

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Dontay St. James,

Plaintiff,

v.

City of Minneapolis, Minnesota,
Minneapolis Police Department,
Officer Mark Suchta, in his individual
and official capacities, Sgt. John Rouner,
in his individual and official capacities,
Sgt. Michael Keefe, Sgt. Bruce Folkens,
in his individual and official capacities,
John Does 1-5, and Hennepin County,
Minnesota, Hennepin County Attorney's
Office,

Defendants.

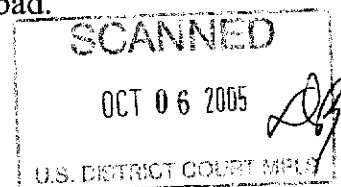
Civil No. 05-CN 2348 DWF/HJB

COMPLAINT

JURY TRIAL DEMANDED

SUMMARY OF CASE

Dontay St. James was shot 4 times through a wooden door by a Minneapolis Police Officer. If a police officer shoots a civilian, it is a crime, unless the shooting is justified. St. James was loaded into the ambulance as a shooting *victim*. Then Minneapolis Police set about the task of attempting to blame St. James for being shot, in order to "justify" the shooting. Despite obvious forensic evidence (all bullets came from the Officer's gun, there were 4 bullet holes in the door), St. James was criminally charged, and the Officer was issued a new gun and put back on the street. Police reports were fabricated to make police look good, and to make St. James look bad.



Throughout the criminal proceedings, St. James contended that he was charged in order to protect the Officer from criminal prosecution, to protect the “image” of the police department, or to prevent St. James from bringing a civil lawsuit. St. James was found not guilty by a jury of his peers.

SUMMARY OF CLAIMS

St. James brings this lawsuit claiming: I) violation of constitutional rights (false arrest, lack of neutral investigation, etc.); and II) malicious prosecution.

PARTIES

1. Plaintiff Dontay St. James is an African American man who resides in Hennepin County. On September 19, 2004 he was the victim of an unjustified police shooting. He had no gun in his hand, and no gun was visible. He had gone into his own apartment and shut and locked the door, before the police officer shot 4 times *through the door*. St. James was hit by all 4 bullets, and 4 bullet holes were left in the door.

2. Defendant Officer Mark Suchta (“Suchta”), the one who shot St. James, is an individual who upon information and belief resides in Hennepin County, is a sworn officer with the MPD, and on September 19, 2004 was assigned to dogwatch patrol in the Third Precinct. Following the shooting, witnesses began exclaiming that Suchta was high on drugs and described symptoms that are consistent with steroid use. But Suchta was not tested for steroids, and the witness observations were concealed by police investigators. Later, in order to justify the shooting, Suchta claimed that St. James had pointed a gun at him. Suchta knew that that was false, and for purposes of any immunity

analysis, Suchta acted with intent to harm, reckless disregard, deliberate or willful indifference, or with malice toward St. James.

3. Defendant Sgt. John Rouner ("Rouner") is a Sergeant with the MPD, and on September 19, 2004 he was a "street supervisor" in the Third Precinct. Upon information and belief he resides in Hennepin County. He is sued in his individual and official capacities. By inventing a story for Suchta to use to justify the shooting, and by falsifying police reports and/or ordering that they be falsified, he acted with intent to harm, reckless disregard, deliberate or willful indifference, or with malice toward St. James.

4. Defendant Sgt. Bruce Folkens ("Folkens") is an individual who upon information and belief resides in Hennepin County, and who is also an employee of the MPD, at times relevant, in the Homicide Unit. He is sued in his individual and official capacities. By ordering that St. James be arrested and booked into jail, even know there was no evidence available at that time to show that St. James had done anything wrong (let alone probable cause that he had committed a crime), Folkens acted with intent to harm, reckless disregard, deliberate or willful indifference, or with malice toward St. James.

5. Defendant Sgt. Michael Keefe ("Keefe") is an employee of the MPD, and in late September 2004 was assigned by Lt. Carlson to be the lead investigator on this case. Rather than performing a neutral and objection investigation, Keefe intentionally manipulated the investigation to favor Suchta, concealed, failed to retain, or destroyed exculpatory evidence, and recommended booking St. James into jail even though no

evidence existed at that time that St. James had done anything wrong. For purposes of immunity analysis, Keefe acted with intent to harm, reckless disregard, deliberate or willful indifference, or with malice toward St. James.

