Soucie collected the DNA sample from Jones, they met with him in an interview room to question him with respect to the Washington crimes. While in custody, Jones made a series of inculpatory and false statements demonstrating that he was involved in the crimes.

98. When Jones learned that his DNA was being collected in connection with the 1991 murder of Doris Washington, Jones told Pennica that Doris had been his girlfriend, but denied killing her. After further discussion with the investigators, Jones changed his story and told Pennica that he did not know Doris at all, even though his DNA had been found inside of her. Later, Jones changed his story again and told Soucie that he had consensual sex with Nishonda, even though his DNA was not in Nishonda. In a subsequent written report, Soucie misrepresented the investigators' interactions with Jones, intentionally failing to report Jones's contradictory statements.

99. Additionally, when Jones was in the interview room alone, he made a series of cell phone calls in which he made inculpatory statements implicating himself in the crimes and demonstrating that he had just lied to Pennica and Soucie. In particular, despite his statement to Pennica that he did not know Doris, Jones said on a call that he not only knew Doris and Nishonda, but had also visited their apartment. In a different call, Jones made statements showing guilty knowledge of the crimes: he did not want to "rat on anybody"; "I ain't said nothing"; and "ain't nothing they going to learn without my attorney."

100. Unknown to Jones, there was a digital recording device hidden in the interview room that captured audio and video of his interactions with Soucie and Pennica, as well his inculpatory statements on the phone while he was alone in the room. Pennica and Soucie knew the device was recording, and they could monitor the recording in real time in a different room.

101. Although Soucie—and, on information and belief, Pennica—knew that Jones was not truthful when they questioned him, they conducted no follow-up investigation regarding Jones’s false and incriminating statements. They did not seek Jones’s cell phone records to identify the individual(s) Jones reassured that he would not “rat on anybody.” Despite swearing under oath in December 2011 that DPD needed Jones’s DNA for an investigation that was “ongoing,” Soucie swore under oath in August 2016 that DPD conducted no follow-up on Jones because the investigation was not “active.” In the latter testimony, Soucie also acknowledged that, based on her training, false exculpatory statements could be powerful evidence of guilty knowledge.

102. Concealing new evidence that would have confirmed Howard’s innocence, DPD withheld the Jones recording for four-and-a-half years. In violation of the Superior Court order entered on September 15, 2011, DPD did not disclose the recording to the Durham County District Attorney’s Office or Howard’s defense counsel until July 2016.

103. Because DPD investigators, including Pennica and Soucie, suppressed the Jones recording, Howard was deprived of critical exculpatory evidence that would have led to an earlier exoneration.

104. During the four-and-a-half-year delay, Howard’s only son died, and the true perpetrators of the Washington rapes and murders remained free, as they do to this day.

Darryl Howard is finally exonerated in 2016.

105. On March 19, 2014, Howard’s defense counsel filed an MAR in Superior Court requesting a new trial based on newly discovered evidence, including but not limited to: (1) exculpatory DNA evidence that the sperm of two men, neither of whom was Darryl Howard, was found inside the Washingtons at the time of their deaths, (2) a sworn affidavit from Dwight Moody Moss, one of the witnesses Dowdy had created against Howard, attesting that Dowdy

coerced him into implicating Howard in the crimes, and (3) the informant tip, suppressed during Howard's trial, corroborating that the murders had been committed by multiple perpetrators and that Doris Washington had been raped.

106. On May 27, 2014, in light of the substantial evidence of innocence in the record, the Superior Court granted the MAR and ordered that Darryl Howard receive a new trial on the basis of the briefings alone. The State appealed the ruling, and Howard remained in custody pending appeal.

107. On April 19, 2016, the North Carolina Court of Appeals vacated the Superior Court decision and remanded for an evidentiary hearing. Howard remained in custody.

108. Following remand, Howard's counsel filed a separate motion for a new trial, arguing that North Carolina's DNA statute, N.C.G.S. § 15A-270, entitled Howard to a new trial.

109. In August 2016, the Superior Court conducted an evidentiary hearing on the intervening DNA motion, with a hearing on the original MAR scheduled to follow.

110. At the DNA hearing, Howard's counsel presented the results of the DNA testing on the rape kits that exonerated Howard and implicated Jermeck Jones and another unidentified man. Howard's counsel also presented the 2011 Jones recording, which had only been disclosed to counsel the month before the hearing. Jones was also called as a witness, but he refused to testify, invoking his Fifth Amendment right against self-incrimination.

111. At the end of the hearing, the Superior Court ruled in favor of Howard from the bench. In a subsequent written order, the Superior Court found that the DNA test results "show that Darryl Howard is innocent of the murders of Doris Washington and N[ishonda Washington] and the subsequent arson." Additionally, "all of the physical evidence indicates" that the crimes were perpetrated "by two different men, neither of whom was Darryl Howard."

