IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

1:07cv953

RYAN MCFADYEN, *et al.*, **Plaintiffs,** **v.** **DUKE UNIVERSITY, *et al.*,** **Defendants,**	**MOTION TO DISMISS COUNTS 5 AND 18 AGAINST DEFENDANT WILSON BASED ON USCA DECEMBER 17, 2012 OPINION AND ORDER**

NOW COMES Defendant Linwood Wilson in a Motion to Dismiss remaining Causes of Actions: 5 and 18, against Defendant Linwood Wilson as a result of the recent 4th Circuit Court of Appeals rulings.

FACTS

On September 18, 2012 Appellees and Appellants argued before Judges Wilkinson, Motz and Gregory, Circuit Judges of the 4th Circuit Court of Appeals. On December 17, 2012, the Circuit Court of Appeals issued their opinion and rulings. Judge Motz wrote the majority opinion, Judge Wilkinson wrote a concurring opinion, and Judge Gregory wrote an opinion concurring in part and dissenting in part. (See Attached Opinions)

Defendant Linwood Wilson was at all times a governmental employee as the Investigator for the 14 Judicial District (Durham County, NC) and was employed by NC Administrative Office of the Courts and clearly had absolute and qualified immunity.

Page 19, II ¶ 2 of Judge Motz Opinion states: Qualified immunity protects government officials from suit for damages when their conduct does not violate a "clearly established" constitutional right. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To escape dismissal of a complaint on qualified immunity grounds, a plaintiff must (1) allege a violation of a right (2) that is clearly established at the time of the violation. *See Pearson v. Callahan*, 555 U.S. 223, 231(2009).

Although we may address immunity without ruling on the existence of a right, *see id.* at 236, if a plaintiff fails to allege that an official has violated any right, the official "is hardly in need of any immunity and the analysis ends right then and there," *Abney v. Coe*, 493 F.3d 412, 415 (4th Cir. 2007).

USCA ORDER

In No. 11-1458 (1:07-cv-00953-JAB-WWD), the judgment of the district court is REVERSED on all issues appealed (Counts 1, 2, 5, 13, and 18 below). In No. 11-1460 (1:07-cv-00953-JAB-WWD), the judgment of the district court is REVERSED as to Counts 1, 2, 5, and 18 against all defendants.

FIFTH CAUSE OF ACTION:
FALSE PUBLIC STATEMENTS IN VIOLATION OF 42 U.S.C. §1983
(Against Addison, Gottlieb, Hodge, and Wilson, in their individual and official capacities; Nifong in his individual capacity and his official capacity with respect to the Durham Police; Arico, Steel, Brodhead, Burness, in their individual capacities and official capacities with Duke University)

954. Plaintiffs incorporate the foregoing allegations by reference here.

955. Addison, Gottlieb, Nifong, Hodge, Wilson, the City of Durham, Levicy, Arico, Steel, Brodhead, Burness, and Duke University are "persons" for purposes of 42 U.S.C. § 1983, and, at all times relevant to this cause of action, were acting under color of law.

956. Addison, Gottlieb, Nifong, Hodge, Michael, Wilson, the City of Durham, Steel, Brodhead, Burness, and Duke University, acting individually and in concert, published false and stigmatizing statements about and relating to the Plaintiffs. Examples of the Defendants' stigmatizing false public statements include:

A. Gottlieb's published statements falsely asserting as fact that Mangum "was raped, sodomized and strangled" by Plaintiffs or by their teammates in their presence.

B. Addison's published statements falsely asserting as fact that investigators had "really, really strong physical evidence" to support Mangum's claims; that Mangum was, in fact, "sodomized, raped, assaulted and robbed" by Plaintiffs or in their presence; that "the attackers" left substantial genetic material that was collected in the SAE; that the DNA testing would reveal which team members

were “the attackers,” that Mangum was “brutally raped” in a “brutal assault… that occurred within that house,” which Plaintiffs refused to explain. He suggested that the millions of viewers watching him imagine that Plaintiffs brutally raped their daughter, and accused Plaintiffs of stonewalling the police investigation, claiming that the NTID Order (and its Affidavit) were necessary only because Plaintiffs knew who raped Mangum but refused to tell the police.