6. Defendant City of Minneapolis (“City”) is a charter city in the State of Minnesota and a municipality for purposes of 42 U.S.C. § 1983. The MPD is a department within the City. (For purposes of clarity, this Complaint will refer to the MPD, but all references to the MPD also refer to the defendant City). For some purposes, the City is liable under the doctrine of *respondeat superior*. The City is liable for conduct of the individual defendants, acting in their individual capacity, not simply due to the fact that they were employees of the MPD, but because the MPD did nothing to stop the illegal and/or unconstitutional conduct of the individuals, failed to have policies in place (or to discipline for violation of those policies) that would prevent individuals from misusing the authority and power of the MPD for their own illegal and/or unconstitutional purposes (and for other reasons as noted herein) and accordingly the MPD endorsed, ratified or even encouraged the torts alleged herein.

7. John-Jane Does 1-5 are reserved for other City officials or employees whose identities are unknown at time of filing.

8. Hennepin County is a municipality in the State of Minnesota, that is capable of being sued. The Hennepin County Attorney’s Office (“HCAO”) prosecutes felony criminal actions in behalf of the People of the State of Minnesota. For purposes of immunity analysis, the administrative policies of the HCAO are not subject to an

immunities defense. Investigations (or lack thereof) by Prosecutors are subject only to qualified immunity.

JURISDICTION

9. Pursuant to 28 U.S.C. §1331, this Court has original jurisdiction over this matter, which arises in part under the laws of the United States including 42 U.S.C. §1983. This Court has the authority to take jurisdiction over all other claims, as supplemental jurisdiction.

FACTUAL STATEMENT

10. In the early hours of September 19, 2004, Officer Suchta was partnered with Officer Conway. They were dispatched to 33rd and Longfellow to a 911 hangup call. They never went where they had been told to go.

11. Around the same time, St. James was on the 3500 block of 11th Avenue South in Minneapolis, where he resided in Apartment #8 on the third floor. Someone on a different floor in the apartment house was having an “after hours” party and he was there. St. James observed an argument between 2 other men at the party, start to get out of control. He believed the one or more of them had guns. People from the party started to stream outside.

12. St. James knew that his girlfriend had moved outside with a crowd, and knew that the trouble-makers were outside as well. St. James was concerned about his girlfriend, and the other friends who had gone to the party with him, so he went back to

his apartment to get his gun. St. James went outside, and, holding his gun pointed down at the ground with the safety on, diffused the argument and urged the trouble-makers to leave. At one point he made a defensive move with the gun, again, designed to protect those he was with.

13. Unbeknownst to St. James, a woman who lived across the street made a 911 call, asking police to check out the situation across the street. Her statement and testimony later confirmed that the man with the gun was pointing it to the ground, and that he was trying to break up an argument.

14. Two *other* squad cars were dispatched to check out the incident, but Conway and Suchta heard the radiocall (describing a Black man, white shirt, with a gun), and on their own they decided that they would go to that address. Upon information and belief Suchta was looking for an “exciting” call. Suchta would later testify under oath, words to the effect of, that “excitement” and “emotion” took over and ran through his body, and that at times like that mistakes are made.

15. St. James was standing in front of his own apartment building when police arrived. Someone yelled, “police,” and many of those outside, began to run inside. St. James put the gun in his waistband, let his long shirt drop over it, and started to run inside. He ran for several reasons. One of which was his fear that as an African American with a gun, he might be shot by police. St. James was the first (or nearly the first) through the door into the apartment building. He ran straight up the front stairs to his apartment, which was the first door after exiting the stairwell. He wanted to get inside his apartment, put his gun away, and not be in the path of police.

16. Suchta had been driving the squad, stopped it in the middle of the street, pulled his gun immediately, and got out of the car leaving the front door wide open. He and Conway chased into the building. The building had two entrances, and a staircase front and back. During the criminal trial, Suchta finally admitted that if chasing someone into a building, police are trained to enter both entrances.

