

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Faith Kintzel, : Civil Action  
Plaintiff :  
v. : No. 16-cv-  
Dante Orlandi,  
William E. Tucker,  
Corporal Wise and  
Kathy Jo Winterbottom,  
Pa. State Police,  
Defendants

**COMPLAINT**

**PARTIES**

1. Plaintiffs Faith Kintzel is an adult citizen and resident of Pennsylvania who resides at 18 South Sillyman Street, Cressona, Schuylkill County, PA 17929.
2. Defendant Dante Orlandi is Commanding Officer, Troop L. Reading, whose address is BIPS\_IAD, Pennsylvania State Police, 7820 Allentown Blvd., 2<sup>nd</sup> Floor, Harrisburg, PA 17112.
2. Defendant William E. Tucker, is a Sergeant, Pa. State Police, Badge No. 7418, Internal Affairs Division, Central Section, who conducted an investigation in this matter, whose address is BIPS\_IAD, Pennsylvania State Police, 7820 Allentown Blvd., 2<sup>nd</sup> Floor, Harrisburg, PA 17112.
3. Defendant Corporal Wise is a Corporal Pa. State Police, Badge No. \_\_\_\_, Internal Affairs Division, Central Section, who conducted an investigation in this matter, whose address is BIPS\_IAD, Pennsylvania State Police, 7820 Allentown Blvd., 2<sup>nd</sup> Floor, Harrisburg, PA 17112.
4. Defendant Kathy Jo Winterbottom, is an Investigator, Pa. State

Police, Badge No. \_\_\_\_, Internal Affairs Division, Central Section, who conducted an investigation in this matter, whose address is BIPS\_IAD, Pennsylvania State Police, 7820 Allentown Blvd., 2<sup>nd</sup> Floor, Harrisburg, PA 17112.

**JURISDICTION AND VENUE**

5. Defendants are persons as the term is used in 42 U.S.C. § 1983. At all times material hereto, Defendants acted pursuant to and under color of state law.

6. Jurisdiction is based on 28 U.S.C. § 1331 and the presence of federal questions pursuant to 42 U.S.C. § 1983.

7. Venue is proper in the Middle District of Pennsylvania as all the events herein took place in, the parties and witnesses reside in and the physical evidence is located within this district.

**FACTS**

8. At all times relevant to this matter Defendants Orlandi, Tucker, Wise and Winterbottom were State Troopers or employees of the Pennsylvania State Police, on duty, wearing a badge, carrying a gun and/or acting in internal affairs as an investigator or commanding officer and acting under color of state law to carry out their duties as such.

9. On April 7, 2010, Pa. State Police Trooper Stephen Kleeman wrote Out Non-Traffic Citation/Summons Number V0016509-3 charging Faith A. Carl with a charge of Summary Harassment pursuant to 18 Pa. C.S.A. §2709(a)(3).

10. Faith A. Carl married Brian Kintzel October 19, 2010 and is now known by the name Faith Kintzel, Plaintiff (hereinafter referred to as FK).

11. The citation was filed April 13, 2010. FK pled Not Guilty.

12. At the June 2, 2010 hearing, Kleeman acted as prosecutor and FK appeared before Carol A. Pankake, Mag. Dist. No. 21-3-04, 19 North Pine St., Tremont, Schuylkill County, PA 17981. Kleeman and FK agreed to a deal under which “this case will be held for 60 days and if no other problems the case will be dismissed.” Kleeman told FK if she stayed away from her ex-boyfriend for 60 days and no other charges were filed against her the charges would be dropped.

13. At the time FK had no criminal record and little or no experience in the court system and was not being represented by a lawyer.

14. At a later date, the charges were dismissed by Kleeman.

15. After the hearing Kleeman asked Plaintiff if she was interested in having coffee with him sometime. She said no. He then asked Plaintiff if she would accompany him to a cemetery so they could talk in a more private place. Plaintiff trusted Kleeman because he is a state trooper. Defendant told FK to come with him and to follow him in her car. She did so in order that her deal of dismissal would not be jeopardized.

16. Kleeman drove 5-10 minutes in his Pa State Trooper vehicle with FK in her vehicle following to Donaldson Community Cemetery, a remote area. He stopped his car but left the motor running. They were alone and there was no one within view. They got out of their cars.

17. Kleeman told FK he knew “a good way to relieve stress.” Kleeman asked her if she was interested. FK demurred. Kleeman insisted “it works.”