112. On August 31, 2016, after 23 and a half years of wrongful incarceration for crimes he did not commit, Mr. Howard was finally released from prison.

DAMAGES

113. Defendants' unlawful, intentional, willful, deliberately indifferent, reckless, and/or bad-faith acts and omissions caused Darryl Howard to be falsely arrested and imprisoned, unfairly tried, wrongfully convicted, and forced to spend over 23 years of his life imprisoned.

114. As a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, and/or deliberately indifferent acts and omissions, Howard sustained injuries and damages, which continue to date and will continue into the future, including: loss of freedom for more than 23 years; physical pain and suffering; severe mental anguish; emotional distress; loss of family relationships; severe psychological damage; loss of property; legal expenses; loss of income and career opportunities; humiliation, indignities, and embarrassment; degradation; permanent loss of natural psychological development; and restrictions on all forms of personal freedom including but not limited to diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression, for which he is entitled to monetary relief.

115. As a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, and/or deliberately indifferent acts and omissions, Howard was also deprived of his familial relationships, including relationships with his children. While Howard languished unjustly in prison, he lost a son, a sister, two brothers, a stepfather, and numerous aunts and uncles, and his mother declined significantly from Alzheimer's Disease.

116. As a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, and/or deliberately indifferent acts and omissions, Howard sustained physical injuries and damages,

including physical pain and suffering, personal injuries, physical illness, and inadequate medical care, for which he is entitled to monetary relief.

117. Howard continues to suffer physical, emotional, mental, and psychological damage as a result of the Defendants' conduct.

118. These injuries and damages to Howard were foreseeable to Defendants at the time of their acts and omissions.

119. All of the acts and omissions committed by Defendants were done intentionally, unlawfully, maliciously, wantonly, recklessly, negligently, and/or with bad faith, and said acts meet all of the standards for imposition of punitive damages.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**(42 U.S.C. § 1983 Claim Under Fourth and Fourteenth Amendments –
Dowdy, Sarvis, Smith, Does #1-10)**

120. The allegations in the preceding paragraphs are incorporated by reference.

121. This claim is brought against Defendants Dowdy, Sarvis, Smith, and Does #1-10 in their individual capacities.

122. Beginning in 1991, Defendants intentionally and in bad faith fabricated inculpatory evidence, including but not limited to false reports regarding Nishonda Washington's whereabouts in the days leading up to her death, false reports regarding the status of their investigation, false reports concerning statements made by Howard, and the false statements of Roneka Jackson, Angela Oliver, Kevin Best, Dwight Moody Moss, and Rhonda Davis.

123. Defendants failed to disclose material exculpatory evidence to Howard, his counsel, or the prosecutor, including but not limited to information indicating that the perpetrators were

associated with the New York Boys and the facts that they had obtained inculpatory evidence using unlawful means.

124. Defendants failed to conduct a constitutionally adequate criminal investigation. Defendants deliberately and/or recklessly failed to investigate information and leads that they knew, or in the absence of deliberate or reckless indifference should have known, tended to prove Howard's innocence. The investigative failures of Defendants included but were not limited to failing to investigate known exculpatory and potentially exculpatory information provided by informants and other witnesses and failing to pursue evidence and leads concerning other suspects, including members and associates of the New York Boys gang.

125. Defendants, with malice and knowing that probable cause did not exist to prosecute Howard for the murders of Doris and Nishonda Washington, intentionally caused Howard to be arrested, charged, and prosecuted for those crimes by fabricating inculpatory evidence and failing to disclose exculpatory evidence. The criminal proceedings against Howard terminated in Howard's favor upon his exoneration in 2016.

126. By engaging in this conduct, Defendants acted with deliberate and/or reckless indifference to Howard's constitutional rights. Defendants could reasonably foresee that their conduct would result in Howard's arrest, prosecution, conviction, and incarceration.

127. Defendants acted jointly in agreement to deprive Howard of his constitutional rights. Each defendant performed overt acts in furtherance of that agreement and in furtherance of their intent to deprive Howard of his constitutional rights, including manufacturing false evidence, failing to disclose exculpatory evidence, making false representations to the prosecution regarding their investigation, committing perjury during hearings and trials, failing to intervene to prevent others' misconduct, and approving and endorsing others' misconduct.

128. Defendants' misconduct was the direct and proximate cause of Howard's injuries, including his wrongful arrest, prosecution, conviction, and incarceration.

