

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LOGAN A. OWSLEY,)	
)	
Plaintiff,)	
)	
v.)	
)	
MARK E. GORBETT, in his individual)	
and official capacities as Sheriff of)	
Bartholomew County, ERNEST)	
DeWAYNE JANES, SR., DEAN A.)	
JOHNSON, CHRISTIE L.)	
NUNEMAKER, BRENT E. WORMAN,)	
WILLIAM R. KINMAN, JR.,)	
CHRISTOPHER M. ROBERTS in their)	
individual and official capacities as)	
Bartholomew County Sheriff's Deputies,)	
LARRY S. FISHER, in his individual and)	
official capacities as Bartholomew County)	
Coroner,)	
)	
Defendants.)	
)	

No. 1:15-cv -00552

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Plaintiff, LOGAN A. OWSLEY, by counsel, Trent A. McCain and Ronald S. Sullivan, Jr. *, and complains against Defendants, MARK E. GORBETT, in his individual and official capacities as Sheriff of Bartholomew County, ERNEST DeWAYNE JANES, SR., DEAN A. JOHNSON, CHRISTIE L. NUNEMAKER, BRENT E. WORMAN, WILLIAM R. KINMAN, JR., CHRISTOPHER M. ROBERTS in their individual and official capacities as

* Counsel's application for Admission to the Bar is forthcoming.

Bartholomew County Sheriff's Deputies, and LARRY S. FISHER, in his individual and official capacities as Bartholomew County Coroner, as follows:

INTRODUCTORY STATEMENT

1. This case involves the suspicious April 7, 2013 death of Cary Owsley, of Columbus, Indiana, and the shoddy investigation that followed. Cary died from a gunshot wound to the chest. Several Bartholomew Sheriff's deputies appeared on the scene, one of whom was formerly married to Cary's estranged wife, Lisa Owsley. Coroner Larry Fisher appeared on the scene. Despite his training and despite the circumstances, the Coroner did not order an autopsy. Rather, Cary Owsley was buried. In July 2013, then Sheriff Mark Gorbett suspended Deputies E. DeWayne Janes, Jr. (Lisa Owsley's ex), Dean Johnson, and Detective Christie Nunemaker for violation of protocol during the Cary Owsley Death Investigation. Later that month, Cary's sister, Cheryl Owsley Jackson, filed a petition to exhume her brother's remains and to have an autopsy performed to determine the cause and manner of Cary's death. After four months of legal wrangling, Cheryl won the right to have her brother's remain exhumed and examined. In May 2014, the two forensic pathologists, tasked with performing the post-mortem examination, agreed that the manner of death was "undetermined." Neither could opine, to a reasonable degree of medical certainty, that Cary's manner of death was homicide, suicide, or accidental. As early as October 2013, Cary's family asked the United States Department of Justice to investigate Cary's death and the subsequent investigation by Bartholomew County law enforcement. On March 6, 2015, current Sheriff Matt Myers requested that the FBI take a look at the case along with the Sheriff's complete file (which had never been disclosed before) and additional information from Cary's family; namely, from Dr. William S. Smock, police surgeon from Louisville, Kentucky. As of the date of this filing, the FBI has yet to

confirm or deny it will be conducting an investigation.

NATURE OF THE ACTION

2. This is a civil action arising under 42 U.S.C. §§1983, 1985, and 1986 for deprivation of Plaintiff's constitutional rights.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is invoked pursuant 28 U.S.C. §§1331 and 1343(a).

4. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367(a) because they are part of the same case and controversy described by Plaintiff's federal claims.

5. Venue is proper in this District, pursuant to 28 U.S.C. §1391, and because all the conduct complained of herein occurred in this District.

PARTIES

6. Plaintiff, LOGAN A. OWSLEY ("Logan") is the only surviving child of Cary A. Owsley, deceased. ("Cary").

7. At all times relevant herein, Defendant MARK E. GORBETT ("GORBETT," the "Sheriff") was the duly elected Sheriff of Bartholomew County, Indiana.

