

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JOSEPH D. AMRINE,)
)
 Plaintiff,)
)
 v.)
) Case No. 04-4300-CV-C-NKL
 GEORGE ROBERT BROOKS, et al.,)
)
 Defendants.)

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Joseph Amrine, by his undersigned counsel, and for his cause of action against the above named defendants states and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff's claims are brought under the Constitution of the United States, the Missouri Constitution, Missouri tort law and 42 U.S.C. § 1983. Jurisdiction of the Court over this action is provided by 28 U.S.C. §§ 1331 and 1343(a)(4). This Court has jurisdiction of Plaintiff's state law claims pursuant to 28 U.S.C. §1367.

2. The Court has jurisdiction over Defendants because the acts alleged in this Complaint were committed in Cole County, Missouri, which lies within the Western District of Missouri, Central Division. In addition, Defendants have minimum contacts with the Western District of Missouri and the State of Missouri.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred in Cole County, Missouri, which lies within the Central Division of the Western District of Missouri, and

because Defendants Brown, Brooks, Hemeyer, and Lee performed their official duties within the Central Division of the Western District of Missouri.

THE PARTIES

Plaintiff

4. Plaintiff Joseph Amrine is a citizen of the United States residing at 3507 East 45th Terrace, Kansas City, Jackson County, Missouri.

Defendants

5. Thomas J. Brown, III (“Brown”) was at all times pertinent to this complaint the prosecuting attorney for Cole County, Missouri. He was charged by law with the supervision, management, and control of the Prosecutor’s Office and was responsible for the implementation of uniform policies and procedures regarding criminal investigations and prosecutions. Brown is being sued in his individual and official capacities.

6. Defendant George Brooks (“Brooks”) was at all times pertinent to this complaint the Chief Investigator for the Missouri State Penitentiary in Jefferson City, Missouri, and was responsible for investigating incidents at the Penitentiary and briefing Superintendent Armontrout as to his findings. Brooks is being sued in his individual and official capacities.

7. Defendant John Hemeyer (“Hemeyer”) was at all times pertinent to this complaint the Deputy Sheriff or the Sheriff of Cole County, Missouri. Hemeyer is being sued in his individual and official capacities.

8. Defendant Richard Lee (“Lee”) was at all times pertinent to this complaint an investigator in the Cole County prosecutor’s office. Lee is being sued in his individual and official capacities.

ALLEGATIONS COMMON TO ALL COUNTS

9. On October 18, 1985, at approximately 2:30 p.m., Gary “Fox” Barber, an inmate at the Missouri State Penitentiary in Jefferson City, “SuperMax”, was fatally stabbed in the recreation room.

10. There were approximately fifty inmates and two guards, John Noble, CO-I (“Noble”), and Thomas Smith, CO-I, in the locked recreation room. Among the inmates were Amrine, an African-American; Terry Lee “Tat-Tat” Russell (“Russell”), an African-American; and Randall E. Ferguson (“Ferguson”), and Jerry Reginald Poe (“Poe”), both Caucasian.

11. Neither of the guards saw the actual stabbing of Barber, but Noble, who was standing in the front of the recreation room, saw Barber immediately after he was stabbed, chasing another inmate from the back of the room towards the front of the room. Noble noticed an ice pick drop from Barber’s hand and then Barber fell face forward onto the floor in front of Noble.

12. When other officers responded to the call for assistance, Noble pointed out to Officer Danny Bowers the inmate that he thought Barber was chasing. That inmate identified himself to the officers as Russell.

13. About ten days before the stabbing, Barber and Russell had gotten into a fight after breakfast regarding a statement that Barber had allegedly made regarding Amrine. Both Russell and Barber were given ten days of cell detention and were released from that detention at 10:00 a.m. on the day that Barber was killed.

14. The recreation room was sealed after the stabbing and the guards obtained everyone’s name and inmate identification number. Hemeyer took photos.

15. On information and belief, Officer Bowers took Russell from the room to the Captain's office, searched him, and allowed him to re-enter the recreation room without interviewing him.

