

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ANDREW BROWN 11816 Cromwell, Upper Unit Cleveland, Ohio 44120)	CASE NO.
)	
)	
<i>Plaintiff,</i>)	JUDGE
)	
vs.)	
)	
CITY OF EAST CLEVELAND <i>c/o Mayor Brandon L. King</i> 14340 Euclid Ave. East Cleveland, Ohio 44112)	
)	
EAST CLEVELAND POLICE DEPARTMENT <i>c/o Chief Michael Cardilli</i> 14340 Euclid Ave. East Cleveland, Ohio 44112)	
)	
TORRIS MOORE <i>Individually and in his capacity as a East Cleveland Police Sergeant</i> FMC Carswell J St. Bldg. 3000 Fort Worth, Texas 76127)	
)	
ANTONIO MALONE <i>Individually and in his capacity as a East Cleveland Police Detective</i> FCI Bennettsville 696 Muckerman Road Bennettsville, South Carolina 29512)	
)	
ERIC JONES <i>Individually and in his capacity as a East Cleveland Police Officer</i> FMC Devens 42 Patton Road Ayer, Massachusetts 01432)	
)	
And)	
)	
JOHN DOES 1 through 9 <i>Individually and in their capacities as</i>)	

East Cleveland Police Officers)
14340 Euclid Ave.)
East Cleveland, Ohio 44112)
)
Defendants.)

COMPLAINT
(Jury Demand Endorsed Hereon)

Now comes Plaintiff, ANDREW BROWN (hereinafter “Plaintiff” or “BROWN”), by and through counsel, and for his Complaint against Defendants, CITY OF EAST CLEVELAND (hereinafter “EAST CLEVELAND”), EAST CLEVELAND POLICE DEPARTMENT (hereinafter “ECPD”), TORRIS MOORE (hereinafter “MOORE”), ANTONIO MALONE (hereinafter “MALONE”), ERIC JONES (hereinafter “JONES”), and JOHN DOES 1 through 9 (hereinafter “DOE”), all of whom are collectively referred to as “Defendants”, states as follows:

1. This is an action to redress the deprivation under color of statute, ordinance, regulation, custom, or usage of the rights, privileges, and immunities secured to the Plaintiff by Constitution of the United States, pursuant to 42 U.S.C. §1983, as well as pursuant to the common law of the State of Ohio.

2. Plaintiff BROWN, at relevant times herein, resided within the City of East Cleveland, Cuyahoga County, Ohio.

3. At all relevant times herein, Defendant EAST CLEVELAND is and was a political division and/or municipal governmental entity organized and existing as such under and by the virtue of the laws of the State of Ohio.

4. Upon information and belief, and at all times relevant herein, Defendant EAST CLEVELAND, its agents, servants, or employees operated, maintained, and/or controlled Defendant ECPD, including all the police officers and civilian employees thereof.

5. At all relevant times herein, Defendant ECPD is and was a political division and/or municipal governmental entity organized and existing as such under and by the virtue of the laws of the State of Ohio whose purpose is to provide for public safety by enforcing laws of the City of East Cleveland, State of Ohio, and/or Federal government, with due regard to the rights of individuals guaranteed under the United States Constitution and the Ohio Constitution.

6. Defendant ECPD is responsible for the hiring, training, and supervision of its police officers and civilian employees.

7. Defendant MOORE, at all relevant times herein, resided within the City of Cleveland, Cuyahoga County, Ohio.

8. At all relevant times herein, Defendant MOORE was employed by Defendants, EAST CLEVELAND and/or ECPD, as a police officer who obtained the rank of Sergeant.

9. In his role as Sergeant, Defendant MOORE oversaw investigations of and supervised the Defendant ECPD's Street Crimes Unit (hereinafter "SCU") whose primary responsibility was investigating illegal drug activity within Defendant EAST CLEVELAND's territorial boundaries which are exclusively within Cuyahoga County, Ohio.

10. At all times herein, Defendant MOORE was acting for, upon, and in furtherance of the business of Defendants, EAST CLEVELAND and/or ECPD, and within the course and scope of his employment.

11. Defendant MALONE, at all relevant times herein, resided within the City of Cleveland, Cuyahoga County, Ohio.

12. At all relevant times herein, Defendant MALONE was employed by Defendants, EAST CLEVELAND and/or ECPD, as a police officer who obtained the rank of Detective.

13. Defendant MALONE was assigned to SCU, identified many of the investigative targets, prepared reports and affidavits, and, in the absence of Defendant MOORE, assumed the supervisory role of the SCU.

