

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RALPH DALE ARMSTRONG,

Plaintiff,

v.

OPINION AND ORDER

12-cv-426-bbc

JOHN I. NORSETTER, former Assistant Dane
County District Attorney; JOHN DOE #1,
Dane County WI prosecutor; MARION G.
MORGAN, Madison Police Department
Detective; JOHN DOE #2, Madison WI
Police Officer; KAREN D. DAILY,
Wisconsin Crime Lab Analyst; DANIEL J.
CAMPBELL, Wisconsin Crime Lab Analyst;
JANE DOE #3, Wisconsin Crime Lab Analyst;
VICKI GILBERTSON, Dane County Clerk of
Circuit Courts Supervisor; JANE DOE #4, Dane
County Clerk of Circuit Court Assistant,

Defendants.

Plaintiff, now represented by counsel, has moved for leave to file a proposed third amended complaint in this civil action for money damages against persons who caused him to be charged and convicted of a crime he never committed. Defendants John Norsetter, Marion G. Morgan and Vicki Gilbertson oppose the filing of the complaint.

The proposed complaint attempts to add a number of new defendants: Detectives Roger Attoe, Frank McCoy, Mary Otterson, Dorothy Standridge, Ted Mell and Rudy Jergovic, along with Lynn Anderson, Lt. Jeffrey Frye, the City of Madison and Dane County,

without explaining what if anything these defendants might have done in connection with plaintiff's trial and conviction.¹ As in earlier versions of his complaint, plaintiff alleges that defendants acted under color of state to target him for the murder of Charise Kamps on June 24, 1980, to the exclusion of any other possible suspects, but he does not identify which specific defendants performed which allegedly illegal actions. For example, he alleges that "the police" collected forensic evidence and "the Defendants" collected drug paraphernalia, without saying which of the numerous police officers he has named as defendants took the particular act or acts. Proposed Third Am. Cpt., dkt. #58, ¶¶ 18, 19. This shortcoming persists throughout the proposed complaint, with the exception of several paragraphs in which defendant Norsetter is referred to by name. Id. at ¶¶ 44, 45.

Plaintiff contends that he is entitled to damages for defendants' violations of 42 U.S.C. § 1983. He argues that the city and county governments are both liable for the acts of their employees, because they maintained "policies and practices that were the moving force driving the foregoing constitutional violations." Id. at ¶ 58. (He gives no additional details about the policies and practices.) He says that defendants' acts violated the due process clause in three ways: depriving him of a fair trial, conducting an unduly suggestive lineup and destroying evidence and that, in addition, defendants engaged in malicious

¹ I assume plaintiff is referring to the Jeffrey Frye who is now a court security officer in the courthouse and was formerly a lieutenant in the police force, which raises a question whether I and the other judges in the building should recuse ourselves from taking any action in this case. Given the total paucity of allegations against CSO Frye in the proposed amended complaint and the fact that his name has never arisen in the litigation until now, I am persuaded that recusal is unnecessary. This is not an instance in which the court's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

prosecution, failed to intervene to prevent the misconduct and conspired to deprive plaintiff of his constitutional rights. Plaintiff sets out a final count in his complaint, which is that public entities are required to pay any tort judgment for any damages for which their employees may be liable if the tortious acts were committed within the scope of their duties, but this is not a cause of action.

As defendants point out, this court refused to allow plaintiff to proceed on a number of claims that he asserted in his proposed second amended complaint. He has shown no reason why the court should reach a different conclusion about those same claims in his third amended complaint. Still less has he shown why the court should expand his proposed complaint to include a number of new defendants that he has not alleged did anything illegal.

In view of the vague nature of the allegations in the complaint and the repetition of claims that had been dismissed earlier, I will deny plaintiff's motion to file a third amended complaint. The case will go forward on the claims remaining in the second amended complaint: that defendants John Norsetter violated plaintiff's right to due process (claim one) and that defendants Norsetter, Campbell, Morgan, Daily and Gilbertson violated plaintiff's right to due process (claim six), as spelled out in the order granting leave to proceed entered on March 20, 2013. (I note that plaintiff did not allege any wrongdoing against defendant Daniel Campbell in claim six of his second amended complaint relating to the alleged intentional destruction of potentially exculpatory crime scene evidence, but that defendants assume that he is still a defendant on this claim. I will proceed on that assumption.)

In addition, now that the motion for leave to file has been decided, plaintiff may have until August 15, 2013, in which to respond to the motion to dismiss claim six of the second amended complaint (the operative complaint) filed by defendants Norsetter, Morgan, Campbell and Daily.

ORDER

IT IS ORDERED that plaintiff Ralph Dale Armstrong's motion to file a third amended complaint, dkt. #58, is DENIED; plaintiff may have until August 15, 2013, in which to file his response to the motion to dismiss claim six of the operative complaint filed by defendants John Norsetter, Daniel J. Campbell and Karen Daily. Dkt. #53. Defendants may have until August 22, 2013 in which to file a reply.

Entered this 30th day of July, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge