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JON A. SANFILIPPO  
CLERK

12-C-0071

Case No.

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STEVEN AVERY,  
Plaintiff,

v.

**CALUMET COUNTY, WI**, IN ITS OFFICIAL  
AND INDIVIDUAL CAPACITY;  
**KENNETH KRATZ**, IN HIS OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**PEGGY A. LAUTENSCHLAGER**, IN HER  
OFFICIAL AND INDIVIDUAL CAPACITY;  
**R. NICK STAHLKE**, IN HIS OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**SHERRY CULHANE**, IN HER OFFICIAL  
AND INDIVIDUAL CAPACITY;  
**KIM J. SKORLINSKI**, IN HER OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**THOMAS FASSBENDER**, IN HIS OFFICIAL  
AND INDIVIDUAL CAPACITY  
**MARK WIEGERT**, IN HIS OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**WENDY BALDWIN**, IN HER OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**GERALD A. PAGEL**, IN HIS OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**BARBARA VAN AKKEREN**, IN HER OFFICIAL AND  
INDIVIDUAL CAPACITY;  
**DONALD A. POPPY**, IN HIS OFFICIAL CAPACITY,  
Defendants.

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**COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §§ 1983, 1985, AND 1986**

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Plaintiff, Steven Avery, a state prisoner, *pro se*, for his complaint against defendants: Kenneth Kratz; Peggy A. Lautenschlager, R. Nick Stahlke, Sherry Culhane, Kim J. Skorlinski; Thomas Fassbender, Mark Wiegert, Wendy Baldwin; Gerald A. Pagel; Barbara VanAkkeren; Donald A. Poppy; and Calumet County, WI, brings a civil rights action for damages and declaratory relief under 42 U.S.C. §§ 1983, 1985, and 1986. This complaint alleges that the plaintiff's rights under the 4<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution including

but not limited to freedom from unreasonable search and seizure, equal protection, and due process were violated by those acting under color or state law.

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3) and (4). The matters in controversy arise under 42 U.S.C. §§ 1983, 1985, and 1986.

(a) Venue properly lies in this District pursuant to 28 U.S.C. Section 1391(b)(2), because the events giving rise to this cause of action occurred in Calumet County, Wisconsin, Winnebago County, Wisconsin, and Manitowoc County, Wisconsin, which are located within the Eastern District of Wisconsin.

## **I. PLACE OF CONFINEMENT**

2. Plaintiff is currently confined at:

Wisconsin Secure Program Facility  
1100 Morrison Dr.  
P.O. Box 9900  
Boscobel, WI 53805

3. The claim stated herein is the result of actions of those acting under color of state law and not as a result of a condition of confinement. There is a grievance procedure in the Calumet County jail that plaintiff was located at however there was no filing of a grievance with the jail as the claim does not relate to the jail or conditions of confinement.

4. Plaintiff has filed no other lawsuits dealing with the same facts involved in this action.

## **II. PARTIES**

5. Plaintiff Steven Avery DOC #122987, SSN # (last four digits) 6920, was at all times relevant hereto, a pretrial detainee in the custody of the Calumet County Sheriff. At the time of the events relevant hereto, plaintiff was incarcerated in the Calumet County jail.

6. Defendant Kenneth Kratz was at all relevant times herein the District Attorney for the Calumet County District Attorney's office located at: 206 Court St., Chilton, WI, 53014-1127. He was also the lead prosecutor in the criminal case against the plaintiff. He is sued individually.

7. Defendant Peggy A. Lautenschlager was at all relevant times here in an assistant attorney general for the State of Wisconsin, located at: State Capital, 114 East, P.O. Box 7857, Madison, WI, 53707-7857. She is sued individually.

8. Defendant R. Nick Stahlke was at all relevant times herein a laboratory analyst with the Wisconsin State Crime Laboratory, located at: 4626 University Ave., Madison WI, 53705-2156. He is sued individually.

9. Defendant Sherry Culhane was at all relevant times herein a laboratory analyst with the Wisconsin State Crime Laboratory, located at: 4626 University Ave., Madison WI, 53705-2156. She is sued individually.

10. Defendant Kim J. Skurlinski was at all relevant times herein an investigator for the Wisconsin Department of Justice, Division of Criminal Investigations, located at: 17 West Main Street, PO Box 7857, Madison, WI, 53707-7857. She is sued individually.

11. Defendant Thomas Fassbender was at all relevant times herein an investigator for the Wisconsin Department of Justice, Division of Criminal Investigations, located at: 17 West Main Street, PO Box 7857, Madison, WI, 53707-7857. He is sued individually.

