

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANIEL TAYLOR,)

Plaintiff,)

vs.)

No.: 14 cv 737

CITY OF CHICAGO, ANTHONY)
VILLARDITA #20849., THOMAS JOHNSON)
#20820. BRIAN KILLACKY#20748, TERRY)
O’CONNOR #20831, RICK ABREU #20796,)
ROBERT DELANEY #20383, SEAN GLINSKI)
#3122, MICHAEL BERTI #12881, AND)
UNIDENTIFIED EMPLOYEES OF THE)
CITY OF CHICAGO,)

Defendants.)

DEFENDANTS’ STATEMENT OF MATERIAL FACTS¹

NOW COME Defendants, ANTHONY VILLARDITA, THOMAS JOHNSON, BRIAN KILLACKY, TERRY O’CONNOR, RICK ABREU, ROBERT DELANEY, SEAN GLINSKI, and MICHAEL BERTI (collectively “Defendant Officers”), by and through their attorneys, Steve Borkan, Timothy P. Scahill and Misha Itchhaporia of BORKAN & SCAHILL LTD., and for their Statement of Material Facts pursuant to Local Rule 56.1, state as follows:

DESCRIPTIONS OF PARTIES AND KEY PARTICIPANTS.

1. Plaintiff, Daniel Taylor (also known as “Black T”), was arrested on December 3, 1992,

¹ The following statements are to be construed in a light most favorable to Plaintiff and do not necessarily represent the facts Defendant Officers intend to present at trial

in connection with the murders of Jeffrey Lassiter (“Lassiter”) and Sharon Haugabook (“Haugabook”) (hereinafter “the Lassiter/Haugabook murders”). Subsequently, he was prosecuted and convicted for these murders until his conviction was vacated in 2013. Ex. 1 at 8:11-15, 228:1-3, 366:11-16, 367:16-24

2. Plaintiff’s co-defendants, Deon Patrick, Lewis Gardner, Paul Phillips, Akia Phillips, Joseph Brown, Rodney Matthews and Dennis Mixon were also arrested and prosecuted for the Lassiter/Haugabook murders. Ex. 1 at 352:2-6, 354:2-6; Ex. 3 at 38:13-39:2.

3. Defendant Officers, Anthony Villardita, Thomas Johnson, Rick Abreu, Terry O’Connor Brian Killacky and Robert Delaney were Chicago Police Detectives at all relevant times and were either assigned or performed various tasks as detectives relative to the Lassiter/Haugabook murder investigation. Ex. 2 at ¶ 8.

4. Defendant Officers, Michael Berti and Sean Glinski, were Chicago Police Officers at all relevant times and assigned to the 23rd District tactical team in November 1992. *Id.*

5. Thomas Needham (“ASA Needham”) was an Assistant State’s Attorney for the Cook County State’s Attorney’s Office (“CCSAO”) from 1984 to 1996. Ex. 3 at 16:14-17:5. At the time of the Lassiter/Haugabook investigation, he was a senior first chair in the CCSAO’s trial division. *Id.* at 27:9-21, 33:11-35:5. ASA Needham was assigned as the first chair to prosecute the eight criminal co-defendants that were charged for the Lassiter/Haugabook murders. *Id.* at 33:10-34:2, 35:20-37:12.

6. Jeanne Bischoff (“ASA Bischoff”) was an Assistant State’s Attorney for the CCSAO for twenty nine years from 1982 to 2011 Ex. 4 at 8:23-9:1, 13:12-14. In 1992, she was a wing supervisor, ASA Needham’s trial partner and the second chair during the prosecutions of the Plaintiff and his co-defendants. Ex. 3 at 36:20-37:12; Ex 4 at 14:3-15:7, 24:15-21

7. In March 1993, criminal defense attorney, Nathan Diamond-Falk, was appointed to represent Plaintiff in the underlying criminal case. Ex. 5 at 40:15-20. Diamond-Falk represented Plaintiff during the discovery and pretrial stage of Plaintiff's criminal case, throughout Plaintiff's September 1995 criminal trial and subsequent sentencing hearing that occurred in November 1995. *Id.* at 44:7-45:3, 67:9-18,

8. Criminal defense attorney, Ellen Rubin, began working on Plaintiff's criminal case in or around January 1995 and she was the "second chair" during Plaintiff's criminal trial. Ex. 6 at 22:7-21, 66:4-9, 67:23-68:1, 89:17-19, 119:3-7.

FACTS ESTABLISHING JURISDICTION AND VENUE.

9. Plaintiff brought this action pursuant to 28 U.S.C. §§ 1331 and 1367 for alleged acts and commissions that occurred in the City of Chicago; thus, venue and jurisdiction of this Court are proper. Ex. 2 at ¶ 6.

**THE MURDERS OF JEFFREY LASSITER AND SHARON HAUGABOOK ON
NOVEMBER 16, 1992.**

10. On November 16, 1992, at approximately 8:43 p.m., Jeffrey Lassiter and Sharon Haugabook were shot and killed inside Lassiter's second floor apartment at 910 W. Agatite located in Chicago, Illinois. *Id.* at ¶¶ 10-11.

11. Police arrived at the scene of the Lassiter/Haugabook murders three minutes later. *Id.* at ¶ 11.

12. Detectives Anthony Villardita and Thomas Johnson ("Villardita" and "Johnson") were assigned to investigate the Lassiter/Haugabook murders on November 16, 1992 and the first thing they did in the investigation was to go to the scene of the murders. Ex. 7 at 17:8-24, 83:22-84:4, 94:1-8, 97:17-98:3.

13. At the scene of the murders, Villardita and Johnson learned that a witness, Faye McCoy (“McCoy”), who lived in the same apartment building complex as Lassiter, had seen four African American men leaving Lassiter’s apartment building shortly after the shooting. Ex. 2 at ¶ 17; Ex. 8 at 106:3-107:24.

14. Prior to November 16, 1992, Plaintiff had spoken to McCoy on a few occasions, and he knew that she lived in an apartment building on Agitate. Ex. 1 at 113:9-114:1, 119:10-23. In fact, early in the year, Plaintiff had asked McCoy if he could live with her as her foster child. Ex. 1 at 118:10-119:23, 120:7-10.

15. From the night of the murders to December 2, 1992, Villardita and Johnson, along with other detectives, examined the crime scene, drafted reports, spoke to the victims’ family, neighbors and friends, located and interviewed witnesses, assembled and presented photo arrays to witnesses, tried to locate Mixon and conducted other investigative tasks to find the killer(s). Ex. 7 at 17:8-22, 98:1-99:6, 105:22-106:18, 111:19-24, 130:10-17, 135:21-136:4, 136:21-137:15; Ex. 8 at 98:1-5, 102:12-103:4, 114:9-17, 119:20-120:14, 122:14-123:4, 128:9-21, 133:17-22, 134:8-10, 151:10-152:20, 154:11-156:4.

THE ARREST OF LEWIS GARDNER ON DECEMBER 2, 1992.

16. On December 2, 1992, 23rd District Chicago Police Officers arrested Lewis Gardner for possession of drugs. Akia Phillips and Paul Phillips were also arrested with Gardner. Ex.11 at 114:13-15, 115:22-116:2, 116:19-23, 118:18-119:5.

17. On December 3, 1992 at 3:20 a.m., Gardner provided a court reported statement to Cook County Assistant State’s Attorney Marty Fogarty (“ASA Fogarty”) implicating himself, Plaintiff and the other co-defendants in the Lassiter/Haugabook murders. Ex. 11 at 179:8-18, 180:9-14; Ex. 14.

18. On December 3, 1992, Akia Phillips also gave a court reported statement to ASA Fogarty in which he implicated himself, Plaintiff and others. Ex. 13.

19. On December 3, 1992 at 2:15 a.m., Plaintiff was arrested and transported to the detective area located at the intersection of Belmont and Western in Chicago, Illinois. Ex. 1 at 228:1-11, 232:9-11, 239:24-240:1.

20. A few hours later at 5:27 a.m. on December 3, 1992, Plaintiff gave a court reported statement to Cook County Assistant State's Attorney Joseph Magats ("ASA Magats") about the Lassiter/Haugabook murders. Ex. 1 at 306:19-23; Ex. 12.

21. Plaintiff's other co-defendants, Lewis Gardner, Paul Phillips, Deon Patrick, Joseph Brown, Rodney Matthews and Dennis Mixon also made statements implicating themselves and each other in the Lassiter/Haugabook murders. Ex. 8 at 208:2-8; Ex. 15; Ex. 16; Ex. 17; Ex. 18; Ex. 19.

FAYE MCCOY VIEWS A LINEUP ON DECEMBER 3, 1992.

22. On December 3, 1992, McCoy viewed a lineup consisting of Plaintiff, Paul Phillips, Deon Patrick, Rodney Matthews and two other African American males at the Chicago Police Detective Area. Ex. 7 at 260:1-261:11; Ex. 24.

23. Detectives Terry O'Connor ("O'Connor) and Villardita were with McCoy when she viewed the lineup. Detectives Robert Delaney and Brian Killacky ("Delaney" and "Killacky") were inside the room with the lineup participants for the duration of the lineup. Ex. 7 at 260:1-17; Ex. 24; Ex. 44 at 50:22-23, 52:17-53:8, 67:19-22.

24. Almost immediately following the lineup, O'Connor and Villardita told Delaney and Killacky what McCoy said when she viewed the lineup and Delaney and Killacky drafted a supplementary report (hereinafter "lineup supplementary report") which stated, in summary, that

McCoy knew Plaintiff and his co-defendants, but did not know their names and that she had seen them in the area of 910 W. Agatite. Ex. 24; Ex. 44 at 49:2-19,68:2-12, 69:13-70:21, 77:18-78:15, 82:11-83:18.

**DETECTIVES VILLARDITA AND JOHNSON LOCATE AND DOCUMENT THEIR
DISCOVERY OF PLAINTIFF'S NOVEMBER 16, 1992 ARREST REPORT AND BOND
SLIP OF DANIEL TAYLOR.**

25. At some point when Plaintiff was in police custody, he told Villardita and Johnson that he was locked up on November 16, 1992, which they thought was odd because they had checked his criminal history report which did not reflect an arrest on that date. Ex. 1 at 312:4-6; Ex. 7 at 255:22-256:7, 266-12-267:20, 268:9-269:2; Ex. 8 at 237:24-238:13, 241:1-9.

26. After Plaintiff made this statement, Villardita and Johnson checked his criminal history report again to see if he had been arrested on November 16, 1992, but there was no such record of this arrest on his criminal history report. Ex. 7 at 266:22-268:2, 270:19-22; Ex. 8 at 238:9-13, 240:10-18, 242:2-6.

27. A couple of days after Plaintiff's arrest on December 3, 1992, Villardita called 23rd District Chicago Police Officer Steve Caluris ("Officer Caluris") and asked him to look through the arrest reports at the 23rd District to see if there was an arrest report for Plaintiff for November 16, 1992. Ex. 7 at 266:22-268:2; Ex. 8 at 241:1-9, 242:7-13.

28. On December 6, 1992, Officer Caluris informed Villardita that he had found an arrest report for a Daniel Taylor which showed that Taylor had been arrested on November 16, 1992. Ex. 7 at 266:12-268:2, 272:1-7; Ex. 8 at 242:20-243:10; Ex. 20 at 201:1-11, 213:5-12.

29. Thereafter, on December 6, 1992, Villardita and Johnson went to the 23rd District police

station where they reviewed and obtained a copy of the arrest report and a bond slip for a Daniel Taylor dated November 16, 1992, which they brought back to the detective area. Ex. 7 at 272:8-273:7, 281:14-16; Ex. 8 at 243:5-244:13, 245:18-246:4.

30. According to the four corners of Plaintiff's November 16, 1992 arrest report, Plaintiff was arrested at 6:45 p.m. for disorderly conduct, received into the 23rd District lockup by Civilian Aide Larry Stinson at 7:25 p.m., a facsimile message was sent by 23rd District Chicago Police Officer John Meindl to Central Booking at 7:35 p.m., an initial approval of probable cause was made by Captain McCorry, the charge for disorderly conduct was approved by Lt. Nolan at 9:45 p.m. and Plaintiff was released from custody at 10:00 p.m. Ex. 2 at ¶ 14; Ex. 7 at 273:18-275:13; Ex. 21

31. According to Plaintiff's November 16, 1992 bond slip, Plaintiff bonded out at 10:00 p.m. in the presence of 23rd District Officer James Gillespie. Ex. 7 at 273:18-275:13; Ex. 22.

32. Villardita and Johnson recognized that the arrest report and bond slip that showed that Plaintiff was in custody at the time of the murders conflicted with Plaintiff's court reported statement. Ex.7 at 276:11-277:1; Ex. 8 at 244:14-20, 396:9-14.

33. Villardita and Johnson checked to see if the Daniel Taylor who had been arrested on November 16, 1992 had been photographed or fingerprinted and they determined that he had not been photographed or fingerprinted. Ex. 7 at 279:23-280:10.

34. While they were at the 23rd District, Villardita and Johnson also looked at the 23rd District personnel roster ("personnel roster") that listed the names of the individuals that were assigned to work on November 16, 1992 and their respective assignments on that day, including those that were assigned to work in the lockup. Ex. 7 at 312:13-20.

35. Villardita and Johnson documented their discovery of Plaintiff's November 16, 1992 arrest

report and bond slip in a police report, they inventoried these documents and they also informed their supervisors, Commander Callaghan and Lt. Stevens about this development in their investigation. Ex. 7 at 280:15-281:16; Ex. 8 at 244:14-20, 246:5-10, 247:17-19, 248:22-24, 250:22-251:23, 396:9-399:6.

VILLARDITA AND JOHNSON INFORM ASA DAVID STYLER AND ASA GARRITT HOWARD OF THE DANIEL TAYLOR ARREST REPORT AND BOND SLIP.

36. The next day, on December 7, 1992, Villardita and Johnson met with ASA David Styler (“ASA Styler”) and his supervisor, ASA Garritt Howard (“ASA Howard”) to inform them of the potential conflict between the confessions of Plaintiff and his co-defendants and the police records that appeared to indicate that Plaintiff was in custody at the time of the murders (hereinafter “Taylor lockup issue or lockup issue”). Ex. 7 at 284:19-285:14, 299:14-19; Ex. 8 at 252:3-253:13; Ex. 23 at 39:12-18, 124:18-23.

37. During the meeting, ASAs Styler and Howard requested that Villardita and Johnson look into the Taylor lockup issue and it was decided that ASA Styler would interview the 23rd District personnel that were assigned to work at the desk at the 23rd District police station as well those that were assigned to work in the lockup on November 16, 1992. Ex. 7 at 300:2-10, 301:17-302:22, 316:6-317:23, 409:2-411:23; Ex. 8 at 252:3-254:4, 336:6-337:7; Ex. 23 at 43:9-14, 47:22-49:7; 63:15-20.

38. It was further decided that Villardita and Johnson would continue their investigation by attempting to locate and interview individuals who may have seen Plaintiff and his co-defendants at the park prior to the Lassiter/Haugabook murders. Ex. 7 at 301:16-302:13, 316:6-317:23; Ex. 8 at 252:3-253:13.

39. At some point, Villardita and Johnson drafted a timeline of Plaintiff's arrest on November 16, 1992 on a General Progress Report ("Villardita/Johnson timeline GPR") in which they chronologically documented Plaintiff's whereabouts from the time of his arrest on November 16, 1992 using Plaintiff's November 16, 1992 arrest report and bond slip. Ex. 7 at 338:6-339:6; Ex. 8 at 261:11-264:4, 444:20-445:21,457:12-458:7; Ex. 24. Thereafter, Johnson submitted the Villardita/Johnson timeline GPR to his supervisor for approval. Ex. 8 at 451:16-454:20, 457:12-458:7.

DETECTIVES GATHER ARREST REPORTS, BOND SLIPS AND LOCKUP ROSTER.

40. On December 7, 1992, at the request of Villardita and Johnson, Detectives Robert Elmore ("Elmore") and James Gildea ("Gildea"), went to the 23rd District police station and obtained the arrest reports and bond slips of people that were in custody at the 23rd District lockup on November 16, 1992, as well as a copy of the lockup roster, which contained a handwritten list of the people that were purportedly in custody in the lockup on November 16 and 17, 1992 ("lockup roster") and turned these documents to Villardita and Johnson for the file. Ex. 7 at 306:17-23, 307:13-17; Ex. 26 at 152:20-154:1, Ex. 27 at 121:16-24, 125:7-126:9, 127:13-19; Ex. 41.

41. Elmore and Gildea also attempted to locate an individual by the name of James Anderson ("Anderson"), who according to police records, had shared a cell with Plaintiff at the 23rd District lockup on the night of the murders and they documented their attempt in a police report. Ex. 26 at 154:16-155:10, 164:23-165:22, 245:1-8; Ex. 27 at 121:16-24, 127:20-130:2; Ex. 36.

42. Sometime between December 6 and December 8, 1992, Johnson saw a copy of the lockup roster, which was provided to the CCSAO. Ex. 7 at 318:6-12; Ex. 8 at 304:8-305:23, 306:16-307:17,311:21-312:6.

43. Around December 7, 1992 or December 8, 1992, Villardita and Johnson put together a package for ASA Howard because he had requested the arrest reports of the people that were in the 23rd District lockup on November 16, 1992 and they attached the package to a GPR that they submitted to their supervisor. Ex. 7 at 319:17-320:1, 330:17-331:6.

ASA STYLER INTERVIEWS 23RD DISTRICT OFFICERS IN DECEMBER 1992.

44. On December 18, 1992, ASA Styler identified the police personnel that he wanted to interview by looking at Plaintiff's arrest report and personnel roster and then he sent grand jury subpoenas to the following 23rd District personnel who worked in the 23rd District lockup during the third watch on November 16, 1992 and the first watch on November 17, 1992: Sgt Pierson, Officer Cruz, Officer Milz, Civilian Aide Stinson, Officer Miendl, Officer Gillespie, Officer Mitchell, Civilian Aide Patterson and Sgt. Loiacono. Ex. 23 at 49:8-16, 147:14-148:5, 150:6-11.