17. Conway went up the front stairs, St. James, and several others who had been outside, were running up the same staircase. Suchta came up the back staircase. By the time he reached the third floor hallway, he had the entire length of the hallway to see St. James standing in front of his door, trying to get inside. Suchta admitted under oath that St. James had his keys into the lock with his right hand, and that he managed to open the door.

18. Afraid, St. James fumbled with his keys, trying to open the lock on his apartment door. Although he heard yelling, he did not know anyone was yelling at him. It took both hands for him to open the lock, and turn the handle on the door. His gun was not visible, it was not in either of his hands. He was not have dreamed of doing any provocative with the gun in the presence of police. As it was, he feared for his life. St. James was able to get the door open and get inside, and lock the door.

19. Soon thereafter, St. James was shot in the right shoulder. Three more shots followed, and all 3 bullets entered St. James' body. He fell to the floor just inside the door.

20. Suchta began to kick at the door and yell words to the effect of, "open the door or I'll shoot you again!" St. James was worried he would be killed, and his first

instinct was to throw the gun from his waistband, as far as he could across the room, so that police would not see the gun and have an excuse to finish him off. He managed to stand up and open the door to let police in.

21. Officer Conway came into the apartment first, took St. James to the ground, but then saw the blood, noticed St. James had been shot in the chest, and began to administer first aid.

22. Because the officers had never been dispatched to the address by the police dispatcher, dispatch did not know where they were. At some point in this timeframe Suchta radioed "shots fired!" but neglected to give dispatch an address. At 3:59 a.m., dispatch toned a "help call," but police and ambulance began speeding to *the wrong address*. Several officers arrived at 33rd and Longfellow, but could not find anyone. According to witnesses, Suchta was disoriented, shaking, and so did not know where he was. Witnesses in the third floor hall were beseeching him to call an ambulance, but several times he had to ask for the address. All of this confusion delayed the arrival of the ambulance.

23. According to witnesses, Suchta was acting out in other ways. He came out into the hall and when asked whether St. James was all right, he threatened to shoot someone else, and called a concerned female a "bitch." He refused to allow St. James' girlfriend to give CPR. Witnesses have stated that they thought Suchta wanted St. James to die. Suchta would claim later, both in his official statement, and under oath, that he stood the entire time in the entryway of the apartment, and did not go into the hall.

24. Police and ambulance finally arrived at the correct address, several police and EMS workers came into the apartment, and St. James was loaded into the ambulance and taken to HCMC. Officer Laura Turner, who was assigned to ride to HCMC with St. James, testified under oath that St. James was loaded into the ambulance as a shooting victim.

25. Back at the scene, numerous police began to arrive (approximately 40). So many police, in fact, that there were no squad cars available to respond to 911 calls in the Third Precinct. Although some of the police were necessary, some were merely gawkers, who came to check out the exciting call. Eventually, a Fifth Precinct squad was assigned to answer Third Precinct calls.

26. Under MPD written policies, the shooter and his partner are supposed to be immediately escorted from the scene, and kept apart until questioning. In part, this is designed to keep them from “fixing” their stories to protect themselves. Police supervisors who arrived at the scene violated that policy, then fabricated police reports to make it *look* like they had followed policy. Sgt. Rouner arrived and made the decision that *he* would be the one to deal with Conway and Suchta. He met with both together (a clear violation of policy), debriefed them, and upon information and belief began to craft a story that would help protect Suchta. That act was malicious, because its intent was to make St. James pay for the wrong perpetrated by Suchta.

27. Rouner himself testified that it is important to keep the shooting team from other officers, so that their testimony will not be tainted. Yet Conway admitted under oath that Rouner talked with him about the incident. Interestingly, Conway said that he

told Rouner that Suchta had shot someone. Conway did *not* testify that he had told Rouner that the shooting victim had done anything to deserve it. That story did not emerge until later.