12. Defendant Wendy Baldwin was at all relevant times herein an officer with the Calumet County Sheriff's Department located at: 206 Court St., Chilton, WI, 53014. She is sued individually.

13. Defendant Gerald A. Pagel was at all relevant times herein the Sheriff for the Manitowoc County Sheriff's Department located at: 206 Court St., Chilton, WI, 53014. He is sued individually.

14. Defendant Barbara VanAkkeren was at all relevant times herein the Clerk of Court for Calumet County located at: 206 Court St., Chilton, WI, 53014. She is sued individually.

15. Defendant Circuit Court Judge Donald A. Poppy was at all times herein a judge in Calumet County, Wisconsin located at: 206 Court St., Chilton, WI, 53014. He is sued individually.

16. Defendant the County of Calumet, Wisconsin runs the Calumet County Sheriff's Department which was run by policy a maker/administrator, at all relevant times herein and is located at: 206 Court St., Chilton, WI, 53014. The Calumet County Sheriff's Department has the responsibilities of setting policy and custom, supervising, and instructing its officers in acting under color of state law. It is sued individually.

### **III. PREVIOUS LAWSUITS**

17. Plaintiff has not begun other lawsuits in state or federal court relating to the facts involved in this action.

18. Plaintiff has not begun other lawsuits in state or federal court relating to his imprisonment.

### **IV. STATEMENT OF CLAIM**

19. On November 5<sup>th</sup>, 2005 defendant Pagel presented an "AFFIDAVIT FOR SEARCH WARRANT" (Exhibit 1) to defendant Kratz of the Calumet County District Attorney's office. Defendant Kratz notarized the document.

20. On November 5<sup>th</sup>, 2005 defendant Baldwin obtained a “SEARCH WARRANT” (Exhibit 2) from Calumet County Circuit Court Judge Poppy for six items or classes of items that may have been concealed in either of two vehicles. The warrant was to be executed on November 6<sup>th</sup>, 2005 in Marinette County, WI.

21. On November 7<sup>th</sup>, 2005 defendant Skorlinski submitted a “RETURN OF SEARCH WARRANT” (Exhibit 3) for a “1993 Pontiac Grand Am” and a “2005 International Harvester Flatbed Tow Truck.”

22. Defendant Fassbender requested aid in processing the Grand Am.

23. Within days the International Harvester Flatbed Tow Truck was released to Charles E. Avery.

24. On November 9<sup>th</sup>, 2005 defendant Lautenschlager signed off on the Grand Am being held by the State for analysis. See Exhibit 4.

25. The Grand Am was taken to the Madison Wisconsin Crime Lab (hereinafter “Crime Lab”) for further processing due to a preliminary analysis that blood had been found inside the vehicle. The Crime Lab completed its investigation and produced its findings in a report (“Exhibit 5”).

26. While at the Crime Lab defendants Stahlke and Culhane both entered the vehicle and engaged in collections of samples and other investigatory actions. Their findings were memorialized in Exhibit 5, which was signed by defendant Lautenschlager.

27. A significant time after this the 1993 Pontiac Grand Am was released. The Grand Am required subsequent repair and was missing a substantial amount of gas.

**COUNT ONE: THE PLAINTIFF WAS DENIED HIS RIGHTS TO  
BE FREE FROM UNREASONABLE SEIZURE, EQUAL  
PROTECTION, AND DUE PROCESS BY THOSE ACTING UNER  
COLOR OF STATE LAW**

## LEGAL THEORY

28. Plaintiff contends that his rights were violated when **1)** a defective warrant was executed to obtain his property; **2)** the seizure expanded beyond the warrants legal parameters; and **3)** his property was damaged.

29. The warrant is defective because probable cause was not established in the affidavit. Defendant's affidavit failed to establish a nexus that these vehicles might actually have the sought items "concealed" inside them. See *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 306-07 (1967). The Supreme Court defines probable cause to search as "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Defendant's Kratz, Poppy, and Pagel should have been aware of this issue and corrected it.

