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

RYAN MCFADYEN, *et al.*, **Plaintiffs,** **v.** **DUKE UNIVERSITY, *et al.*,** **Defendants,**	**1:07cv953**

Reply Brief to Plaintiffs' Opposition To Defendant's Motion for Judgment on the Pleadings and Motion to Dismiss Uncontested Re Renewed Motion to Dismiss

NOW COMES Defendant Linwood Wilson, *pro se*, in reply to Plaintiffs' Opposition to Motion for Judgment on the Pleadings and Motion to Dismiss Uncontested Re Renewed Motion To Dismiss.

Plaintiffs' Attorney responds by stating that Judgment on the Proceedings is untimely:

IV. WILSON FAILED FILE HIS MOTION "EARLY ENOUGH NOT TO DELAY TRIAL."

Rule 12(c) permits a party to move for judgment on the pleadings, but only so long as the motion is filed "early enough not to delay trial." Fed. R. Civ. P. 12(c). Given that this case is now in its seventh year and that Plaintiffs have been prevented from conducting discovery of any kind on their claims against Wilson solely as a result of the Rule 12 motions already filed in this case, Plaintiffs respectfully submit that Wilson has failed to file his motion for judgment on the pleadings "early enough" as Rule 12(c) requires.

Plaintiffs' apparently have forgotten that Doc 218 Judge Beaty's Order to Stay further actions until the Fourth Circuit Court of Appeals process was resolved:

Doc. 218 Order Granting Stay

IT IS THEREFORE ORDERED that the Motions to Stay [Doc. # 205, 211, 212] are GRANTED and all proceedings in this case with respect to Counts 1, 2, 5, 12, 13, 14, 18, 25, 26, 32, 35, and 41, including discovery, are stayed pending the resolution of the interlocutory appeal in this case. HOWEVER, IT IS FURTHER ORDERED that discovery may proceed with respect to Counts 21 and 24, but discovery may not be directed to any of the City Defendants until the resolution of the interlocutory appeal unless otherwise ordered by the Court.

This, the 9th day of June, 2011.

United States District Judge

Since this order stayed everything, Wilson argues that his motion for judgment on the pleadings is timely and early enough not to delay trial. Therefore, Plaintiffs'' argument fails.

Plaintiffs' further state "and in his (Wilson's) Answer [ECF 377] to the Second Amended Complaint, Wilson denies Plaintiffs' contention that he participated in a conspiracy to obstruct justice. But Wilson admits most, if not all, of the material facts Plaintiffs allege to support that claim. For example, Wilson admits Plaintiffs' allegation that he participated in the "interview conducted in the DA's office . . . of Nurse Levicy." [ECF 377 at 143 (Answer ¶ 788).] Wilson admits that he "met Nurse Levicy and Investigator Himan on the evening of January 10, 2007." [*Id*. at 145 (Answer ¶ 798).] Wilson admits that, during that January 10 meeting, he, Levicy, and Himan discussed

how Levicy would explain the absence of any DNA belonging to any member of the Duke men's lacrosse team on the swabs, smears, or any other evidence in the rape kit; and that "Nurse Levicy responded to multiple questions about condoms during her interview on January 10, 2007." [*Id*. at 144 (Answer ¶795).] And, Wilson admits Plaintiffs' allegation that, during the January 10, 2007, meeting, "Levicy stated that she 'wasn't surprised when [she] heard no DNA was found because rape is not about passion or ejaculation but about power.'" [*Id*. at 145 (Answer ¶796).] Were Plaintiffs' sitting in on the interview or maybe they are speculating.

Well here we go again; Plaintiffs' attorney is making statements that are not true. (Say it ain't so!) The conversation that Levicy stated "she wasn't surprised when she heard no DNA was found because rape is not about passion or ejaculation but power" was not made at the June 10 meeting. It was made on the phone the following morning with a phone call to Wilson in his office. (Clearly stated in Wilson's report on Levicy's interview.) Plaintiffs' are again interpreting things the way that sounds best for the benefit of justifying their claim in light most favorable to them. I doubt Plaintiffs' want to go back to the Fourth Circuit; they don't have a very good record there.

Just because Defendant Wilson was present at a meeting with two other defendants, in this case, does NOT mean that he conspired with them on anything. He observed, asked questions, took notes, and made a report for preparation for trial. As required by NC Statutes providing responsibilities of DA Investigator.