28. Presumably because he was ordered by Sgt. Rouner to do so, Officer Anthony Smith would later write a police report, fabricated to make it look like he had come to the scene, escorted Officer Conway away immediately, and stayed with him the entire morning. During the criminal trial, when faced with a contemporaneous radiocall and other documentation, Smith finally had to admit that his police report was rife with falsities. But Smith still insisted (under oath) that he took Conway to the Homicide Unit and remained there with him until released later that morning. That could not be true, since Smith was inadvertently captured in a photograph taken at the crime scene *during that same period*. Smith was only one of the Officers who fabricated police reports to help protect police.

29. Sgt. Rouner's police report claims that he escorted Suchta and was with him at all times. That was later proven false. Indeed, before being interviewed by Homicide Investigators, Suchta and Conway met jointly with a police officer whose police report was never presented to St. James' attorneys.

30. Although Rouner did take Suchta to HCMC to have his urine tested for drugs, Rouner made no attempt to ensure that the proper drug screening was done. IN fact, it was not. Numerous substances that are required to be tested for under written police policy, were not tested for in Suchta's urine.

31. Because the MPD has *no* policy requiring that officer be tested for steroids, Suchta was not tested for steroids. Steroids are touted by many across the country as the drug of choice for police officer. Purposely not testing for steroids not only fails to identify armed police officer high on the drug, but it encourages officers who are going to use drugs, to pick the drug that they know will not be tested. St. James alleges herein that Suchta was high on steroids at the time of the shooting, that his judgment was impaired by the drugs (which fosters feelings of being invincible, aggression, and a “hair trigger” temper), and that that lack of steroid testing policy was the moving force behind St. James’ injuries.

32. Although St. James was taken to HCMC as a shooting victim, as soon as he was due to be released from the hospital (approximately 6:00 a.m.), police consulted each other, and Sgt. Bruce Folkens gave the order to book St. James into the Hennepin County Jail. Rather than being allowed to recuperate from his injuries in his own bed, St. James was taken to jail, to give police time to fabricate a story that would protect Suchta, and would subject St. James to false criminal charges. At the time Folkens gave the order to book St. James into jail (the time that Officer Turner testified that St. James was “handcuffed”), he had no evidence that St. James had done anything wrong, let alone probable cause that St. James had committed a crime. This is proven by Folkens’ own affidavit supporting a search warrant, which was drafted *after* Folkens gave the order to arrest St. James, and which contains no allegation that St. James pointed a gun at Suchta. Officer Turner admitted under oath that the MPD would never allowed the victim of an officer shooting to be released from the hospital – they are always booked into jail. This

shows a pattern and practice of falsely arresting the *victims* of police shootings, until such time as police can fabricate a criminal case against them.

33. While at the hospital, police provided false information to medical staff, which interfered with St. James' medical care (turned hospital staff against him), and which resulted in false medical entries which police knew would be in evidence in any civil case against Suchta. St. James contends that this is also a pattern and practice of Minneapolis Police, when the victim of police conduct is taken to HCMC for medical care.

34. Not only did police investigators fail to treat Suchta as a criminal suspect, they favored him, pampered him, and coached him to "justify" the shooting. Lead Investigator Sgt. Keefe purposely had investigators interview civilian witnesses without the tape recorders on, and then during later, audiotaped statements, purposely refused to ask them about subjects like Suchta's drug use symptoms, that Suchta shot St. James through the door, that the door was already closed and locked when the Officer shot, and other exculpatory information. The audiotaped statements were carefully manipulated to make it look like none of the eye witnesses had seen the shooting. That was false.

35. Keefe admitted on cross examination that he had not reviewed any of the physical evidence in the case, or even any pictures of the evidence, and did not recall if he had listened to any radiocalls. Keefe testified that by the time he had "interviewed" Suchta and Conway, he was satisfied that the shooting was justified. That admission shows the real goal of Keefe's "investigation" – to show that the shooting was justified. He was never really investigating Suchta for a crime, and he never bothered to determine

whether St. James had really committed one. He testified that he had never, in his career, found that a police officer had done something wrong, a telling statement about his bias.