16. On information and belief, Brooks had primary investigative authority in the case.

17. Brooks interviewed the corrections officers. The correction officers prepared handwritten Inter-Office Communications ("IOC's") which, on information and belief, were edited and retyped by their captain. Brooks had access to all the IOC's written that day. On information and belief, not all inmates who were present in the recreation room were interviewed. Of those who were, some implicated Amrine in the stabbing and others exonerated him. At least one inmate later testified that Russell was in the recreation room when the stabbing occurred.

18. Amrine was the first inmate actually interviewed. Sometime between 3:00 p.m. and 4:00 p.m., October 18, 1985, Sgt. Frank Bosworth, CO-II, escorted Amrine to the Captain's office where Bosworth released Amrine to Brooks. Amrine was strip-searched.

19. On information and belief, Brooks wanted to interview Amrine because an unidentified inmate had told Brooks that the problem between Russell and Barber revolved around Amrine.

20. Brooks and Hemeyer interviewed Amrine. They found a red spot on the outer right leg of the pants and three small red spots on the undershirt. Amrine did not have any marks or scratches on him. Amrine denied any knowledge of the stabbing.

21. Amrine's clothing was bagged and placed in the evidence locker. Later, the clothes were sent to the lab to compare to Barber's blood. The spots were identified as human blood but the blood could not be typed nor could the age of the stain be determined.

According to Amrine, the blood on his clothing was an old stain and was from John Blockton.

22. On information and belief, examiners could have typed the blood if it were stored properly in a refrigerator and tested within two weeks – then, the standard practice of the Highway Patrol. At trial, the blood was identified as only human blood.

23. On information and belief, Brooks questioned Russell on the afternoon or evening of October 18, 1985. Initially, Russell denied any knowledge of the stabbing, claiming that he was out of the room when it occurred. Brooks and Hemeyer told Russell they would guarantee his safety and protection, impliedly on the condition that Russell would give a statement implicating Amrine. On information and belief, Brooks and Hemeyer told Russell that they had two witnesses, an inmate and an officer, who said Russell stabbed Barber and that they would charge Russell if he did not tell them who stabbed Barber. Brooks told Russell that his fight with Barber, and the fact that Noble saw him running from Barber, made him a suspect.

24. Amrine was interviewed by Brooks a second time on the same (October 18, 1985) evening after Russell had been interviewed at 5:30 p.m. Brooks told Amrine that Russell said Amrine had killed Barber. Amrine signed his waiver of rights at 10:39 p.m., witnessed by Brooks, but refused to take a polygraph.

25. During the evening of October 18, 1985, Russell asked Brooks for protective custody and Brooks moved him that night to the Cole County Jail. By the following Monday, October 21, Russell had given his statement and indicated he would testify against Amrine.

26. On information and belief, Russell was aware of the rumor about Amrine and

Barber, and was encouraged by Brooks, or others at Brooks' direction, to blame Amrine and thereby shift suspicion from himself.

27. Russell was kept in protective custody in the Cole County jail prior to testifying at trial. Richard Lee, an investigator for the Cole County Prosecutor, talked with Russell twice but failed to tape either interview or take a formal statement. On information and belief, on the day of the trial, Brooks and Hemeyer told Russell that if he did not testify against Amrine, they would drop the charges against Amrine, charge him, and get a guard to testify that Barber was chasing Russell. Russell was scheduled to be released from prison in sixty (60) days.

28. On information and belief, immediately before trial, Russell told Brooks and/or others that the testimony he was going to give was not truthful. Nevertheless, Russell was called by Brown to testify as a witness. Russell testified that Amrine had told him before the stabbing that Amrine intended to kill Barber and that after the stabbing, Amrine had told Russell, "I had to do it."

29. Immediately after the stabbing, it was noted that Randy Ferguson ("Ferguson") an inmate, had blood on his forehead. Ferguson, a Caucasian, was considered the "boy" or "punk" of another inmate, Clifford Valentine, who protected Ferguson from being raped in return for sexual favors. Brooks later acknowledged that Ferguson was a person who was easily coerced and would generally do what his "daddy", Valentine, told him to do. On information and belief, the prison had done nothing to protect Ferguson, who claimed to be heterosexual rather than homosexual, from rape.

30. Ferguson was facing serious felony charges at the time of the stabbing for possessing a weapon in his cell. As a prior and persistent offender, Ferguson could have

been sentenced for an additional thirty years if found guilty of the weapons charge.