14. At all times herein, Defendant MALONE was acting for, upon, and in furtherance of the business of Defendants, EAST CLEVELAND and/or ECPD, and within the course and scope of his employment.

15. Defendant JONES, at all relevant times herein, resided within the City of Cleveland, Cuyahoga County, Ohio.

16. At all relevant times herein, Defendant JONES was employed by Defendants, EAST CLEVELAND and/or ECPD, as a police officer who obtained the rank of Detective.

17. Defendant JONES was assigned to SCU, identified many of the investigative targets, and prepared reports and affidavits.

18. At all times herein, Defendant JONES was acting for, upon, and in furtherance of the business of Defendants, EAST CLEVELAND and/or ECPD, and within the course and scope of his employment.

19. Upon information and belief, Defendants DOE, who are presently unknown, reside within Cuyahoga County, Ohio.

20. Upon information and belief, and at all relevant times herein, Defendants DOE are and were employed by Defendants, EAST CLEVELAND and/or ECPD, as a police officer(s) and were either direct superiors of Defendants, MOORE, MALONE, and JONES or

were individuals assigned to SCU who knew of, participated in, condoned, or ratified the conduct complained of herein.

21. Upon information and belief, and at all times herein, Defendants DOE were acting for, upon, and in furtherance of the business of Defendants, EAST CLEVELAND and/or ECPD, and within the course and scope of their employment

STATEMENT OF FACTS

22. On or about August 6, 2012, Defendants, MOORE, MALONE, JONES, and/or DOE, purportedly met with and used a “confidential informant” to participate in a purported controlled purchase of crack cocaine from an individual identified as “Snoop.”

23. Defendants believed “Snoop” to be Plaintiff who, at the time, resided at 1769 Rosedale Ave, East Cleveland, Cuyahoga County, Ohio (hereinafter “1769 Rosedale Ave.”)

24. Thereafter, Defendants, MOORE, MALONE, JONES, and/or DOE, prepared and signed an affidavit in support of a search warrant for 1769 Rosedale Ave. based upon the information purportedly provided by the confidential informant and the purported controlled buy on August 6, 2012.

25. The aforementioned affidavit contained materially false and/or misleading statements and/or other material omissions which Defendants knew, or should have known, were false and misleading, however, were necessary for the finding of probable cause.

26. On or about August 8, 2012, Defendants, MOORE, MALONE, JONES, and/or DOE, obtained a search warrant using the aforementioned affidavit and, further, executed a search of 1769 Rosedale Ave. finding evidence of purported contraband.

27. Upon information and belief, Defendants, MOORE, MALONE, JONES, and/or DOE, thereafter prepared or caused to be prepared, police reports and/or other documentation to conceal the lack of probable cause for the search of 1769 Rosedale Ave.

28. Upon information and belief, Defendants, MOORE, MALONE, JONES, and/or DOE, thereafter directed one or more individuals to serve as the “confidential informant” and provide false information to local prosecutors and court personnel to conceal the lack of probable cause.

29. As a result of the foregoing, Plaintiff was arrested and indicted for various felonies in Cuyahoga County Case # CR-12-565855-A.

30. On or about October 22, 2012, Plaintiff was convicted on counts of drug possession, having a weapon while under disability, and possessing criminal tools and was immediately sentenced to serve one year in prison with credit dating back to August 8, 2012, for the time he spent in county jail awaiting trial.

31. Plaintiff was released from prison on August 11, 2013.

32. On October 7, 2015, Defendant MOORE was indicted for various criminal offenses in Northern District of Ohio Case: 1:15-cr-00363 that were related to conduct similar to the allegations herein.

33. On October 8, 2015, Defendants, MALONE and MOORE, were charged with various criminal offenses in a Bill of Information in Northern District of Ohio Case: 1:15-cr-00373 that were related to conduct similar to the allegations herein.

34. Following his plea of guilty to violations of 18 U.S.C § 241, 18 U.S.C § 1951, 18 U.S.C § 666(a)(1)(A), and 18 U.S.C. § 1001, Defendant MOORE was convicted and sentenced to serve 108 months with the Bureau of Prison on or about April 5, 2016.

35. Following his plea of guilty to violations of 18 U.S.C § 241 and 18 U.S.C § 1951, Defendant JONES was convicted and sentenced to serve 46 months with the Bureau of Prison on or about April 11, 2016.

36. Following his plea of guilty to violations of 18 U.S.C § 241 and 18 U.S.C § 1951, Defendant MALONE was convicted and sentenced to serve 71 months with the Bureau of Prison on or about April 19, 2016.