C. Deputy/Acting Chief Hodge’s statements falsely claiming that the police had a “strong” case against Plaintiffs, conveying police had amassed evidence that Mangum was raped and sodomized by the Plaintiffs or in their presence.

D. Wilson’s published statements falsely asserting as fact that Mangum’s account of the number of “attackers” did not change.

E. Nifong’s published statements—volumes of them—falsely conveying, among many other things, that a rape occurred, that the medical evidence was convincing, and that he was personally convinced and there was “no doubt in [his] mind” that Mangum was raped by Plaintiffs or in their presence. He claimed that the physical evidence contradicted Plaintiffs’ claims of innocence, and they had not confessed because, alternately, they were not “enough of a man to come forward,” or they did not “want to admit to the enormity of what they’ve done;” he characterized Plaintiffs as ‘racist-rapists,’ asserting “there was a deep racial motivation” animating the gang rape. He publicly mused, “I would like to think that somebody [not involved in the attack] has the human decency to call up and say, ‘What am I doing covering up for a bunch of hooligans?’” He accused Plaintiffs of covering up their own culpability in the crimes by “hiding behind the Fifth Amendment” and erecting a “Stone Wall of Silence.” Nifong wound up his initial stigmatization of the Plaintiffs by saying he “refuse[d] to allow Durham’s view in the minds of the world to be a bunch of lacrosse players at Duke raping a black girl from Durham.”

F. Michael published false public statements that a woman unrelated to Mangum and Pittman called 911 earlier in the evening to report a mob of white men hurling racial epithets at her, and that the police had determined that the caller was not Pittman, that Mangum reported she was raped at the Kroger, that Mangum was taken from Kroger to Duke Hospital (to avoid revelation of Mangum’s involuntary commitment procedures at Durham Access).

G. Levicy published statements falsely asserting that she conducted Mangum's SAE herself, that Mangum exhibited objective indices of actual pain, that there was evidence of blunt force trauma visible in the SAE; and her written narrative in the SAER was an accurate demoralization of a SANE interview she conducted herself; and that the SAE corroborated Mangum's claim that she was violently gang raped.

H. Arico published statements falsely asserting that a complete SAE was performed, it was done by a competent SANE, and produced evidence of blunt force trauma via a coloposcope.

I. Chairman Steel, President Brodhead, and John Burness, pursuant to a script of "talking points" they carefully crafted with the aid of media consultants, repeatedly published false statements conveying that Plaintiffs had participated in conduct that was "far worse" than even the horrific race-motivated gang-rape that was reported, either as participants or as accomplices.

957. The Defendants' statements charging Plaintiffs with multiple forms and instances of illegality, dishonesty or immorality were false, and were made in conjunction with and/or in connection with deprivations of Plaintiffs' tangible interests as alleged herein; for example:

A. The deprivation of Plaintiffs' rights under Article IV of the United States Constitution and the First, Fourth, Fifth, and Fourteenth Amendments thereto as alleged in this Complaint;

B. The deprivation of Plaintiffs' statutory right to reports of all tests conducted with the products of the NTID Procedures to which Plaintiffs were subjected;

C. The malicious and public deprivations Plaintiffs' right to compete and participate in Division I intercollegiate athletics;

D. The deprivation of Plaintiffs' educational status as students enrolled in the University.

E. The deprivation of Plaintiffs' privacy rights under federal and state banking laws.

F. The deprivation of Plaintiffs' rights to privacy in their confidential financial transaction card accounts under federal and state banking laws.

G. The deliberate deprivation of Plaintiffs' rights under the federal and state

election laws.

958. The foregoing deprivations were temporally and causally connected and proximate to the stigma to which Defendants subjected Plaintiffs, and those same Defendants who imposed the stigma explicitly or implicitly adopted the stigmatizing statements.