36. Although Keefe's official police report describes sessions with Conway and Suchta as "interviews," it came out during the criminal case that: i) Conway and Suchta were allowed to consult with their private attorney about the answers that were typed into the computer; ii) the attorney sometimes asked Keefe to "rephrase his questions," and a "draft" statement was printed off, and Conway and Suchta reviewed it for changes with their attorney before it was "finalized." During these sessions, multiple police came and left the room. Keefe admitted that another Homicide investigator came to deliver information received from civilian witnesses in other interview rooms, and it is St. James' contention that that was done so that Suchta would know what information he had to account for in his "statement." That room was the focal point of the conspiracy to maliciously prosecute Dontay St. James.

37. Back at the scene, more manipulation of evidence was occurring. Sgt. Folkens, who knew that St. James had been hospitalized with gunshot wounds, purposely failed to tell the MPD lab technician that someone had been shot in Apartment 8, and that skewed the technician's conclusion about the trajectory of the bullets. This was done to manipulate a conclusion that the door had been open for at least one shot, assuming that that would support Suchta's fabricated statement.

38. Rather than admitting that St. James' gun was lying across the room, police moved the gun into the doorway of Apartment 8, presumably because they thought that that would somehow corroborate their story that St. James had pointed a gun at Suchta.

Multiple police officers wrote in their reports that they had seen the gun in the doorway. It is clear from reviewing the reports in toto, that officers had been *told* to write that in their reports. In fact, one of the officers' reports states, almost exclusively, that he arrived at the scene, saw the gun in the doorway, and left. Clearly that report was written in order to comply with an order to place that item in the report. One Officer had obviously been told to say that he guarded the gun so that no one would step on it. On cross examination, that story was not borne out, as it would have been impossible for that Officer to keep the gun from being moved while the multiple police and medical workers traipsed through that doorway. Even the police forensic expert admitted that. Further, on cross examination, the police forensic expert admitted that the gun had to have been placed where it appeared in pictures taken by police, since it was within the swing of a door that had been opened and closed multiple times.

39. The police reports were full of these, and other, fabrications. That police report was presented to the HCAO, which failed to perform any investigation of its own, but quickly issued a written complaint before St. James could be let out of jail from the probable cause hold. The HCAO has a policy of not investigating what police present to them, and such lack of investigation was the moving force behind the malicious prosecution of St. James in this case. Even minor investigation of the police story would have shown its falsity. The HCAO has a policy of vigorously pursuing prosecutions against criminal defendants in cases where police misconduct is an issue. It has no policy that requires its prosecutors to consider the motivation of police to lie in cases where their own conduct is at issue. In this case, St. James' criminal defense attorney notified the

HCAO, several times, that the case was falsified, that it was malicious and should be dismissed. No one at the HCAO took any interest in those statements, and upon information and belief no investigation was made, even at that time.

40. Further, the HCAO has a policy of removing discretion from the “front line” prosecutors who are trying the cases. In this case, the prosecutor trying the case had no discretion to dismiss it. That discretion was left to his supervisor’s supervisor, and that supervisor never emerged in the case, never had even one conversation with defense counsel, and completely ignored communications urging him to dismiss the case. The point of giving prosecutors discretion, is that they are familiar with the case, the evidence, the defendant, and they watch evidence come in at trial. It became obvious during trial that the prosecution’s case was crumbling, and yet the prosecutor who knew this had no discretion to dismiss the case. The prosecution insisting on taking the case all the way down the road, despite mounting evidence that police had fabricated policy reports, lied on the stand, manipulated the investigation and ignored physical evidence. That HCAO policy was the moving force behind the criminal prosecution of St. James.

41. All charges were resolved in favor of St. James. The jury got the case at around 1:00 p.m. on the final day of trial. It had lunch, elected a foreperson, and by about 2:30 p.m., recorded 2 not guilty verdict.¹ It is St. James’ contention that that is further evidence that the prosecution was unfounded.

¹ One of the charges was dismissed upon St. James’ motion for judgment of acquittal, following the close of the State’s case.

COUNT I
Violation of 42 U.S.C. §1983
(Against all Defendants)

42. Plaintiff realleges the above allegations as if hereinafter set forth in full and further states and alleges as follows:

53. This claim arises under Title 42 of the United States Code (Civil Rights Act of 1964, as amended), including but not limited to §1983.