30. Further, the warrant is defective because there is no indication that the affidavit was ever seen by the issuing judge. The affidavit is witnessed by the actual prosecutor in the case, defendant Kratz. **Wis. Stat. § 968.23** gives an example of an affidavit for a warrant. At the bottom of the example the legislature took the time to put in the text "..., Judge of the ... Court." Clearly the legislature saw that the United States Constitution requires that a neutral magistrate be *accountably* placed between the State and a defendant. Without a way of knowing that the judge was actually involved in the process of establishing probable cause the procedure was invalid and the warrant is illegal. The Seventh Circuit stated in *United States v. Stefonek*, 179 F.3d 1030 (CA7 1999), "The police or other law enforcement officer who is seeking the warrant must submit *to the judicial officer* a precise description of what is sought to be seized..." *Id.* at 1033. (Emphasis added).

31. In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court recognized that the pre-search proceeding is *ex parte* and that a defendant could challenge the information placed before the court. *Id.* at 169. In the present case there is no record that defendant Pagel was sworn before the Court in presenting his evidence in pursuit of the warrant. Holding an evidentiary hearing with the actual prosecutor seeking the warrant doesn't meet the mandates of the Constitution. See *Coolidge*, 403 U.S. at 450, 454-55; *Johnson v. United States*, 333 U.S. 10 (1948); *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967). Defendants Kratz, Poppy, VanAkkeren, and Pagel should have been aware of this issue and corrected it.

32. Additionally, the warrant was issued by a Calumet County judge for items to be seized in a criminal investigation for Manitowoc County. **Wis. Stat. § 753.03** states in relevant part: "The courts and the judges thereof have power to award all such writs, process and commissions, throughout the state, returnable to the proper county." And the **Wisconsin State Constitution, Article VII §8** states in relevant part "The circuit court may issue all writs necessary in aid of its jurisdiction." In other words, the proper venue to obtain this warrant was Manitowoc County Circuit Court, since the evidence sought was for a crime alleged to have occurred in that county. Defendant Poppy had usurped the power of Manitowoc County and the warrant has no validity under Wisconsin constitutional and statutory law.

33. Lastly, writs are required to have a seal of the court, pursuant to **Wis. Stat. § 753.04**, and public documents not under seal are not self-authenticating, pursuant to **Wis. Stat. § 909.02(2)**; in turn, those public documents under seal are self-authenticating. **Wis. Stat. § 909.02(1)**. Because the warrant lacks a seal it is not a valid warrant.

34. As to illegal expansion of the warrant, even if the warrant was legal the executing officers went outside the parameters of the warrant by seizing and then holding the plaintiff's car past

any reasonable time needed to conduct the authorized search. See *United States v. Place*, 462 U.S. 696, 709 (1983). Indeed, the return notes that two vehicles were seized. See Exhibit 3. However, there was never a warrant to seize the vehicles. The vehicles were merely the place to be searched, not the things to be seized. See Exhibit 2. The language of the warrant is "... you are commanded forthwith to search said vehicles for said things, and if the same or any portion thereof are found, to bring the same, and person(s) in whose possession the same are found, and return this warrant within forty-eight hours of service, before the said Court, to be dealt with according to law."

35. The very language of the warrant set forth the command to merely search the vehicles. Defendant Poppy, as the judge, was made aware of the illegal expansion of the warrant in the very return that he ordered. The judge expressly points to the authority of the Court in the above quoted command where it was stated "...to be dealt with *according to law*." (Emphasis added). Defendant Poppy violated the plaintiff's rights when he did not deal with the illegal seizure "according to law."

36. Defendant Pagel is marked on the warrant as being the requester of the warrant and it is presumable that he was aware of the language, as he was the probable author of the warrant. Further, the plaintiff's car was held by the Calumet County Sheriff's Department, of which defendant Pagel was the sheriff.

37. Defendant Baldwin endorsed the warrant at "10:15 p.m." on what was most likely November 5<sup>th</sup>, 2005 (this is hard to verify as the date the warrant was received is marked as being "Received by me, Wendy Baldwin, 2005." However, plaintiff concedes this is likely a scrivener's error and defendant Baldwin likely meant the 5<sup>th</sup> of November, 2005). Therefore, she knew the limit of the "command" by the Court.



38. Defendant Skorlinski marked on the warrant that she “served” the warrant “on 11-6-05 at 12:15 pm.” Further, she created the return and therefore it is indisputable that she knew the vehicles were seized. The defendants are required by law to know the limits of the law in executing a search warrant. See *Groh v. Ramirez*, 540 U.S. 551, 563 (2004) (“It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted.”).

39. On “11-8-05” at “9.55 am” defendant VanAkkeren stamped the warrant and return, thereby making a record of her own knowledge of the limits of the warrant and the illegal expansion. Further, as Clerk of Court, she should have been aware that the judge had no power to authorize this search and seizure.