45. On December 22, 1992 and December 23, 1992, ASA Styler interviewed Officer Gillespie, Officer Mitchell, Civilian Aide Patterson, Officer Milz, Sgt. Pierson, Officer Miendl and Civilian Aide Stinson and took notes of his interviews. Ex. 23 at 20:23-21:4; 150:6-18; Ex. 30.

46. ASA Styler identified in his notes the 23rd District Chicago Police officers and civilian aides that were on duty at the 23rd District lockup during the third watch on November 16, 1992, and the first watch on November 17, 1992. Ex. 23 at 49:8-16, 160:16-161:22; Ex. 30.

47. In December 1992, ASA Styler was aware that Anderson was also arrested on November 16, 1992 for a violation of a city ordinance, and that Anderson may have shared a cell with Plaintiff at the 23rd District lockup. Ex. 23 at 109:17-19, 136:2-137:18.

48. ASA Styler also knew that Anderson went to the Salvation Army from time to time to pick

up his mail. Ex. 23 at 137:7-18, 301:8-23. ASA Styler wrote in his notes that he needed to get the arrest report of Anderson and that the Salvation Army should contact the CCSAO if Anderson picked up his mail. Ex. 23 at 137:7-11, 140:5-16, 143:1-4; Ex. 30.

49. ASA Styler also made reference in his notes to a “log book,” which he believes referred to a police log book that tracked the names and times of people in lockup, and he also indicated, in his notes, at 7:15 p.m. there were no individuals in lockup and at 8:30 p.m., there were five people in the lockup. Ex. 23 at 298:22-300:19; Ex. 30.

POLICE INVESTIGATION INTO THE LOCKUP ISSUE

50. In furtherance of the investigation into the lockup issue, Villardita and Johnson interviewed an individual called Adrian Grimes (“Grimes”) and documented their interview of Grimes in a police report. In the report, they indicated that Grimes told them that he had seen Plaintiff at a park on the night of the murder at a time when police reports indicated that Plaintiff was in police custody. Ex. 7 at 319:5-9, 323:18-324:17; Ex. 8 at 292:5-13, 424:6-9, 428:1-4; Ex. 29

51. Elmore and Gildea interviewed an individual by the name of Mike Seymore (“Seymore” or “Seymour”). Ex. 27 at 133:21-134:1. Seymore told the detectives that he had seen Plaintiff in the area of the homicides immediately after the murders. Ex. 27 at 141:14-142:10. Elmore and Gildea told Villardita and Johnson about their interview of Seymore and Villardita and Johnson provided a summary of the interview in a report. Ex. 7 at 292:5-10, Ex. 8 at 428:23-429:22; ex. 27 at 134:2-13, 136:1-16.

52. There is no evidence that Seymore was coerced by the Defendant Officers. *See Celotex*

Corp. V. Catrett, 477 U.S. 317, 323 (1986)(party not bearing burden of proof may rely upon absence of evidence in seeking summary judgment; party not required to produce evidence negating element of opposing party's claims).

53. On December 3, 1992, when Plaintiff gave his court reported statement, he truthfully relayed that on the night of the murders he agreed to show the police where his friend Akia Phillips (also known as Baby T) was located and that he went with the police to find Akia Phillips. Ex. 41 at 71:9-72:16, 74:5-18. Villardita and Johnson decided to follow up on this statement by trying to find the officers that Plaintiff interacted with on the night of the murders and they determined that these officers were Michael Berti and Sean Glinski. Ex. 7 at 399:2-400:24, 401:11-402:4.

54. On December 14, 1992, Officers Michael Berti ("Berti") and Sean Glinski ("Glinski") drafted a supplementary report documenting the interaction they had with Plaintiff on November 16, 1992 to find Akia Phillips (hereinafter the "Berti and Glinsk Supplementary Report.") Ex. 32; Ex. 48 at 17:10-13, 242:11-20.

55. Officers also made attempts to locate Anderson. On December 29, 1992, Sergeant Fred Bonke ("Sgt. Bonke") wrote in a GPR "need to locate James Anderson..." and he provided in the report some locations, such as the Salvation Army located at or near the intersection of Sunnyside and Broadway, where detectives were to go to look for Anderson. Ex. 33; Ex. 37 at 121:9-122:7, 128:11-20, 129:23-130:14.

56. On December 31, 1992, Detective John Fitzsimmons ("Fitzsimmons") wrote in a GPR "in regards to the G.P.R. of 30 Dec 1992 from Villardita and Johnson," he went to the Salvation Army location but he was not able to find Anderson. Ex. 34; Ex. 38 at 15:18-21, 83:1-3, 83:21-85:7, 110:12-16.