18. Several minutes later, Kleeman asked FK why she was still dressed.

19. When FK did not respond, Kleeman again asked her why she was still dressed.

20. FK was intimidated and afraid because they were all alone, Kleeman was wearing a Pa. State Police uniform, badge and handgun, he was stronger than she, and she believed she had to comply with his commands because otherwise he might not dismiss the charges against her.

21. Kleeman stood by the passenger side of the door to her car, then went to the driver’s side of her car, and leaned in. Then he returned and said for the third time “what about your clothes being on?”

22. Kleeman walked to the passenger side of her car. Then he demanded of her “you’re still dressed. How are you going to relieve stress?”

23. FK perceived that he was ordering her to undress, and understood that if she did not he would continue prosecuting her.

24. FK undressed but sat with her legs closed while in her vehicle, a Jeep Wrangler.

25. Kleeman walked to her vehicle and roughly pushed her legs apart

while standing fully clothed wearing his gun belt. FK resisted his pulling her legs open.

26. Kleeman attempted to perform oral sex on her. Kleeman licked her vagina with his tongue. FK closed her legs to tell him to stop and he did.

27. Kleeman then used his hands to get FK's legs open and ordered her to lay back.

28. FK sat up. Kleeman took his belt off, threw the gun off, put it on the passenger seat of his car, came back to her vehicle and ordered FK to lay down. Her legs were shut at this time.

29. Kleeman opened FK's legs, and pulled his trousers down to his ankles.

30. Kleeman inserted his penis into FK's vagina and had sexual intercourse with her against her will.

31. FK closed her legs to indicate she did not want to have sex with Kleeman. Kleeman withdrew his penis.

32. Kleeman told FK he was sorry. FK was so upset she was crying. Kleeman tried to kiss her. She did not kiss him back.

33. FK was very afraid. Kleeman told her to wait a while after he left the cemetery to leave the cemetery. After a while she left after Kleeman left.

34. Kleeman's conduct violated plaintiff's civil rights under the Fourth

and Fourteenth Amendments to the United States Constitution, particularly her rights to bodily integrity and to be free of unreasonable seizures and excessive force.

35. On January 3, 2011 FK sent a complaint to the Pa. State Police about Kleeman's behavior.

36. As a result of the actions of Kleeman, FK suffered physical injury including multiple bruises on both thighs in the area of both knees. She was also subjected to emotional pain and suffering, fear of police, and lost sleep, all of which she continues to suffer.

37. On September 29, 2011, as a result of an August 12, 2011 letter which apparently had attached to it enclosures (the identity of which were not disclosed), from Defendant Tucker requesting a decision about criminal prosecution, and mentioning possible criminal culpability of FK, Karen Noon, First Assistant District Attorney, and Jennifer Lehman, Assistant District Attorney, after conducting an investigation of the incident based solely on documents and information provided by the Pennsylvania State Police, wrote Sgt. William Tucker, BIPS\_IAD, Pennsylvania State Police, 7820 Allentown Blvd., Harrisburg, PA 17112, and stated in a letter "after careful consideration of the above-referenced case we believe that a sexual encounter took place between Trp. Kleeman and Faith Kintzel on June 2, 2010. However, we do not believe we would be able to prove each element of a non-consensual encounter. Although we have made the decision not to prosecute this case, we believe that

Trp. Kleeman while in uniform acted inappropriately with a person who he had arrested.”

38. In March and May 2011 Defendant Wise of the Pennsylvania State Police interviewed FK.

39. On March 2 and May 3, 2011, Defendants Wise and Kathy Jo Winterbottom, of the Pennsylvania State Police internal affairs, interviewed FK. She told them she had bruises on inner thighs from the pressure Kleeman put on them to open her legs and that her husband Brian Kintzel saw the bruises at least twice. The bruises lasted 3-4 weeks Defendants put this information in the general investigative report at pages 18-19 but did not interview Brian Kintzel, or send this section of the report, or a report containing this information, to the Schuylkill County District Attorney. Instead they sent interviews of witnesses adverse to Plaintiff's interest, including her cousin, all in an effort to cover up the violation of FK's civil rights.

40. On June 27, 2011 Defendant Tucker of the PSP replaced Wise in the investigation. He never interviewed Brian Kintzel or considered the evidence of bruises on Plaintiff's thighs, although he spoke to Wise and Winterbottom and knew what plaintiff had told them.

41. On October 17, 2011, Tucker interviewed Kleeman. Kleeman stated he “could not say” where he went after he spoke to FK after the hearing June 2, 2010, but falsely stated he did not go to any cemetery. He “could

not say” where he was at the times the GPS records indicated that his car was in the cemetery that day.

42. Kleeman had been assigned PSP patrol vehicle L7-07 on June 2, 2010, and logged into its data base at 2:04 p.m. and logged out at 9:58 p.m.