40. The particularity requirement of the 4<sup>th</sup> Amendment “prevents the seizure of one thing under a warrant describing another.” *Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (quoting *Marron v. United States*, 275 U.S. 192, 196 (1972)). The warrant didn’t actually authorize the seizure of the vehicles suspected of concealing the sought evidence. Though *Place* recognized that temporary seizing of property expected to contain evidence or contraband was occasionally reasonable, “the brevity of the invasion of the individual’s Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion.” *Place*, 462 U.S. at 709.

41. Defendant the County of Calumet was responsible, through its policy maker/administrator, for setting the policies and/or customs inside the municipality, oversight and training of its personnel, and is responsible for the violations herein as much as the County, through its agency(s), have neglected to check the work its officers and be sure that they were properly trained or were acting within the legal boundaries of plaintiff’s rights as well as applicable law.

In the plaintiff's criminal case there were several search warrants issued, none of which contains a seal by the court as required under **Wis. Stat. § 753.04**. And all of the affidavits for these warrants were notarized by the prosecutor, defendant Kratz, and not by the issuing judge. This shows by negative inference that the policy or custom of the County was to *not* ensure that warrants were properly obtained from the Court before executing them. Further, the municipality actually was involved in holding the plaintiff's car by storing it.

42. The plaintiff acknowledges that the actual seizure date is past the six year limitation for bringing a suit. However, the continuing retention of his property by those acting under color of state law continued to cause him harm and was still a violation of his rights. Therefore, the plaintiff brings suit for the deprivation of rights that occurred within the last six years.

**COUNT TWO: THE DEFENDANTS DEPRIVED THE PLAINTIFF OF BENEFITS DERIVED FROM HIS POSSESSORY INTERESTS IN HIS VEHICLE**

43. Plaintiff could not use his vehicle to loan to others, sell to aid in funding his defense, or for any other purpose that any person with a possessory interest may exercise (his pretrial detainee status notwithstanding). This was the result of the retaining of the car beyond any reasonable amount of time.

**COUNT THREE: THE DEFENDANTS DAMAGED THE PLAINTIFF'S VEHICLE AND USED HIS GAS, IN ENTITLING HIM TO RELIEF**

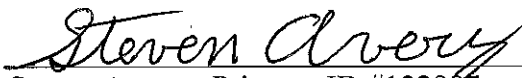
44. Plaintiff contends that his vehicle was in need of repair after it was returned. The alternator and battery needed to be replaced. Further the shifter on the transmission was bent and had to be repaired. Lastly, the gas tank was missing  $\frac{3}{4}$  of a tank of gas when it had been full before it was taken.

**RELIEF REQUESTED**

45. WHEREFORE, plaintiff respectfully requests judgment in his favor with an order declaring that the defendants have acted in violation of the United States Constitution and violated his rights. Plaintiff further requests a judgment in his favor for nominal damages in an amount not less than \$1 for every day he was deprived of the benefit of his property, jointly and severally against defendants. Plaintiff requests \$455 in compensatory damages for damage to his vehicle and the used gas. Plaintiff additionally requests punitive damages in the sum of \$250,000 or what amount the Court may deem just and proper, jointly and severally against defendants. Finally, plaintiff requests any attorney fees and court costs that may accrue and any other such relief as it may appear plaintiff is entitled.

I declare under penalty of perjury that the foregoing is true and correct.

Complaint signed this 23 day of January, 2012.



Steven Avery – Prisoner ID #122987  
Wisconsin Secure Program Facility  
P.O. Box 9900  
1101 Morrison Dr.  
Boscobel, WI 53805

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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STEVEN AVERY,  
Plaintiff,

v.

Case No. \_\_\_\_\_

CALUMET COUNTY, WI, ET AL.,  
Defendants.

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**DECLARATION OF AUTHENTICITY OF DOCUMENTS AND STATEMENT**

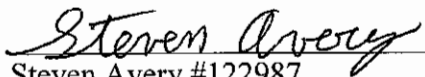
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I, Steven Avery, declare that:

1. I am the *pro se* plaintiff in the above-entitled matter.
2. I hereby certify that all exhibits presented with my complaint for the above-entitled matter are all true and accurate representations of the original documents as I have received them.
3. I declare that the events presented in my complaint for the above-entitled matter are true and accurate.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing statements are true and correct.

Date: 1-23-2012

  
Steven Avery #122987  
Wisconsin Secure Program Facility  
P.O. Box 9900  
1100 Morrison Dr.  
Boscobel, WI 53805