129. Defendants' misconduct deprived Howard of his liberty without due process of law, deprived Howard of his right to be free from prosecution absent probable cause, deprived Howard of his right to a fair trial, and deprived Howard of his access to the courts, in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

130. Defendants were at all relevant times acting within the scope of their employment and under color of state law.

131. Defendants are liable to Howard for damages under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION
**(42 U.S.C. § 1983 Monell Claim Under Fourth and Fourteenth Amendments –
City of Durham, Dowdy, Sarvis, Smith, Does #1-10)**

132. The allegations in the preceding paragraphs are incorporated by reference.

133. This claim is brought against Defendant City of Durham and Defendants Dowdy, Sarvis, Smith, and Does #1-10 in their official capacities.

134. Defendant City of Durham was at all times relevant to this Complaint responsible for the policies, practices, and customs of the DPD.

135. As of 1991, there was a persistent and widespread policy and practice at the DPD of fabricating evidence, withholding exculpatory evidence, and failing to conduct constitutionally adequate investigations.

136. This practice is evidenced in the multiple withheld pieces of evidence in this case, the multiple pieces of fabricated evidence in this case, and similar misconduct in other criminal investigations.

137. Defendants condoned and failed to address officers' practice of withholding exculpatory evidence from the prosecution, manufacturing false evidence, and failing to conduct constitutionally adequate investigations. Defendants' conduct constituted deliberate indifference.

138. In the period surrounding Howard's conviction, Defendants failed to adequately supervise, discipline and train officers at the DPD about their obligations to disclose exculpatory material, not to fabricate evidence, and to conduct adequate investigations. As a result of this failure, officers at the DPD repeatedly failed to disclose exculpatory material in multiple cases and manufactured false evidence in multiple cases.

139. As a direct result of Defendants' foregoing policies and practices, Defendants' condoning the officers' failure to disclose exculpatory material, fabrication of evidence, and conducting inadequate investigations and Defendants' failure to adequately supervise, discipline and train officers about their obligations, Howard suffered injuries, including his wrongful arrest, prosecution, conviction, and incarceration.

140. Defendants are liable to Howard for damages under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION
(42 U.S.C. § 1983 Claim Under Fourteenth Amendment
– Soucie, Pennica, Does #1-10)

141. The allegations in the preceding paragraphs are incorporated by reference.

142. This claim is brought against Defendants Soucie and Pennica in their individual capacities.

143. From 2011 to 2016, Defendants intentionally and in bad faith, or with deliberate indifference, withheld material exculpatory evidence, violated a state court order mandating that they provide Howard exculpatory evidence, and manufactured false reports about evidence in their possession.

144. Howard had a liberty interest in proving his innocence, including through newly discovered exculpatory evidence.

145. Defendants' misconduct deprived Howard of powerful new evidence of innocence under N.C. Gen. Stat. § 15A-1411 *et. seq.* and § 15A-270 that he did not have until its belated disclosure in July 2016. With that critical evidence, an earlier motion for post-conviction relief would have been successful and freed Howard from prison.

146. Defendants' misconduct deprived Howard of his liberty without due process of law and deprived Howard access to the courts in violation of the Fourteenth Amendment to the United States Constitution.

147. As a direct result of Defendants' misconduct, Howard's incarceration was wrongfully extended, and Howard suffered physical, emotional, and pecuniary damages.

148. Defendants are liable to Howard for damages pursuant to 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION
**(Common Law Obstruction of Justice – Dowdy, Sarvis, Smith,
Soucie, Pennica, Does #1-10)**

149. The allegations in the preceding paragraphs are incorporated by reference.

150. This claim is brought against Defendants Dowdy, Sarvis, Smith, Soucie, Pennica and Does #1-10 in their individual and official capacities.

151. Defendants deliberately prevented, obstructed, impeded, or hindered public or legal justice, including the clearing of Howard and the identification and prosecution of the actual murderer and arsonist.

152. As a direct and proximate result of the obstruction of justice by Defendants, Howard was wrongfully arrested, prosecuted, convicted, and incarcerated, and Howard suffered physical, emotional, and pecuniary damages.

FIFTH CAUSE OF ACTION

(Negligence – Dowdy, Sarvis, Smith, Soucie, Pennica, Does #1-10)

153. The allegations in the preceding paragraphs are incorporated by reference.
154. This claim is brought against Defendants Dowdy, Sarvis, Smith, Soucie, Pennica and Does #1-10 in their individual and official capacities.
155. Defendants had the following duties:
- a. to ensure that citizens were not wrongfully arrested and charged with crimes they did not commit;
 - b. to ensure that only reliable sources of evidence were used in criminal prosecutions;
 - c. to exercise reasonable care when engaging in criminal investigations;
 - d. to disclose exculpatory material and to ensure such material is disclosed;
 - e. to include accurate information in reports describing evidence in their possession;
 - f. to fully comply with judicial orders regarding evidence held in their possession; and
 - g. in other respects to be proved through discovery and at trial.
156. Defendants were negligent and breached duties owed to Howard in the following respects:
- a. Defendants wrongfully caused Howard to be arrested and charged with crimes he did not commit;
 - b. Defendants used unreliable sources of evidence when investigating the Washington rapes and murders;
 - c. Defendants failed to use reasonable care when investigating the Washington rapes and murders;
 - d. Defendants failed to disclose exculpatory evidence and failed to use this evidence to conduct an adequate investigation;

- e. Defendants failed to comply with the Durham County Superior Court's 2011 order to produce evidence in Howard's case;
- f. Defendants failed to disclose exculpatory evidence to Howard, his attorney, the Durham County Superior Court, and the Durham County District Attorney's office;
- g. Defendants provided false information to Howard, his attorney, and the Durham County District Attorney regarding evidence in their possession; and
- h. in other respects to be proved through discovery and at trial.