31. Ferguson was repeatedly interviewed by Brooks and Lee or Hemeyer, sometimes for hours. They told Ferguson that he was the one they suspected because there had been blood on his forehead. Ferguson consistently denied any knowledge of the stabbing.

32. On about April 15, 1986, Brooks told Ferguson he would get Brown to dismiss the weapons charges pending against Ferguson and told Ferguson that if Brooks testified he would guarantee Ferguson's safety and keep him at the Cole County jail. Brooks told Ferguson that if he did not talk, Ferguson they would be sent him back to prison and that word would be put out the word that Ferguson had snitched, causing Ferguson to fear for his life.

33. Upon information and belief, Brooks talked to Lee who talked to Brown, who agreed that a deal could be offered to Ferguson in exchange for his testimony against Amrine.

34. An agreement was signed on April 16, 1986, specifying that charges would be dropped against Ferguson in exchange for his testimony. Ferguson gave his formal statement on April 17, 1986. Ferguson's April 17, 1986, statement was a complete contradiction of all his prior statements.

35. In addition to the concessions agreed to, Lee brought Ferguson a radio for Ferguson to use at the Cole County Jail and Brooks gave Ferguson a black and white TV in exchange for his testimony.

36. Following Ferguson's agreement to testify, Brooks and Lee coached him on his testimony by telling him details of which Ferguson had no personal knowledge and they provided Ferguson with a written statement regarding the events surrounding the stabbing.

37. At trial, Ferguson gave a detailed eyewitness account of Amrine stabbing Barber, an account that closely followed his coached April 17, 1986, statement.

38. Jerry Reginald Poe (“Poe”), a Caucasian inmate, age twenty at the time of the stabbing, was being pressured by other inmates to submit to their homosexual advances. Poe was present in the recreation room when Barber was stabbed.

39. On October 19, 1985, Poe passed a note to a corrections officer saying he had information regarding the stabbing. Poe passed the note because he had heard that whites were going to be targeted by some black inmates and Poe was afraid.

40. Brooks had Poe placed in protective custody and Brooks and Hemeyer interviewed him on or about October 21, 1985.

41. On information and belief, Brooks and Hemeyer showed Poe photographs of inmates and asked him to identify the various photos. When Poe was unable to do so, they told him to look on the back of the photos where the names were written.

42. Brooks and Hemeyer offered to protect Poe, to transfer him out of state, and to parole him if he testified against Amrine. However, Brooks and Hemeyer also said that if Poe did not testify, they would put him back in SuperMax and put out the word that Poe had snitched.

43. Poe repeatedly told his interviewers, Brooks and Hemeyer, that he had not witnessed the stabbing, and that he was turned away from Barber. When Hemeyer was typing Poe’s statement, Hemeyer kept stopping and going off the record, to tell Poe what to say, *i.e.* that Poe was positioned where he could see the stabbing. Brooks and Hemeyer did not tape record the many interviews with Poe. As soon as Poe signed his statement, they moved him to the Cole County Jail where he stayed until the trial.

44. On information and belief, Lee also talked with Poe and told him that he would be protected.

45. On information and belief, Brooks and Hemeyer told Poe where Barber and Amrine were standing and where the stabbing took place. Brooks and Hemeyer changed Poe's testimony in order to reconcile Poe's testimony with that of Russell and Ferguson.

46. The day before the trial, Poe met with Brown, Brooks, and Hemeyer. On information and belief, Brown was functioning as though he were an administrator and/or investigator at this meeting. Brown was angry because Poe was unable to tell what had happened and Brown instructed Brooks to take Poe out of the room and talk to him. Brooks and Hemeyer then acted out the stabbing to show Poe where the principals were standing and instructed Poe what to say so that it would correspond with the other witnesses' testimony.

47. On the day of Poe's testimony, Brooks and/or Hemeyer told Poe not to worry about testifying when he took the stand because there would be a picture of Barber's body in the courtroom with the location of the wound already identified. On information and belief, Brooks and Hemeyer knew that Poe would otherwise be unable to identify the location of the stab wound on Barber's body, because he had not witnessed the stabbing.