57. When Fitzsimmons made reference in his report to the “G.P.R. of 30 Dec 1992 from Villardita and Johnson,” he was actually referring to Sgt. Bonke’s December 29, 1992 GPR because that was the GPR he was given to work on. Ex 34; Ex. 38 at 110:12-111:17, 113:3-16.

DISCOVERY DURING PLAINTIFF’S CRIMINAL CASE.

57. Upon assignment of Plaintiff’s criminal case, ASA Needham was made immediately aware of the lockup issue. Ex. 3 at 39:24-44:6, 139:21-140:21.

58. When ASA Needham was assigned to the case, he received and reviewed the CCSAO Felony Review folder relating to the case. Ex. 3 at 41:2-42:11, 43:1-17. There were documents in the CCSAO Felony Review folder that Needham reviewed that indicated that Plaintiff was in lockup on November 16, 1992, such as his November 16, 1992 arrest report. *Id.* at 39:24-42:11; 43:1-44:6, 313:9-24.

59. At all relevant times, ASA Needham understood that under *Brady v. Maryland*, he was obligated to provide exculpatory evidence to the Plaintiffs and their criminal co-defendants. Ex. 3 at 110:7-111:13.

60. ASA Needham was responsible for conducting discovery on behalf of the State during the prosecution of the Plaintiffs’ (and their criminal co-defendants) criminal cases. Ex. 3 at 37:13-19; 51:10-20; Ex. 3 at 112:19-112:24, 113:1-14.

61. On February 23, 1993, at a status hearing in the criminal cases against Plaintiff and his co-defendants, ASA Needham tendered “a full set of all the police reports and arrest slips and written statements and so forth” to all counsel, which included the criminal defense attorney for the Plaintiff. Ex. 31 at 5:19-6:5.

62. ASA Needham tendered, among other documents, Plaintiff’s November 16, 1992 arrest

report and bond slip and the lineup supplementary report to Plaintiff's criminal defense attorney. Ex. 3 at 138:3-139:2, 209:3-19.

63. ASA Needham provided the Berti and Glinski supplementary report to Plaintiff's criminal defense attorney. Ex. 3 at 196:20-197:9; Ex.33.

64. ASA Needham was confident that he had all the GPRs relating to the Lassiter/ Haugabook investigation. Ex. 3 at 120:16-122:24.

65. During the prosecution of Plaintiff and his co-defendants, ASA Needham had three GPRs that made reference to Anderson and which, among other things, described the detectives' attempt to locate Anderson. Ex. 3 at 117:14-119:10, 124:14-125:3, 131:11-131:21, 153:15-154:6; Ex. 29; Ex. 33; Ex. 34. As a result, ASA Needham was aware that Anderson was arrested on November 16, 1992 in the 23rd District and that Chicago Police detectives had made attempts to locate him. Ex. 3 at 124:14-125:3, 131:11-131:21, 153:15-154:6.

66. By the time ASA Bischoff was assigned to the case, all discovery had been completed as well as most of the pretrial hearings. Ex. 4 at 24:15-24:23, 113:1-14. ASA Bischoff did not have an active role in any pretrial hearings. *Id.* at 24:24-25:10.

67. Upon assignment of the case, ASA Bischoff was made aware of the lockup issue. Ex. 4 at 104:2-104:19.

68. ASAs Needham and Bischoff saw the Villardita/Johnson timeline GPR prior to the commencement of Plaintiff's criminal trial. Ex. 3 at 132:2-133:14, 172:13-172:23; Ex. 4 at 51:8-51:18.

69. In the Answer to Discovery that was prepared by ASA Needham and filed with the Court on

April 29, 1993, the prosecution disclosed McCoy, Grimes and Seymore as witnesses that it may or may not call during Plaintiff's criminal trial and provided their contact information. Ex. 35.

NATHAN DIAMOND-FALK'S REPRESENTATION OF PLAINTIFF.

70. In March 1993, when Diamond Falk was appointed to represent Plaintiff in his criminal case, Diamond Falk was an experienced criminal defense lawyer, who was familiar with the rules of discovery and the criminal discovery process. Ex. 5 at 349:12-23.

71. When Diamond Falk was appointed to represent Plaintiff, he shared office space with criminal defense attorney, John Theis, who was appointed to represent one of Plaintiff's co-defendants, Deon Patrick in his criminal case for the Lassiter/Haugabook murders. Ex. 5 at 14:20-16:23. Diamond Falk also knew some of the attorneys that were representing Plaintiff's other co-defendants in their respective criminal cases for the Lassiter/Haugabook murders. Ex. 5 at 106:20-108-10, 110:22-111:10.