8. At all times relevant herein, Defendant ERNEST DeWAYNE JANES, SR. ("JANES, SR.") was a sworn deputy sheriff and a member of the Bartholomew County Sheriff's Police Department. Defendant resigned, pending a termination hearing, effective December 31, 2014.

9. At all times relevant herein, Defendant DEAN A. JOHNSON (“JOHNSON”) was a sworn deputy sheriff and a Sergeant in the Bartholomew County Sheriff’s Police Department.

10. At all times relevant herein, Defendant CHRISTIE L. NUNEMAKER (formerly known as Christie L. Sims) (“NUNEMAKER”) was a sworn deputy sheriff and a Detective in the Bartholomew County Sheriff’s Police Department.

11. At all times relevant herein, Defendant BRENT E. WORMAN (“WORMAN”) was a sworn deputy sheriff and a member of the Bartholomew County Sheriff’s Police Department.

12. At all times relevant herein, Defendant WILLIAM R. KINMAN, JR. (“KINMAN”) was a sworn deputy sheriff and a Field Training Officer in the Bartholomew County Sheriff’s Police Department.

13. At all times relevant herein, Defendant CHRISTOPHER M. ROBERTS (“ROBERTS”) was a sworn deputy sheriff and a member of the Bartholomew County Sheriff’s Police Department.

14. At all times relevant herein, Defendant LARRY S. FISHER (“FISHER,” the “Coroner”) was the duly elected coroner of Bartholomew County, Indiana.

BACKGROUND FACTS

The Family Connection

15. On or about April 24, 2010, Cary married Lisa Ann Janes (“Lisa”). They resided at 4303 Roosevelt Drive in Columbus, Bartholomew County, Indiana

(the “Owsley Home”).

16. Defendant JANES, SR. was once married to Lisa. They were divorced in October 1997.

17. Defendant JANES, SR. and Lisa had two (2) sons, Ernest DeWayne Janes, Jr. (“DeWayne, Jr.”) and Joshua C. Janes (“Josh”).

The Fateful Day

18. On and before April 7, 2013, Cary and Lisa were having marital problems.

19. On the early morning of April 7, 2013, Cary called Logan to help him move out of the Owsley House. He intended to separate from Lisa and move in with his son.

20. On April 7, 2013, at 12:59 pm, Lisa called 911 and reported that Cary “shot himself.”

21. According to police reports, Defendants WORMAN and KINMAN were dispatched to the scene at approximately 1:01 pm and were the first to arrive at 1:07 pm.

22. When Defendants WORMAN and KINMAN arrived, they reportedly found Cary tipped over in a chair and attempted to locate a pulse on him. They found none.

23. Reportedly, Defendant JOHNSON was next to arrive. He also checked Cary for a pulse and determined that Cary was dead.

24. Defendant JOHNSON reportedly informed dispatch to contact the

Coroner, Defendant FISHER and the on-call detective, Defendant NUNENMAKER.

25. Defendant WORMAN reported that EMT Jamie Cole and Paramedic Chuck Kuhfal arrived at this time and confirmed that Cary had no pulse.

26. Defendant WORMAN reported that Cary was already “cool to the touch” when he was alive, by Lisa’s account, at 1:00 pm.

27. When Defendant NUNEMAKER arrived at the scene, Defendant JOHNSON advised her that he met DeWayne, Jr. on the scene shortly before she arrived.

28. Defendant NUNEMAKER reported that Defendant JANES, SR., who was off-duty at the time, arrived at the scene with his current wife, Margaret.

29. Then, according to Defendant NUNEMAKER, Defendant FISHER arrived and conducted his “investigation.”

The Botched Investigation

30. No “suicide note” was found at the scene.

31. Defendant FISHER reportedly interviewed the sole witness, Lisa, and spoke with the Defendant Investigating Officers.

32. Despite the fact that this was an “apparent suicide” without clear evidence of intent (i.e. “suicide note”), Defendant FISHER failed to order an autopsy at the time of Cary’s death, as required.[†]

33. Defendant Investigating Officers failed to bag Cary’s hands for Gunshot Residue (GSR) testing.

[†] See Indiana State Coroners Training Board’s GUIDEBOOK FOR INDIANA CORONERS §501.2.1; <http://www.in.gov/ctb/files/section501.pdf> (visited Apr. 5, 15).