37. On December 13, 2016, in Cuyahoga County Case # CR-12-565855-A, the State of Ohio voluntarily filed a *Motion to Vacate Conviction and Sentence* due, in part or whole, to Defendants' convictions in Case: 1:15-cr-00373 and Case 1:15-cr-00363 and their involvement with Plaintiff's investigation and prosecution, placing Plaintiff on notice of the potential nature of the claims asserted herein.

38. On June 29, 2017, Plaintiff's convictions in Cuyahoga County Case # CR-12-565855-A were vacated and his post release control was terminated.

PLAINTIFF'S CIVIL RIGHTS CLAIMS

39. The Civil Rights Act, codified as 42 U.S.C. § 1983, provides as follows: “[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any laws, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

40. Plaintiff BROWN has a right to be secure in his person and home against unreasonable searches and seizures and that no warrant shall be issued without probable cause

as guaranteed by the Fourth Amendment to the Constitution as incorporated and applied to the states by and through the Fourteenth Amendment.

41. Plaintiff BROWN has liberty interest protected by the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution as incorporated and applied to the states by and through the Fourteenth Amendment.

42. Defendants, jointly and/or severally, through their acts and/or omission, violated BROWN's Constitutional rights through, but not limited to, the following:

- a. Preparing, or causing to be prepared, affidavits in support of a search warrant that contains materially false and/or misleading statements and/or other material omissions which Defendants knew, or should have known, were false and misleading but were necessary for the finding of probable cause;
- b. Reviewing the aforementioned affidavits and failing to correct false and/or misleading statements or omissions;
- c. Executing, or causing to be executed, unlawful search warrants;
- d. Unlawfully searching Plaintiff and his residence;
- e. Unlawfully seizing Plaintiff, his property, and possessions;
- f. Unlawfully seizing and diverting Plaintiff's money and/or property for Defendants' personal benefit;
- g. Preparing, or causing to be prepared, police reports and/or other documentation to conceal the lack of probable cause for the search of Plaintiff's residence;
- h. Directing, or causing to be directed, one or more individuals to serve as the "confidential informant" to provide false information to local prosecutors and court personnel to conceal the lack of probable cause.

- i. Failing to adequately hire, train, supervise, and monitor EAST CLEVELAND and/or ECPD police officers and/or civilian employees;
- j. The wrongdoing complained of herein was undertaken pursuant to a custom or a formal policy of EAST CLEVELAND and/or ECPD, by individual(s) with final policymaking authority, and/or an official with final authority ratified subordinate(s) wrongdoing.

43. As a direct and proximate result of Defendants' violations of BROWN's Constitutional rights, BROWN suffered a loss of liberty and personal integrity; property loss; severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

COUNT I
Violation of Civil Rights - 42 U.S.C. § 1983
Defendants MOORE, MALONE, JONES, and DOE

44. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

45. Plaintiff brings a claim against Defendants, MOORE, MALONE, JONES, and DOE, individually, as well as in their official capacities as EAST CLEVELAND and/or ECPD employees, pursuant to 42 U.S.C. § 1983 and for punitive damages.

46. At all material times, Defendants, MOORE, MALONE, JONES, and DOE, were acting under color of state law, within the course and scope of their employment with Defendants, EAST CLEVELAND and/or ECPD, and/or pursuant to a policy, procedure, practice, or custom of Defendants, EAST CLEVELAND and/or ECPD.

47. Defendants had the duty to maintain and protect BROWN's Constitutional rights as set forth herein.

48. Defendants acts and/or omissions as set forth herein were unreasonable and with deliberate indifference to BROWN's Constitutional rights.

49. As a direct and proximate result of Defendants acts and/or omissions, Defendants, MOORE, MALONE, JONES, and DOE violated Plaintiff's rights protected by the Fourth Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution causing injury to Plaintiff and that an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

50. As a direct and proximate result of Defendants' violations of BROWN's constitutional rights, BROWN suffered a loss of liberty and personal integrity; property loss; severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

COUNT II
Violation of Civil Rights - 42 U.S.C. § 1983
Defendants EAST CLEVELAND and ECPD

51. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

52. Municipal entities, like Defendant EAST CLEVELAND and ECPD, are liable under 42 U.S.C. § 1983 for Constitutional violations that are committed pursuant to a policy, procedure, practice, or custom of the municipal entity, by individual(s) with final policymaking authority, and/or an official with final authority ratified subordinate(s) wrongdoing. *See, e.g. Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978).