48. At trial, Poe gave a purported "eyewitness" account of Amrine stabbing Barber as he had been coached to testify.

49. Amrine was tried on April 28, 1986, found guilty of capital murder and sentenced to death on May 1, 1986. Amrine was convicted on the testimony of three key witnesses Russell, Ferguson, and Poe, all inmates who: were promised significant benefits if they testified against Amrine; were threatened with either legal action or being placed in a dangerous situation if they did not testify against Amrine; and, were coached as to the

substance of their testimony.

50. Russell, Ferguson, and Poe later recanted their testimony, admitting that they gave false evidence at trial. Russell admitted that Amrine had never confessed to him; Ferguson admitted he was not even in the recreation room when Barber was stabbed; and, Poe admitted that he was turned away from Barber and did not see the stabbing.

51. After his conviction, Amrine filed various state and federal petitions for post-conviction relief culminating in a petition for habeas corpus filed with the Missouri Supreme Court. That petition was granted on April 29, 2003, based on Amrine's "actual innocence" and Amrine was released from prison on July 28, 2003.

52. Prior to being charged with and convicted of killing Barber, Amrine was scheduled for a parole hearing in August, 1986, and he had a conditional release date in August, 1987.

53. Although Defendants knew that Amrine was innocent of the murder, Defendants withheld disclosure of the knowledge of his innocence throughout Amrine's subsequent incarceration.

54. Defendants had a duty to disclose their knowledge that Amrine was innocent of the murder, and their failure to disclose it in a timely manner caused his continued incarceration each year from 1986 to 2003.

COUNT I: VIOLATION OF PROCEDURAL DUE PROCESS
Fifth and Fourteenth Amendments and Missouri Constitution Art. I, § 10
(42 U.S.C. §1983)

55. Plaintiff hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 54 above.

56. Amrine had a protected liberty interest in receiving a fair trial on the criminal

charge against him, and in being free from wrongful conviction and incarceration.

57. Amrine was deprived of that liberty interest in that he was denied due process by Defendants acting under color of state law. Specifically, he was deprived of due process by:

a. The failure of Defendants Brooks, Hemeyer and Lee to conduct an adequate or appropriate investigation including reasonable or appropriate interviews all of the inmates in the recreation room;

b. The failure of Defendants Brooks, Hemeyer and Lee to interview or conduct a reasonable or appropriate follow up investigation of the facts based on the statements of the approximately six inmates who stated that Amrine did not commit the murder;

c. The failure of Defendants Brooks and Hemeyer to preserve properly Amrine's clothing for the testing of the blood stains that would likely have yielded data exonerating Amrine;

d. The willful suppression by Defendants Brooks, Hemeyer, Lee and Brown of both exculpatory and impeaching evidence;

e. The solicitations, fabrications and coaching of Defendants Brooks, Hemeyer, Lee, and Brown of false testimony given by Russell, Ferguson, and Poe; and,

f. The prosecutorial misconduct of Defendant Brown in (1) his knowing use of false evidence at trial and (2) his failure to correct false testimony.

58. Amrine has been damaged as a direct and proximate result of Defendants' actions. In particular, he suffered approximately seventeen years of wrongful incarceration in a small cell with the constant odor of urine and smoke. Amrine was on death row in

Jefferson City under terrible and inhumane conditions from the time he was convicted of Barber's murder in 1986 until 1989. Thereafter, he was incarcerated at Potosi, Missouri, where the physical conditions were somewhat improved, but the psychological impact and emotional pain of being under a death sentence were unmitigated. Amrine spent some of the best years of his life, from age twenty through age forty-seven, in prison. He missed out on the growth from toddler to manhood of his son, Dwayne, and the birth of four grandchildren. The world turned and the years slipped away while Amrine was forced to live with the fear of being put to death for a crime he did not commit and struggled to obtain justice. He suffered injuries including but not limited to: inconvenience, insult, mental distress, embarrassment, humiliation, anxiety, emotional pain and suffering; and incurred attorney's fees.

59. Defendants' actions were willful, wanton, reckless, and malicious, and, further, show a complete and deliberate indifference to, and conscious disregard for, the rights of Plaintiff. Therefore, Plaintiff is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

60. Plaintiff is entitled to recover from Defendants his reasonable attorneys fees, as provided by 42 U.S.C. § 1988.

WHEREFORE, Plaintiff requests that this Court, after a trial by jury of Plaintiff's claims, enter judgment against Defendants for Plaintiff's actual damages, nominal damages, and exemplary or punitive damages as are proven at trial, his reasonable attorney fees and costs incurred herein, and for any such further legal and equitable relief as this Court deems appropriate.