72. Diamond Falk could have called the attorneys that were representing Plaintiff's co-defendants on the phone to inquire if their clients were claiming that their confessions had been coerced and he could have reviewed the court files for Plaintiff's co-defendants criminal cases to see if they had filed motions to suppress their statements, but he did not do either of these things. Ex. 5 at 390:20-393:5, 394:17-396:6.

73. Diamond Falk did not ask any of the attorneys that were representing Plaintiff's co-defendants if he could see the discovery materials they had because he believed he had everything. Ex. 5 at 135:24-136:9.

74. Nothing prevented Diamond Falk from asking John Theis or the other attorneys that were

representing Plaintiff's co-defendants if they had any documents in their respective files relating to the identity of any arrestees who shared a cell with Plaintiff on November 16, 1992. Ex. 5 at 279:17-280:4.

75. On August 25, 1993, Diamond Falk served the Chicago Police Department with a subpoena duces tecum that requested, among other things, "lock up records from the 23rd District from November 14, 1992 through November 17, 1992." Ex. 5 at 290:9-15, 291:10-15, 291:23-292:9. When he did not get any responsive documents or any response to this subpoena, he did not file a motion to compel these records. Ex. 5 at 293:16-294:5, 295:8-10.

76. Diamond Falk was generally aware that the Chicago Police Department kept a record of people that were arrested and in custody. Ex. 5 at 269:24-270:9, 293:16-294:5.

77. Diamond Falk made no attempts to discover if the confessions provided by Plaintiff's co-defendants were coerced because he believed that any such evidence would not be admissible at Plaintiff's criminal trial or make a difference to Plaintiff's case. Ex. 5 at 389:15-390:10, 391:19-393:9, 394:17-396:6.

78. During the pretrial trial stage of Plaintiff's criminal trial, Diamond Falk had the lineup supplementary report viewed by McCoy. Diamond Falk was aware that she had seen people fleeing the scene of the Lassiter/Haugabook murders, but he never made any attempt to interview her because he knew what she was going to say and was aware that she was not going to identify Plaintiff as one of the people she saw leaving the scene of the murders. Ex. 5 at 141:20-142:20, 398:21-7, 398:8-400:13.

79. Diamond Falk was also aware that Grimes was disclosed by the state as a witness, that

Grimes had seen Plaintiff out of the lockup at the time when Plaintiff was supposedly in the lockup, and he had a supplementary police report with Grimes' contact information, date of birth, and social security number; yet, Diamond Falk did not attempt to interview Grimes even though he had adequate information to locate Grimes. Ex. 5 at 143:7-22, 397:21-24, 398:15-17.

80. The police did not prevent Diamond Falk from interviewing McCoy or Grimes. Ex. 5 at 142:23-143:5, 144:18-145:1, 398:1-7, 401:18-24

81. Diamond Falk felt that the statements attributed to Grimes in a supplementary police report about seeing Plaintiff out on the street prior to 10:00 p.m. on the night of the murder were not truthful and that he could reveal that these statements were false by cross examining Grimes at trial. Ex. 5 at 414:13-18, 415:22-416:8.

82. Prior to November 16, 1992, Plaintiff was familiar with Grimes and he knew that Grimes' nickname was Pookie because Grimes and Plaintiff were both members of the Traveling Vice Lord street gang. Ex. 1 at 40:23-41:19, 42:3-8, 45:18-20, 97:16-22, 101:16-20.

83. Diamond Falk filed a motion to set bail in which he identified the person who received Plaintiff in the lockup, the individual who sent a fax transmission and the person who approved charges for Plaintiff's arrest on November 16, 1992 and cited to the arrest report and bond slip as sources of this information. Ex. 5 at 404:24-406:14; Ex. 46.

ELLEN RUBIN'S REPRESENTATION OF PLAINTIFF.

83. When Rubin began working on Plaintiff's case, she was aware that pretrial hearings in Plaintiff's criminal case were completed and that Plaintiff had lost his motion to suppress his court reported statement. Ex. 6 at 119:3-16. She read Plaintiff's motion to suppress his court reported statement and transcripts from the hearings on this motion prior to his criminal trial. *Id.*

84. When Rubin worked on Plaintiff's case before his criminal trial, she reviewed police reports that were in Diamond Falk's possession, she also reviewed some transcripts of motion to suppress hearings from the cases of some of Plaintiff's co-defendants and she and Diamond-Falk looked into every officer that was mentioned or referenced on Plaintiff's arrest report and bond slip. Ex. 6 at 51:12-52:1, 59:140-60:12; 62:20-63:11, 120:23-121:5.

85. Prior to the start of Plaintiff's criminal trial, Rubin assumed that Plaintiff would have been locked up with other arrestees when he was in custody at the 23rd District lockup on November 16, 1992 because of her understanding that the 23rd District was a busy police district in the City of Chicago and based on her general knowledge that there are usually multiple people in the lockup at any given time. Ex. 6 at 133:4-8, 139:5-16, 143:19-144:12, 144:22-145:22.