North Carolina General Statutes § 7A-69 Investigatorial assistants

The district attorney in prosecutorial districts 1, 3B, 4, 5, 7, 8, 11, 12, 13, 14, 15A, 15B, 16A, 18, 19B, 20A, 20B, 21, 22A, 22B, 24, 25, 26, 27A, 27B, 28, 29A, 29B, and 30 is entitled to one investigatorial assistant, and the district attorney in prosecutorial district

10 is entitled to two investigatorial assistants, to be appointed by the district attorney and to serve at his pleasure.

It shall be the duty of the investigatorial assistant to investigate cases preparatory to trial and to perform such other Duties as may be assigned by the district attorney. The investigatorial assistant is entitled to reimbursement for his subsistence and travel expenses to the same extent as State employees generally. (1975, c. 956, s. 6; 1977, c. 969, s. 1; 1981, c. 964, s. 2; 1993, c. 321, s. 200.7(e); 1997-443, s. 18.16; 1998-212, s. 16.21; 1999-237, s. 17.9; 2004-124, s. 14.7(a); 2005-276, s. 14.2(p); 2007-323, s. 14.25(n).)

Also note page 6, Doc. 390, Duties of the Investigator for the 14th District of NC.

However, in the pleadings in their second amended complaint ¶ 63 under heading **3. Durham Investigator Defendants** they include Defendant Wilson as a law enforcement officer, as the Investigator of the 14th Judicial District of North Carolina. Plaintiffs' can't have it both ways. Either he is or he isn't. Again just say whatever fits the occasion. Who knows maybe they will red line count 18 too.

When Plaintiffs' stated in their second amended complaint that Wilson was a Durham Investigator Defendant they were admitting he was considered a law enforcement officer. However, now they are saying he is NOT a police officer and never has been. Wrong again! From 1972 to 1979 Defendant Wilson was a Police Officer with the City of Durham. In Judge Motz's opinion page 18, ¶ 1, she called Defendant Wilson a police officer referencing the December 21 interview of Crystal Mangum.

The relevant issue here is whether or not Wilson was considered in Plaintiffs' second amended complaint a Durham Investigator Defendant. By their own concession in, their complaint, they admit Wilson was a Durham Investigator Defendant. Not a State Employed Investigator for the District Attorney's Office. Why were Defendant's Wilson and Nifong not sued as State Employees and also why wasn't the State of NC sued?

Could it be because the deal with A.G. Cooper worked out so the State wasn't sued? The records sure got sealed fast! Instead of suing 2 State Employees in the course of their employment, Plaintiffs' chose to make Wilson and Nifong appear to be City employees, Nifong was running the investigation so he was authorized by the City, according to what Plaintiffs' would have you believe. Wilson, on the other hand, was a Durham Investigator not a State Employee. Talk about chasing rabbits.

Plaintiffs state that WILSON'S THIRD MOTION TO DISMISS MERITS NO CONSIDERATION BECAUSE IT VIOLATED THE LOCAL RULES AND STATES NO BASIS FOR DISMISSAL OF PLAINTIFFS' OBSTRUCTION OF JUSTICE CLAIM.

Plaintiffs' never filed any response stating these claims until they find out the case should be dismissed, for their legal error in judgment, by making the decision of no merit so, we don't have to respond, instead of asking the court for a ruling. Plaintiffs' never asked for any relief for not responding. The excuse they are now using certainly doesn't meet the standards of "excusable neglect". This re renewed motion to dismiss was a new motion, with a new document number, and it was simply neglected by the Plaintiffs. Therefore, they have abandoned the motion as uncontested and the motion to grant defendant's motion to dismiss uncontested motion should be allowed.

CONCLUSION

For reasons stated herein, Defendant Linwood Wilson's motion for judgment on the pleadings should be GRANTED, and for reasons stated herein Defendant Linwood Wilson's Motion to Dismiss Uncontested re renewed Motion to Dismiss should be

GRANTED. If the court should decide not to grant the judgment on the pleadings, then the Court should GRANT the motion for a clearly uncontested motion to dismiss.

This the 6th Day of May, 2014

Respectfully,

/s/ Linwood E. Wilson
Linwood E. Wilson

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 6th day of May, 2014.

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