157. As a direct and proximate result of Defendants' negligence, Howard was wrongfully arrested, prosecuted, convicted, and incarcerated, and Howard suffered physical, emotional, and pecuniary damages.

SIXTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – Dowdy, Sarvis, Smith, Soucie, Pennica, Does #1-10)

158. The allegations in the preceding paragraphs are incorporated by reference.

159. This claim is brought against Defendants Dowdy, Sarvis, Smith, Soucie, Pennica and Does #1-10 in their individual and official capacities.

160. Defendants Dowdy, Sarvis, Smith, and Does #1-10 deliberately abused their authority as public officials to maintain the appearance of probable cause where none existed, to deny Howard the opportunity to demonstrate his innocence, to deny Howard a fair trial, and to convict Howard of murder despite his innocence.

161. Defendants Soucie, Pennica, and Does #1-10 deliberately abused their authority as public officials to deny Howard access to exculpatory evidence for the purpose of preventing him from demonstrating his innocence.

162. As a direct and proximate result of Defendants' conduct, Howard was wrongfully arrested, prosecuted, convicted, and incarcerated, and Howard suffered severe emotional distress as described above.

SEVENTH CAUSE OF ACTION

(Common Law Malicious Prosecution – Dowdy, Sarvis, Smith, Does #1-10)

163. The allegations in the preceding paragraphs are incorporated by reference.

164. This claim is brought against Defendants Dowdy, Sarvis, Smith, and Does #1-10 in their individual and official capacities.

165. Defendants maliciously instituted and participated in criminal proceedings against Howard.

166. Defendants lacked probable cause for initiating the proceedings against Howard. Defendants lacked probable cause for instituting and participating in criminal proceedings against Howard at all points in time.

167. If probable cause did exist at the initiation of the proceedings against Howard, Defendants are liable under a continuation theory given that they subsequently discovered information that caused the probable cause to dissipate and evaporate, and nevertheless continued to pursue and participate in the criminal proceedings against Howard in bad faith.

168. The criminal proceedings against Howard terminated in Howard's favor upon his exoneration.

169. As a direct and proximate result of the malicious prosecution by Defendants, Howard was wrongfully arrested, prosecuted, convicted, and incarcerated, and Howard suffered physical, emotional, and pecuniary damages.

EIGHTH CAUSE OF ACTION
**(North Carolina Constitution – Dowdy, Sarvis, Smith, Soucie,
Pennica, City of Durham, Does #1-10)**

170. The allegations in the preceding paragraphs are incorporated by reference.

171. This claim is brought against the City of Durham and Defendants Dowdy, Sarvis, Smith, Soucie, Pennica, and Does #1-10 in their official capacities. This claim is brought to the extent Plaintiff lacks an adequate state remedy for the abridgment of any right under the North Carolina Constitution.

172. In committing the foregoing acts and omissions, Defendants violated Howard's constitutional rights under the North Carolina Constitution, including but not limited to his rights under Article I, Sections 1, 18, 19, and 21.

173. Defendants were acting under color of state law, and their acts were undertaken with deliberate and reckless indifference to Howard's constitutional rights.

174. As a direct and proximate result of Defendants unconstitutional acts and omissions, Howard was wrongfully arrested, prosecuted, convicted, and incarcerated, and Howard suffered physical, emotional, and pecuniary damages.

175. As a direct and proximate result of Defendants unconstitutional acts and omissions, Howard was prevented from having access to evidence that would have exonerated him, was prevented from benefiting from state statutes that afforded him the right to prove his innocence, endured a wrongful extension of his wrongful incarceration, and suffered physical, emotional, and pecuniary damages.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiff prays for the following relief:

1. Compensatory damages from Defendants, jointly and severally, in an amount to be determined at trial;
2. Punitive damages from Defendants, jointly and severally, in an amount to be determined at trial;
3. Reasonable attorneys' fees and litigation expenses from Defendants under 42 U.S.C. § 1988;
4. Costs of court and interest as allowed by law;
5. A trial by jury on all contested issues of fact; and
6. Such other and further relief as the Court may deem just and proper.

This the 24th day of May, 2017.

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