959. The Defendants' statements were false, and were published via local, national, and international media outlets, with the malicious and evil intent to stigmatize the Plaintiffs in the eyes of millions of people throughout the world, and deprive Plaintiffs and their teammates of a fair trial or to peremptorily impeach Plaintiffs' character and credibility as defense witnesses. The false public statements were made in connection with the violations of Plaintiffs' constitutional rights, as alleged herein, and also in connection with the deprivation of the other tangible interests alleged herein.

960. The false statements were designed by Defendants to create, galvanize and then sustain the public's outrage at the Plaintiffs and to establish a presumption of their guilt and to stir up racial hostility towards the Plaintiffs in their local community and throughout the nation. The Defendants conduct quickly succeeded in that; those very sentiments were rife in the Durham community, the state and the nation, and had so completely and universally stigmatized the Plaintiffs, that Nifong stated that a change of venue would be futile, unless the trial were moved to China.

961. Plaintiffs had no opportunity before or after their stigmatization to formally and directly clear their good names through any form of proceedings.

962. As a direct and proximate result of Defendants' conduct, Plaintiffs were deprived of their rights under Article IV of the United States Constitution, and the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments thereto.
(As Against Duke University and the City of Durham)

963. Steel, Brodhead, and Burness, shared final policy-making authority for the University with respect to controlling or correcting public statements attributable to the University. Steel, Brodhead and Burness participated in publishing stigmatizing false

public statements of their own. Further, each of them knew of the outrageous, false and stigmatizing Faculty Statements being made publicly in demonstrations on- and off-campus, lectures in University classrooms, in speeches at professional conferences, in local and national newspapers, and on local and national television news programs. They knew or were deliberately indifferent to the likelihood that their subordinates' conduct was violating or would likely lead to the violations of Plaintiffs' constitutional rights; yet they, individually and in concert with the City of Durham officials, refused to intervene to correct the unconstitutional conduct. They refused even to publicly say that the Faculty Statements were not those of the University. When asked, Brodhead responded to the stigmatizing faculty statements and conduct by asking rhetorically, "how can I be surprised at the outrage?"

964. Hodge and Graves, who had delegated their final policy-making authority to Nifong, Gottlieb, and Addison, ratified and subsequently participated their stigmatizing statements. They did not revoke the delegated policy-making authority or take any act to correct the stigmatizing effects of the false public statements. Further, both ratified the stigmatizing false statements knowing that the evidence Hodge and Graves relied upon was so weak that, when Nifong reviewed it, he concluded, "We're f*****d," and, when Himan was directed to obtain an indictment of Reade Seligman from the Grand Jury, he asked, "With what?"

965. Further, many of the Duke University Defendants named herein, particularly the CMT Defendants, continued to make these false statements and/or condoned the similarly malicious false statements of their subordinates, long after they were aware of the stigmatizing effects with respect to the criminal case and that Mangum's accusations were false. Upon information and belief, these Defendants continued to make false public statements and/or condone those of their subordinates impeach the Plaintiffs' character in the eyes of putative jurors and to dissuade Plaintiffs from petitioning the courts for redress for the Defendants' violations of their civil rights.

966. Defendants' conduct evinced a malicious, corrupt intent and can only be attributed to evil motives. It was plainly obvious that those to whom Defendants had delegated their final policy making authority were violating or would violate Plaintiffs'

constitutional rights that their failure to act to prevent or stop the ongoing violations of Plaintiffs' constitutional rights evinces a reckless and callous disregard for, and deliberate indifference to the Plaintiffs' constitutional rights.

967. As a direct and proximate result, Plaintiffs were deprived of their rights under Article IV of the United States Constitution, and the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments thereto.