43. GPS records determined that the vehicle driven by Kleeman, June 2, 2010 was located within coordinates placing it in a dirt pull off area in the southwest corner of the Donaldson Community Cemetery June 2, 2010 between 3:21 and 3:49 p.m. These facts were consistent with FK’s complaint regarding Kleeman.

44. In a February 28, 2012 report, Lt. William M. Williams, Pa. State Police Bureau of Integrity and Professional Standards, stated that based on the testing and analysis conducted regarding the “AVL track and AVL function,” “I am certain beyond any reasonable doubt that L7-07 was at the coordinates captured on June 2, 2010 at 1527 within the Donaldson Community Cemetery”. Defendants never provided this report to the Schuylkill County District Attorney’s Office.

45. Defendant Tucker, though he had knowledge that FK stated she had bruises on her inner thighs where Kleeman had forced her legs apart prior to sexually assaulting her, and that Brian Kintzel had seen the bruises, which was revealed to Corporal Wise and another PSP employee May 3, 2011, and that GPS records confirmed the vehicle Kleeman was driving that day was in the cemetery where the rape occurred and

Kleeman “could not state” where he was during the times documented by the GPS records, never gave this information or Brian Kintzel’s name as a witness to the Office of the District Attorney for Schuylkill County. On information and belief, he did this to dissuade that office from pressing criminal charges against Kleeman, and impede or obstruct any effort by FK to seek a civil remedy against Kleeman. This was confirmed when the D.A.’s records were received on March 24, 2014. Instead of sending the entire 190-page investigation, only 39 pages were sent. Tucker also never sent the D.A. the February 28, 2012 report of Lt. Williams, indicating the PSP found that Kleeman was lying.

46. Though Pa. State Police experts concluded that Kleeman was lying when he said he was not in the Donaldson Community Cemetery between 3:21 and 3:49 p.m. June 2, 2010 because the vehicle he was assigned to was proved by GPS technology to be there during that period, and he could not state any alternative place he was during that time, and though lying under oath was committed by Kleeman, and both this charge and having sex with an arrestee on the job are generally misconduct resulting in suspension, termination or other sanction, Kleeman was not disciplined by Defendant Orlandi, except for a “written reprimand” and remains on duty.

47. Kleeman’s assault of plaintiff and his associated violation of her

civil and constitution rights gave rise to an action filed in this Court, *Kintzel v. Kleeman*, CA No. 13-cv-163 [*Kintzel v. Kleeman*], which has been settled.

48. In discovery responses served on December 3, 2013, in *Kintzel v. Kleeman*, Kleeman stated he was not at the cemetery on the day of the assault of plaintiff.

49. Responses to discovery received in January 2014 from Kleeman, revealed that Kleeman was charged by the PSP with disciplinary violations, including sex on duty (consensual) and inappropriate action, both of which were held to be not sustained on December 1, 2011, and lying, which was sustained on March 7, 2012. The charge was sex on duty (consensual) even though Defendants Orlandi, Wise, Tucker and Winterbottom knew that Plaintiff claimed it was not consensual and that there was a witness who could confirm he saw black and blue marks on her inner thighs which supported her statement Kleeman used his hands to force her legs apart to force her to have sexual intercourse.

50. Despite the finding of the Schuylkill County D.A. that Kleeman had sex during the June 2, 2010 incident with Plaintiff and his action was inappropriate that day, on April 3, 2012 Defendant Orlandi, who officially ruled that Kleeman lied when he testified he was not in the cemetery June 2, 2010, contradicted the finding in December 23, 2011 and April 3, 2012 reports (which Plaintiff did not find out about until November 2013-January 2014), finding the lying "does not" indicate there was

sexual activity involving Kleeman. Orlandi did so in part or in whole to contribute to the cover up of the violation of plaintiff's civil rights and impede her ability to obtain a civil remedy.

51. Although PSP Disciplinary Code sections FR 1-2 and 2-23 (Use of Department Vehicle) state that members shall not use Department Vehicles for personal business, Kleeman was not charged by Orlandi with a violation of that section.

52. Although Defendant Orlandi admitted that the normal penalty for lying would be suspension without pay, Defendant Orlandi did not suspend Kleeman because he failed to charge him in a timely manner although he knew enough information to charge him in a timely fashion, and it is the normal PSP practice to do so.