54. Defendants acted alone and/or together (2 or more in concert), and one or more of them committed some act in furtherance of the conspiracy to violate Plaintiff's rights (and Plaintiff was damaged).

53. Defendants deprived Plaintiff of his rights, privileges, and immunities secured by the United States Constitution, and specifically the Fourteenth Amendment to the United States Constitution, in conjunction with other rights, including but not limited to the following clearly established rights (the challenge in articulating the underlying constitutional tort in these types of cases is that different courts have used different constitutional phrases to state the claim; St. James has done his best here to indicate the gravamen of his claimed torts, but reserves the right more fully to explicate these torts, or to argue them under additional articulations of tort theory at a later date):

- a. **Substantive due process.** Police fabricating a criminal case with a 10-year minimum prison sentence, against a man who was the *victim* of a police shooting, shocks the conscience of the modern community.
- b. **Due process and/or equal protection.** Keefe's intentionally manipulated investigation was not neutral, and violates St. James' due process right. Further, although there were technically 2 criminal suspects, Suchta, the police officer, was given coaching, comfort, and had no consequences,

whereas St. James was falsely arrested, made to recover in jail, and had a year-long false criminal prosecution as consequences. That violates St. James' right to equal protection under the law. The HCAO's failure to investigate, and other policies or non-policies noted above violate both due process and equal protection rights. MPD policies and lack thereof, also violate both due process and equal protection. St. James also alleges the constitutional tort of "malicious prosecution" (which in some Circuits is articulated as such but is often an equal protection or due process violation).

c. Excessive force. Shooting St. James through a door was excessive force.

54. Defendants (and each of them) knew they were violating the federal law and constitutional rights of Plaintiff and/or acted with deliberate indifference to the rights of Plaintiff (or acted intentionally to harm, or with reckless disregard for the rights of Flowers) as noted above. The Defendants acted under color of law (public officials acting alone and/or conspiring with private officials) of a statute, ordinance, regulation, resolution, policy, custom or usage when they deprived Plaintiff of his Constitutional rights, privileges, and immunities.

55. As a direct and proximate result of the Defendants' conduct, inaction, policy or customs as set forth in more detail above, Plaintiff suffered the deprivation of his constitutional and/or federal statutory rights and suffered personal injuries, including injury to her career/loss of income, humiliation, mental anguish and suffering, and emotional distress.

56. By reason of the foregoing, Plaintiff has been damaged in an amount in excess of \$50,000.

COUNT II
Malicious Prosecution – state common law
(Against all defendants)

57. Plaintiff realleges the above allegations as if hereinafter set forth in full and further states and alleges as follows:

58. Defendants instituted a criminal action against Plaintiff with no reasonable ground on which to base a belief that the State would prevail on the merits (and/or lacked probable cause – under Minnesota law a finding of probable cause is not a defense if the individuals lied to try to obtain it), and Defendants acted with malicious intent. No probable cause was ever found on the First Degree assault on police officer charge. The criminal case terminated in favor of St. James.

59. By reason of the foregoing, Plaintiff has suffered damages and other harm in a reasonable amount in excess of \$50,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief in the form of an injunction against Defendants, and each of them, and/or as follows:

1. Judgment in a reasonable amount in excess of \$50,000, and including but not limited to compensatory, presumed and punitive damages (Plaintiff reserves the right to bring a motion to add punitive damages to state-law claims);
2. Interest on the aforesaid amounts;
3. Awarding to Plaintiff his reasonable attorney fees and costs and disbursements incurred herein (including special damages of attorney fees for state criminal prosecution); and

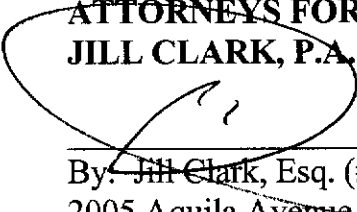
4. Issuing a temporary and/or permanent prohibitory injunction prohibiting Defendants, their officers, agents, employees, and successors, from engaging in the illegal practices complained of herein.

5. Plaintiff seeks punitive damages on all federal claims.

Plaintiff hereby demands a trial by jury on all applicable Counts. Plaintiff reserves the right to amend to add a claim for punitive damages under State law.

Dated: October 6, 2005

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