968. As a direct and foreseeable consequence of the foregoing deprivations, Plaintiffs have suffered loss of education, loss of privacy, loss of property, loss of liberty, physical harm, emotional trauma, and irreparable harm to their reputations, and economic loss, including but not limited to the costs of retaining counsel, forensic experts, investigators and others in order to defend themselves against the false claims and fabrication of evidence throughout the 13-month police investigation of Mangum's claims, as both witnesses and putative defendants in a subsequent prosecution as 'accomplices' to the same crimes.

EIGHTEENTH CAUSE OF ACTION:
COMMON LAW OBSTRUCTION OF JUSTICE & CONSPIRACY
(Against Nifong in his Individual Capacity and in his Official Capacity with Respect to Durham Police; Steel, Brodhead, Burness, Gottlieb, Himan, Lamb, Wilson, Meehan, Clark, DNASI, Levicy, Manly, Arico, and Dzau, in their Individual and Official Capacities; DNASI, PDC, DUHS, and Duke University)

1189. Plaintiffs incorporate the preceding allegations by reference here.

1190. Beginning on March 14, 2006 and continuing to the present Nifong Steel, Brodhead, Burness, Gottlieb, Himan, Lamb, Wilson, Meehan, Clark, DNASI, Levicy, Manly, Arico, Dzau, DNASI, PDC, DUHS, and Duke University, acting individually and in concert, attempted to and did, in fact, prevent obstruct, impede and hinder public and legal justice in the State of North Carolina as alleged herein.

1191. Gottlieb, Himan, Wilson, Nifong, Meehan, Clark and DNASI obstructed justice by conspiring to manufacture and by manufacturing false and misleading reports with respect to the forensic testing of evidence in the investigation of Mangum's

allegations, knowing that the reports of forensic testing would forensic with the knowledge that these reports would be used to bring and maintain criminal prosecutions against Plaintiffs, as principals or accessories to crimes Defendants knew never happened, or to intimidate Plaintiffs and other witnesses who had personal knowledge necessary to prove their innocence.

1192. Gottlieb, Himan, Wilson, Nifong, Steel, Graves, Dean, and Best obstructed justice by conspiring to manufacture and manufacturing false and misleading investigative reports designed to conceal exculpatory witness accounts with the knowledge that these reports would be used bring and maintain criminal prosecutions against Plaintiffs, as principals or accessories to crimes Defendants knew never happened, or to intimidate Plaintiffs and other witnesses who had personal knowledge necessary to prove their innocence.

1193. Gottlieb, Himan, Wilson, Nifong, Steel, Dzau, Manly, Arico, Levicy, DUHS, and Duke University obstructed justice by conspiring to manufacture and manufacturing false and misleading forensic medical records and reports with respect to the SAE conducted at DUHS reports designed to conceal exculpatory witness accounts with the knowledge that these reports would be used bring and maintain criminal prosecutions against Plaintiffs, as principals or accessories to crimes Defendants knew never happened, or to intimidate Plaintiffs and other witnesses who had personal knowledge necessary to prove their innocence.

1194. Gottlieb, Himan, Wilson, Nifong, Meehan, Clark, and DNASI obstructed justice by conspiring to deprive Plaintiffs of copies of reports exonerating DNA test results that existed on or before April 10, 2006, in the form of copies of the raw data from tests conducted with their DNA, which Plaintiffs' retained forensic experts could have expeditiously interpreted—within hours—as conclusively exonerating them when those reports were available on or before April 10, 2006.

1195. Gottlieb, Himan, Wilson, and Nifong conspired to obstruct justice and obstructed justice by intimidating and attempting to intimidate Plaintiffs, as putative witnesses in their own defense or the defense of their teammates, and other witnesses with personal knowledge necessary to prove the Plaintiffs' innocence, including Plaintiffs' teammates, Sergeant Shelton, Kimberly Pittman, and Moezeldin Elmostafa, who had personal knowledge and/or possession, custody or control of evidence their innocence, with the purpose of altering these witnesses' exonerating testimony.

1196. Nifong, Gottlieb, Clayton, and Himan, individually and in concert, conspired to obstruction of justice and obstructed justice by manipulating witness identification procedures with the purpose of charging and convicting Plaintiffs for crimes these Defendants knew never occurred.