34. Defendant Investigating Officers failed to preserve the bloody sweatshirt and T-shirt that Cary was purportedly wearing for GSR testing.

35. Defendants Investigating Officers photographed three (3) bullet holes in the wall of the Owsley Home, but only one was documented in their reports.

36. Defendants WORMAN, KINMAN, JOHNSON, NUNEMAKER, and ROBERTS (collectively “Investigating Officers”) failed to analyze and measure the bullet trajectories from the chair to the wall and from the bedroom wall to the garage wall.

37. The height of the Cary’s exit wound is 45 inches above the floor and the height of the hole in the wall is 44 inches above the floor. Thus, the bullet trajectory would be consistent with being shot in the standing position, not a sitting position.

38. The damage to the chair spindle, however, is below the level of the bullet hole in the wall.

39. Cary was left-handed, but Defendant WORMAN reported that he found the gun “to the *right* of [Cary’s] feet lying in a pile of blankets with the hammer locked in the firing position.” (Emphasis added.)

40. At the time of his death, there was unexplained bruising on Cary’s hand.

41. Defendant WORMAN’s camera failed during the taking of photographs on the scene. WORMAN reported he was unable to retrieve the photographs of Cary’s position once he arrived upon the scene.

The Cover-Up

42. On or about the evening of April 7, 2013, the chair in which Cary was allegedly found dead was burned in the backyard of the Owsley Home.

43. Defendant JANES, SR. cut a portion of the 4 x 6 rug, soaked with Cary's blood, and placed in his personal vehicle and removed it from the Owsley Home. That portion of the rug could not be processed for DNA evidence.

44. Defendant JANES, SR. admitted to assisting Defendant FISHER and others move Cary's body for transport.

45. On or about July 31, 2013, Cary's sister, Cheryl Owsley Jackson filed a petition to have Cary's remains exhumed and have an autopsy performed.

46. Despite voluntarily executing a "Waiver of Right of Disposition" for Cheryl and Cary's mother, Rosemary Pennybaker, Lisa objected to the exhumation of Cary's body until November 20, 2013.

47. The court appointed Scott A. Wagner, MD to perform the autopsy.

48. Cary's family hired Werner O. Spitz, MD to observe the autopsy and prepare an independent report.

49. On March 13, 2014, almost four (4) months later, Cary's body was ultimately exhumed and an autopsy was performed in Fort Wayne, Indiana.

50. On or about May 27, 2014, Drs. Wagner and Spitz authored their respective reports. They agreed on both the cause of death: "Gunshot wound of the chest" and the manner of death: "Undetermined."

51. On or about December 30, 2014, and one day before leaving office,

Defendant GORBETT wrote a 4-page letter to the Federal Bureau of Investigation attempting to dissuade it from conducting a further investigation into the death of Cary Owsley.

52. On March 6, 2015, the newly elected Sheriff of Bartholomew County, Matt Myers, forwarded the Owsley case file to the Indianapolis District Office of the FBI for review.

53. As of the date of the filing, Plaintiff has not received word whether the FBI will conduct a full investigation into the following color of law abuse allegations.

LEGAL CLAIMS

COUNT I: 42 U.S.C. §1985(2) (Second Clause) OBSTRUCTION OF JUSTICE

54. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

55. Defendants, MARK E. GORBETT, ERNEST DeWAYNE JANES, SR., DEAN A. JOHNSON, CHRISTIE L. NUNEMAKER, BRENT E. WORMAN, WILLIAM R. KINMAN, JR., CHRISTOPHER M. ROBERTS, LARRY S. FISHER, are “persons” as that term is used in 42 U.S.C. §1985.

56. Under color of state law, Defendants GORBETT, JANES, SR., JOHNSON, NUNEMAKER, WORMAN, KINMAN, ROBERTS, and FISHER conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering,

obstructing and defeating the due course of justice in the State of Indiana, with the intent to deny Plaintiff the equal protection of the laws.