53. In his November 23, 2011 General Investigation Report, Defendant Orlandi never mentioned the findings of the D.A. or the evidence of the thigh bruises or eyewitness Brian Kintzel (who saw them), that its own office found Kleeman was lying about his whereabouts June 2, 2010 in finding Plaintiff's allegations were not credible. In the report, the averments in ¶¶45-47 above are not cited and Defendant Orlandi referred to an alleged oral statement by Sgt. Nichols challenging the accuracy of the GPS although this is not stated under oath or in any report. All of the foregoing was done in part or in whole to cover up the violation of Plaintiff's civil rights.

54. In furtherance of Defendants' efforts to cover up the violation of

plaintiff's civil rights, the Pennsylvania State police report of the investigation they conducted mentions all evidence that could be used to challenge the credibility of Plaintiff, including an interview with a person Plaintiff told about the incident, but deliberately omits and ignores the evidence corroborating Plaintiff's allegations.

55. On March 2 and May 3, 2011, Defendants Wise and Winterbottom interviewed Plaintiff and recorded the interview. The audiotape of March 2, 2011 interview stated a time when it began but is cut off midsentence at 54:52 with no statement it was ending.

56. In the March 2, 2011 interview Plaintiff confirmed the sexual activity perpetrated by Kleeman was non-consensual: "I wasn't interested" in sexual activity, 25:45, "I told him I was not interested" 30:10, "I told him I wasn't interested in sex," 33:50, "I didn't want it," 34:48, "I felt I had to do whatever he wanted to do," 36:35, "I closed my legs and pulled my thighs together" (to show I did not want it) 42:25, "I trusted him because he was a trooper," 43:20, "I was crying," 48:12, "I did not say it was consensual—I felt it was rape," 42:33, "I did not choose to do it," 43:13.

57. In his October 17, 2011 interview, Kleeman stated Judge Pankake continued the case for 60 days (so it was unresolved later that day), 2:52, after he spoke to Plaintiff at Pankake's office he returned to patrol but does not recall returning to any specific place, 7:26, he lived with his mother at the time: he did not tell Plaintiff that and has no idea how she

knew that, even though sharing personal information is inappropriate, 8:09-8:55, he has no recall where he went after the hearing, 9:24, he stayed in the car the whole shift, 9:41, he never drove to the cemetery that day, 10:11-11:11. Kleeman then indicated that confirmation of his account required a review of his "green logs."<sup>1</sup> After reviewing the green logs, he stated he has no recall where he went after the hearing but it was not a cemetery, :26, data showing his car was in Donaldson Cemetery for 22 minutes is incorrect, 1:35, he has vehicle L7-7 that day from 15:27:18-15:49:16 and Kintzel claimed it took 20-25 minutes 4:40-5:31, he used his cell phone to call her and he blocked his number: "no way I'll give my number out", 7:12-16, he had Plaintiff's cell phone number, 7:44, stated he would keep the records of the radio shift, 11:46.

58. Defendants Orlandi, Tucker, Wise and Winterbottom knew of the contents of these audiotapes and that they tended to show there was a rape but, in furtherance of their efforts to cover up the violation of plaintiff's civil rights, deliberately did not send them to the Schuylkill County D.A.

59. Kleeman admitted he had possession of or access to the green logs showing his activity on June 2, 2010 on October 17, 2011 when he was interviewed and referred to them. The audiotape states he is reviewing his green logs during a break of the October 17, 2011 interview. As of January 3, 2011, Defendants knew the green logs were material and

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<sup>1</sup> "Green logs" are records which show where a police officer was during his shift.

relevant to plaintiff's claims. In a deliberate effort to cover up the crime and the violation of FK's civil rights, with knowledge that the whereabouts of Kleeman June 2, 2010 was important to the rape investigation and FK's case, Defendants had the green logs destroyed and/or took no action to preserve them when they knew they contained highly relevant, material evidence.

60. At all relevant times, Defendants had custody and/or control of the green logs.

61. No green logs were ever produced pursuant to a subpoena first issued to the Pennsylvania State Police on December 23, 2013.

62. On or about July 25, 2014, in *Kintzel v. Kleeman*, Kleeman stated in responses to Requests for Production that he did not know where the green logs were, did not have possession of them, had no documents indicating he had them on the date of the interview (without denying he had them) and had no documents indicating communications he had with the Pa. State Police about them.

63. In the court's July 1, 2015 ruling in case No. 3:14cv-2222, the court dismissed the complaint without prejudice to refile if, inter alia, Plaintiff can prove that what she received from Stephen Kleeman in her lawsuit against him was less than she would have received absent Defendant's actions, or omissions.

64. On or about October 18, 2016, due to the lack of ability for

Stephen Kleeman to pay a judgment and lack of assets he owned, Plaintiff agreed to settle her claim against him for \$12,000 plus the deed to a parcel he owns which is worth approximately \$10,000. She signed a release settling that case.