53. Upon information and belief, Defendants, EAST CLEVELAND and ECPD, had policy, procedure, practice, or custom including, but not limited to:

- a. Failing to properly hire, train, supervise, and monitor employees concerning the use of confidential informants, preparing search warrant affidavits, executing search warrants, logging evidence, and/or preparing police reports;
- b. Failing to properly hire, train, supervise, and monitor employees concerning the Constitutional rights of individuals like Plaintiff;
- c. Engaging in conduct described in Paragraphs 42(a) through (j);
- d. Overlooking, covering up, and/or failing to discipline officers for misconduct and committing constitutional violations;
- e. Failing enforce existing policies regarding those set forth in Paragraphs 53(a), (b), (c), and (d) or otherwise ratifying such violation(s).

54. The Defendants, EAST CLEVELAND and ECPD's, willful blindness towards the Constitutional violations caused by their police officers and/or civilian employees, constitute gross negligence and/or deliberate and conscious indifference to the rights conveyed to Plaintiff through 42 U.S.C. §§ 1983 and 1988.

55. As a direct and proximate result of Defendants, EAST CLEVELAND and ECPD's, acts and/or omissions, Plaintiff's rights protected by the Fourth Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution were violated, causing injury to Plaintiff, and that an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

56. As a direct and proximate result of Defendants' violations of BROWN's constitutional rights, BROWN suffered a loss of liberty and personal integrity; property loss;

severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

57. The acts and/or omissions of Defendants EAST CLEVELAND and ECPD resulted in a systemic and institutional failure to protect the Constitutional rights of BROWN and others.

COUNT III
Negligent Hiring, Training and Retention
Defendants EAST CLEVELAND and ECPD

58. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

59. Defendants EAST CLEVELAND and ECPD knew, or should have known, of Defendants, MOORE, MALONE, JONES, and DOE's incompetence.

60. Defendants EAST CLEVELAND and ECPD failed to properly hire, train, supervise, and monitor those Defendants or otherwise take any disciplinary action against those Defendants despite such knowledge.

61. Defendants EAST CLEVELAND and ECPD's negligent, reckless, and/or willful failure to take action or reasonable measures to protect Plaintiff resulted in harm and injury to Plaintiff.

62. As a direct and proximate result, BROWN suffered a loss of liberty and personal integrity; property loss; severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

COUNT IV
Infliction of Emotional Distress
All Defendants

63. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

64. Plaintiff brings a claim against Defendants, MOORE, MALONE, JONES, and DOE, individually, as well as in their official capacities as Defendants, EAST CLEVELAND and ECPD, employees.

65. At times relevant herein, Defendants negligently, recklessly, and/or intentionally engaged in conduct that was extreme and outrageous or otherwise breached a duty of care under circumstances that serious emotional distress was reasonably foreseeable.

66. BROWN's mental anguish was serious and of a nature that no reasonable man could be expected to endure.

67. As a direct and proximate result of Defendants' acts and/or omissions, BROWN suffered a loss of liberty and personal integrity; property loss; severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

COUNT V
Violation of R.C. § 2921.52
All Defendants

68. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

69. Pursuant to R.C. § 2921.52(B), it is unlawful to do the following:

- a. Issue, display, deliver, distribute, or otherwise use sham legal process;

- b. Use sham legal process to arrest, detain, search, or seize any person or the property of another person;
- c. Commit or facilitate the commission of an offense, using sham legal process;
- d. Commit a felony by using sham legal process.

70. Plaintiff submits that the affidavit in support of a search warrant, the search warrant, the police report, criminal charges, and/or other investigative documents that Defendants created, caused to be created, and/or used, as alleged herein, constitute a “sham legal process.”

71. Defendants recklessly, wantonly, willfully, and/or knowingly violated R.C. § 2921.52(B).

72. As a direct and proximate result, BROWN suffered a loss of liberty and personal integrity; property loss; severe and permanent emotional injuries; a loss of enjoyment of life; loss of ability to perform activities of daily living; a loss of income; a diminution in earning ability; and will continue to suffer said losses in the future, all to his expense and obligation.

73. Pursuant to R.C. § 2921.52(E), Defendants are “liable in a civil action to any person harmed by the violation for injury . . . or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney’s fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division.”

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount to be determined according to proof at Trial, but believed to be in excess of \$25,000.00, punitive damages, in addition to attorney’s fees pursuant to 42 U.S.C. § 1988 on all federal causes of actions, attorneys fees pursuant to R.C. § 2921.52(E) on Count V, and

including court costs and expenses of this action on all causes of action, pre-judgment interest, post-judgment interest, and all other relief this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Scott M. Kuboff

Scott M. Kuboff (#0082703)

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