57. These Defendants' actions evidenced a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

58. As a direct and foreseeable consequence of this conspiracy, Plaintiff's were deprived of their rights under Article IV of the Constitution and the Fourteenth Amendment.

59. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm and emotional trauma.

60. As a further consequence of these deprivations, Plaintiff was required to retain counsel to represent him in court proceedings and incurred expenses associated with these proceedings and prosecuting the instant case.

COUNT II:
42 U.S.C. §1985(3)
CONSPIRACY TO OBSTRUCT JUSTICE BASED ON INVIDIOUS
DISCRIMINATION

61. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

62. Plaintiff and his deceased father are African American, thus members of a protected class of persons.

63. Defendants, MARK E. GORBETT, ERNEST DeWAYNE JANES, SR., DEAN A. JOHNSON, CHRISTIE L. NUNEMAKER, BRENT E. WORMAN, WILLIAM R. KINMAN, JR., CHRISTOPHER M. ROBERTS, LARRY S. FISHER, LISA A. OWSLEY, ERNEST DeWAYNE JANES, JR. and JOSHUA C. JANES are

“persons” as that term is used in 42 U.S.C. §1985.

64. Under color of state law, Defendants GORBETT, JANES, SR., JOHNSON, NUNEMAKER, WORMAN, KINMAN, ROBERTS, and FISHER conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing and defeating the due course of justice in the State of Indiana, with the intent to deny Plaintiff the equal protection of the laws based upon the race of the Plaintiff and the deceased.

65. These Defendants’ actions evidenced a reckless and callous disregard for, and deliberate indifference to, Plaintiff’s constitutional rights.

66. As a direct and foreseeable consequence of this conspiracy, Plaintiff’s were deprived of their rights under Article IV of the Constitution and the Fourteenth Amendment.

67. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm and emotional trauma.

68. As a further consequence of these deprivations, Plaintiff was required to retain counsel to represent them in court proceedings and incurred expenses associated with these proceedings and prosecuting the instant case.

COUNT III:
42 U.S.C. §1986
FAILURE TO INTERVENE

69. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

70. Defendants had knowledge that conspiratorial wrongs were about to be committed.

71. Each of the Defendants had the power to prevent or aid in preventing the commission of those wrongs.

72. Defendants neglected to prevent or aid in preventing these wrongful acts where the wrongful acts were committed and could have been prevented by reasonable diligence.

73. As a direct and foreseeable consequence of this conspiracy, Plaintiff's were deprived of their rights under Article IV of the Constitution and the Fourteenth Amendment.

74. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm and emotional trauma.

75. As a further consequence of these deprivations, Plaintiff was required to retain counsel to represent them in court proceedings and incurred expenses associated with these proceedings and prosecuting the instant case.

COUNT IV:
42 U.S.C. §1983
ACCESS TO COURTS, RIGHT TO SEEK REMEDY

76. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

77. Defendants, MARK E. GORBETT, ERNEST DeWAYNE JANES, SR., DEAN A. JOHNSON, CHRISTIE L. NUNEMAKER, BRENT E. WORMAN, WILLIAM R. KINMAN, JR., CHRISTOPHER M. ROBERTS, LARRY S. FISHER,

are “persons” as that term is used in 42 U.S.C. §1983.

78. Under color of state law, Defendants GORBETT, JANES, SR., JOHNSON, NUNEMAKER, WORMAN, KINMAN, ROBERTS, and FISHER conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing and defeating the Plaintiff’s right to pursue legal redress.

79. These Defendants’ actions evidenced a reckless and callous disregard for, and deliberate indifference to, Plaintiff’s constitutional rights.

80. As a direct and foreseeable consequence of this conspiracy, Plaintiff’s were deprived of their rights under the First and Fourteenth Amendments of the United States Constitution.

81. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm and emotional trauma.

82. As a further consequence of these deprivations, Plaintiff was required to retain counsel to represent them in court proceedings and incurred expenses associated with these proceedings and prosecuting the instant case.