**COUNT II: CONSPIRACY
(42 U.S.C. § 1983)**

61. Plaintiff hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 60 above.

62. Defendants Brooks, Brown, Hemeyer, and Lee, in their respective state and county roles, acted in concert or agreement to deny Amrine his constitutionally protected right to a fair trial by suppressing exculpatory evidence and tutoring witnesses to give false testimony against him.

63. Amrine has been damaged as a direct and proximate result of Defendants' actions. In particular, he suffered approximately seventeen years of wrongful incarceration in a small cell with the constant odor of urine and smoke. Amrine was on death row in Jefferson City under terrible and inhumane conditions from the time he was convicted of Barber's murder in 1986 until 1989. Thereafter, he was incarcerated at Potosi, Missouri, where the physical conditions were somewhat improved, but the psychological impact and emotional pain of being under a death sentence were unmitigated. Amrine spent some of the best years of his life, from age twenty through age forty-seven, in prison. He missed out on the growth from toddler to manhood of his son, Dwayne, and the birth of four grandchildren. The world turned and the years slipped away while Amrine was forced to live with the fear of being put to death for a crime he did not commit and struggled to obtain justice. He suffered injuries including but not limited to: inconvenience, insult, mental distress, embarrassment, humiliation, anxiety, emotional pain and suffering; and incurred attorney's fees.

64. Defendants' actions were willful, wanton, reckless, and malicious, and, further, show a complete and deliberate indifference to, and conscious disregard, for the rights of

Plaintiff. Therefore, Plaintiff is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

65. Plaintiff is entitled to recover from Defendants his reasonable attorneys fees, as provided by 42 U.S.C. § 1988.

WHEREFORE, Plaintiff requests that this Court, after a trial by jury of Plaintiff's claims, enter judgment against Defendants for Plaintiff's actual damages, nominal damages, and exemplary or punitive damages as are proven at trial, his reasonable attorney fees and costs incurred herein, and for any such further legal and equitable relief as this Court deems appropriate.

**COUNT III: MALICIOUS PROSECUTION
(Missouri Tort Claim Against Defendants Brooks, Brown, and Hemeyer)**

66. Plaintiff hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 65 above.

67. Defendants Brooks, Brown, and Hemeyer instigated an investigation and prosecution of Amrine without probable cause for doing so.

68. Amrine has been damaged as a direct and proximate result of Defendants' actions. In particular, he suffered approximately seventeen years of wrongful incarceration in a small cell with the constant odor of urine and smoke. Amrine was on death row in Jefferson City under terrible and inhumane conditions from the time he was convicted of Barber's murder in 1986 until 1989. Thereafter, he was incarcerated at Potosi, Missouri, where the physical conditions were somewhat improved, but the psychological impact and emotional pain of being under a death sentence were unmitigated. Amrine spent some of the

best years of his life, from age twenty through age forty-seven, in prison. He missed out on the growth from toddler to manhood of his son, Dwayne, and the birth of four grandchildren. The world turned and the years slipped away while Amrine was forced to live with the fear of being put to death for a crime he did not commit and struggled to obtain justice. He suffered injuries including but not limited to: inconvenience, insult, mental distress, embarrassment, humiliation, anxiety, emotional pain and suffering; and incurred attorney's fees.

69. In the investigation and commencement of prosecution against Amrine, Defendants Brooks, Brown and Hemeyer's actions were willful, wanton, reckless, and malicious, and, further, show a complete and deliberate indifference to, and conscious disregard for, the rights of Plaintiff. Therefore, Plaintiff is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

WHEREFORE, Plaintiff requests that this Court, after a trial by jury of Plaintiff's claims, enter judgment against Defendants for Plaintiff's actual damages, nominal damages, and exemplary or punitive damages as are proven at trial, his reasonable attorney fees and costs incurred herein, and for any such further legal and equitable relief as this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via the Court's electronic filing system on December 20, 2004, on counsel listed below, and on those recipients designated with an asterisk (*), via U.S. Mail, first class postage prepaid, on December 21, 2004:

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