1197. Nifong, Addison, Gottlieb, Himan, Wilson, Arico, Burness, CMT Defendants, and Duke University, individually and in concert, obstructed public justice by making false public statements intended to generate and galvanize public outrage, racial animus, and to subject Plaintiffs to national and international infamy and condemnation for the purpose of coercing false confessions and/or facilitating their wrongful convictions for crimes they knew never occurred; and to harass, intimidate, and place them in fear of their personal safety for their insistence upon bearing witness to the innocence of their teammates and their own innocence; and to intimidate, harass and otherwise subject Plaintiffs to local and national infamy for the purpose of dissuading Plaintiffs from petitioning the federal or state courts for civil redress of the harms that flowed from the violations of their rights as alleged herein.

1198. After it the Attorney General publicly exonerated Plaintiffs and declared that no crime had ever occurred, Steel, Brodhead, Dzau, Burness, Lange, Moneta, Graves, Dean, Wasiolek, individually and collectively, obstructed public justice by making plans to conceal their participation in the conspiracies alleged herein. By way of example, after the conspiracies disbanded in January, 2007, Moneta sent an email to a list of senior University administrators requesting that the recipients meet with him

immediately for the express purpose of the stated purpose of fabricating a uniform explanation for their conduct, or, in Moneta's words, "get[ing their] stories straight." Moneta also directed the recipients of his email to destroy the email immediately. The purpose of that and other efforts by University officials with policymaking authority with respect to the investigation of Mangum's claims was to defeat or diminish the award of damages in civil actions they assumed would be brought against them and the University by Plaintiffs and/or their teammates.

1199. In the context of and in combination with the events and conduct described in this action, these Defendants' conduct evinced a malicious and corrupt intent to harm Plaintiffs.

1200. As a direct and foreseeable consequence of Defendants' conduct, Plaintiffs were unreasonably and unlawfully subjected to threat of indictment and criminal prosecution as principals or accomplices in crimes that the Defendants knew never happened, which they endured for over a year because of the Defendants' conspiracies to impede, hinder and obstruct public and legal justice.

1201. As a direct and foreseeable consequence of being subjected to these obstructions of justice and conspiracies to obstruction of justice, Plaintiffs have suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education, irreparable harm to their reputations, and were required to retain counsel to represent themselves in a protracted criminal investigation, and incurred expenses that were reasonable and necessary to defend themselves against these unlawful conspiracies and in the criminal prosecutions wrongfully maintained by Defendants against Plaintiffs' teammates as principals in the same crimes that Plaintiffs were accused of aiding and abetting.

1202. As a direct and foreseeable consequence of these conspiracies, Plaintiffs have suffered loss of education, loss of privacy, loss of property, loss of liberty, physical harm, emotional trauma, and irreparable harm to their reputations, and economic loss,

including but not limited to the costs of retaining counsel, forensic experts, investigators and other professionals to defend against the false claims and fabrication of evidence throughout the 13-month police investigation of Mangum's claims, as both witnesses and putative defendants in a subsequent prosecution of 'accomplices' to the alleged sexual assault.

Defendant Wilson relies on his Motion to Dismiss, Doc# 44, and the Order from the 4th Circuit Court of Appeals for reasons to dismiss these Counts.

PRAYER FOR RELIEF

HEREBY, Defendant Linwood Wilson prays the Court that all causes of action against Defendant Wilson must be dismissed because they are either insufficiently pled, barred by the doctrine of absolute immunity, qualified immunity, or both. Accordingly, Defendant Wilson respectfully moves this Court to dismiss all claims with prejudice.

Respectfully submitted, this the 18th day of December 2012.

By: /s/ Linwood E. Wilson
Linwood E. Wilson
Pro Se

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record (or that the party is a registered user of record), to each of whom the NEF will be transmitted.

This the 18th day of December 2012.

By: /s/ Linwood E. Wilson
Linwood E. Wilson
Pro Se