COUNT V:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

83. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

84. Defendants engaged in extreme and outrageous conduct.

85. Defendants’ conduct intentionally or recklessly caused severe emotional distress to another.

COUNT VI:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

86. Plaintiff repeats and realleges paragraphs 1-53 above as though they were fully recited herein.

87. Defendants were negligent.

88. Plaintiff was impacted by the incidents related to Defendants' negligence.

89. Plaintiff suffered serious emotional distress of the type that a reasonable person would expect to occur.

90. Defendants' negligence was a responsible cause of Plaintiff's emotional distress.

DAMAGES

91. Under 42 U.S.C. §§1983, 1985 and 1986, and supplemental state law claims, Plaintiff is entitled to an award of compensatory damages against the Defendants.

92. In the wrongful acts or omissions described in this complaint, defendant acted with fraud, oppression, and malice.

93. By reason of Defendants' acts or omissions described in this complaint, Plaintiff is entitled to recover punitive and exemplary damages.

ATTORNEYS' FEES

94. Under 42 U.S.C. §1988, if Plaintiff is the prevailing party in this litigation, then he will be entitled to receive an award of reasonable attorneys' fees, non-taxable expenses and costs.

WHEREFORE, Plaintiff, LOGAN A. OWSLEY prays for judgment under 42 U.S.C. §§1983, 1985, and 1986, and supplemental state law claims, against Defendants MARK E. GORBETT, ERNEST DeWAYNE JANES, SR., DEAN A. JOHNSON, CHRISTIE L. NUNEMAKER, BRENT E. WORMAN, WILLIAM R. KINMAN, JR., CHRISTOPHER M. ROBERTS, and LARRY S. FISHER for compensatory and punitive damages in a fair and reasonable amount, reasonable attorneys' fees, non-taxable expenses, costs, and such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. §§ 1983, 1985, and 1986.

Respectfully submitted,

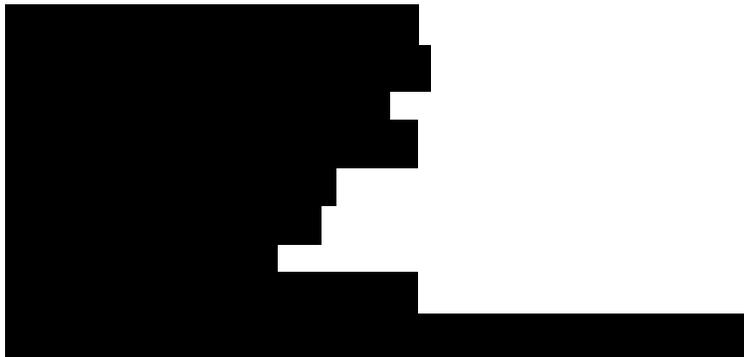
McCAIN LAW OFFICES, P.C.

/s/ Trent A. McCain

One of Plaintiff's Attorneys

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JURY TRIAL DEMAND

Pursuant to FED. R. CIV. P. 38, Plaintiff demands trial by jury in this action of all issues so triable.

Respectfully submitted,

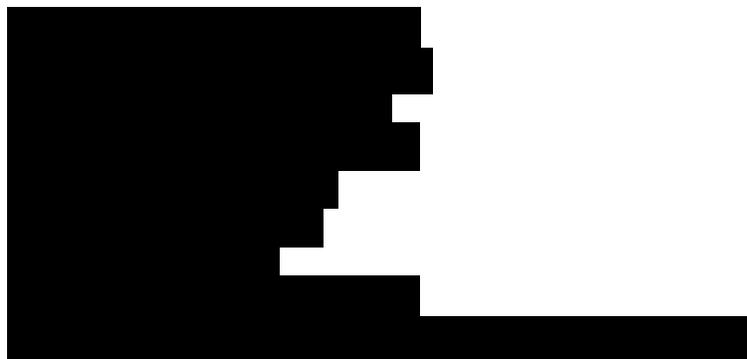
McCAIN LAW OFFICES, P.C.

/s/ Trent A. McCain

One of Plaintiff's Attorneys

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Addresses Redacted

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