65. Plaintiff received in the settlement far less than she would have received absent the actions of Defendants, whose acts and omissions deprived her of the right of access to courts.

66. As of November 2011, Defendants knew, or should have known:

- a. Kleeman had lied about being in the cemetery with plaintiff;
- b. Plaintiff had bruises from her encounter with Kleeman;
- c. Kleeman subjected plaintiff to sex against her will;
- d. The records of their investigation, including but not limited to Kleeman's green logs, were necessary evidence for Plaintiff to prove Kleeman's violation of her civil rights, inasmuch as they directly relate to credibility and liability, in turn affecting FK's ability to recover damages; and
- e. Without the records of their investigation, Plaintiff would not be successful, or would be limited or otherwise impeded, in vindicating the violation of her civil rights and seeking redress in federal court.

**CAUSES OF ACTION**

COUNT I

DENIAL OF ACCESS TO THE COURTS AND VIOLATIONS OF THE FIRST  
AND FOURTEENTH AMENDMENTS (42 U.S.C. §1983)

67. Plaintiff incorporates each of the preceding paragraphs as if set forth fully herein.

68. Plaintiff has been deprived of material evidence as to what occurred the day of the assault since the green logs either stated Kleeman was in the cemetery at the time of the assault, which contradicts his statements in discovery that he was not there, or state he was somewhere else, state nothing or contradict evidence he was at the scene of the sexual assault when it occurred.

69. Defendants Orlandi, Tucker, Wise and Winterbottom together agreed, with the express objective to deny Plaintiff access to the courts, to take and in fact took actions to cover up Kleeman's violation of plaintiff's civil rights and frustrate her right to seek redress, in whole or in part by bringing about a deliberately incomplete investigation of the June 2, 2010 incident and providing incomplete evidence to Plaintiff in her civil case and to the Schuylkill County D.A.'s Office to minimize the chance Kleeman would be criminally prosecuted such that Plaintiff could not fully recover in a civil claim.

70. Defendants' actions and omissions have significantly interfered with Plaintiff's ability to obtain, caused her to obtain substantially less for her claim and/or substantially reduced Plaintiff's likelihood of obtaining relief in her action against Kleeman, in violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff seeks judgment in an amount in excess of \$150,000 in her favor and against Defendants Orlandi, Tucker, Wise and Winterbottom, jointly and severally, on her claim for violations of the 1<sup>st</sup> and 14<sup>th</sup> Amendments pursuant to 42 U.S.C. §1983 as well as an award of attorneys fees and costs.

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

71. Plaintiff incorporates each of the preceding paragraphs as if set forth fully herein.

72. Defendants, acting within the scope of their employment as Pennsylvania State Police Officers and under color of state law, agreed between themselves and/or other individuals to act in concert to deprive plaintiff of clearly established Constitutional rights, as alleged hereinabove.

73. In furtherance of the conspiracy, Defendants engaged in and/or facilitated multiple covert acts, including but not limited to: destroying, or allowing to be destroyed, Kleeman's June 2, 2010 green logs; destroying, allowing to be destroyed, or otherwise making unavailable to Plaintiff additional material evidence relating to the investigation of Kleeman; obscuring or omitting pertinent, probative information and evidence in their reports of their investigation of Kleeman; disparaging Plaintiff in the course of their investigation; purposely sending only certain materials to the prosecutor, omitting much of what is most probative of the guilt of Kleeman.

74. As a result of Defendants' conspiracy and acts in furtherance of it, Plaintiff suffered the harms and damages alleged hereinabove.

WHEREFORE, Plaintiff asks the Court to enter judgment in her favor and against Defendants on the conspiracy claim, and to enter judgment in an amount in excess of \$150,000 in her favor, and against Defendants Orlandi, Tucker, Wise and Winterbottom, jointly and severally, and individually and award her attorney's fees, and the costs, such interest as is allowed by law; and provide other such relief as the Court deems just and equitable.

J. Michael Considine, Jr., P.C.

By: s/J. Michael Considine, Jr.  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
(215)564-4000

Date: December 16, 2016

CERTIFICATE OF SERVICE

I, J. Michael Considine, Jr., hereby certify that I filed electronically the Amended Complaint and by so doing transmitted it to Lisa Wojdak Basial, SDAG and Lindsey Bierzonski, Office of Attorney General, 15th Floor Strawberry Square, Harrisburg, PA 17120, counsel for Defendants.

Date: December 16, 2016

s/J. Michael Considine, Jr.