86. Rubin was also aware that the Chicago Police Department would keep documentation of the names of the arrestees in custody, the time the arrestees were released from its custody and the number of arrestees in a lockup, but she made no attempt whatsoever to obtain any such documentation. Ex. 6 at 156:8-20, 178:9-19.

87. Before Plaintiff's criminal trial began, Rubin did not ask Plaintiff if there were any other individuals with him in his cell during the time that he was in the lockup at the 23rd District on November 16, 1992 and she did not ask Plaintiff to describe any of the people that he was in the lock up with on November 16, 1992. Ex. 6 at 134:6-13, 137:14-19, 142:10-16

88. Before Plaintiff's criminal trial began, Rubin did not obtain any records from the 23rd District that documented the names of any arrestees in the lockup on November 16, 1992, did not issue any subpoenas for documents, did not attempt to find out how many people were working in the lockup did not attempt to identify the lockup keeper that was on duty at the time that Plaintiff's bond slip

said he bonded out and did not take any steps to find the person who was in the same cell with Plaintiff when he was in the 23rd District lockup on the night in question. Ex. 6 at 121:9-22, 122:19-123:6, 155:20-24, 156:21-157:1, 158:5-7, 172:5-9.

89. In fact, Rubin did not do any investigation as it relates to Plaintiff's criminal case even though she believed she had an ethical duty to her client (Plaintiff) to investigate information relating to his defense. Ex. 6 at 134:6-13, 137:24-22, 143:6-17, 144:13-21, 155:20-24, 156:21-157:1.

90. Rubin believed that Diamond Falk had conducted an investigation into Plaintiff's criminal case and alibi defense. Specifically, she believed that Diamond Falk made efforts to find out who was in the lockup at the 23rd District on November 16, 1992. Ex. 6 at 137:14-138:3, 140:9-141:5

91. According to Rubin, she and Diamond Falk discussed that it would be helpful to Plaintiff's defense to have more information about the period of time he was in custody at the 23rd District on November 16, 1992. They also discussed whether Diamond Falk had been able to find any witnesses who had information about the time period when Plaintiff was in the lockup. Ex. 6 at 146:12-147:6.

PLAINTIFF'S ALIBI DEFENSE.

92. Shortly after Diamond Falk began representing Plaintiff, he learned from reviewing police reports of Plaintiff's alibi and knew that Plaintiff claimed to be in lockup at the time of the Lassiter/Haugabook murders. Ex. 5 at 116:17-117:1, 122:19-124:15, 263:14-18.

93. Diamond Falk had Plaintiff's November 16, 1992 arrest report and bond slip and he had information available to him that indicated which cell Plaintiff was placed in at the 23rd District lock up on the night in question. Ex. 5 at 264:10-24, 265:6-19.

94. Diamond Falk had the ability to communicate with Plaintiff to request that Plaintiff provide

a description of the person who was in the same cell with him at the 23rd District on November 16, 1992. Ex. 5 at 266:5-13.

95. Diamond Falk did not think it was necessary to find out if Plaintiff was placed in a cell with another person or take steps to determine the identity of any such person because he had Plaintiff's November 16, 1992 arrest report and bond slip, and he was unsure if such person would have been able to identify Plaintiff. Ex. 5 at 260:23-262:6, 268:8-269:6, 278:4-16, 307:4-14, 318:19-319:16.

96. Diamond Falk did not ask any of the attorneys that represented Plaintiff's co-defendants if they had any information relating to the identity of Plaintiff's cell mate because he felt that the information he had, the arrest report, bond slip and a handwriting expert that was going to confirm Plaintiff's signature on the bond slip, was sufficient to support Plaintiff's alibi defense at trial. Ex. 5 at 275:16-276:9, 279:17-280:23.

97. According to Plaintiff, when he was placed in the 23rd District lockup there were multiple white and black male individuals in the same cell as him. Ex. 1 at 163:4-164:1.

PLAINTIFF'S CRIMINAL TRIAL.

98. When Plaintiff was in Cook County jail waiting for his criminal trial to proceed, he spoke to his co-defendants, Deon Patrick and Rodney Matthews, who were also housed in the same jail as him, about their interactions with the police and their whereabouts at the time of the murders. Ex. 1 at 352:2-9, 354:2-356:4.

99. Diamond Falk and Rubin met with Plaintiff to discuss his criminal case and met to prepare for his criminal trial. Ex. 1 at 333:19-22, 339:3-18; Ex. 6 at 127:6-128:1, 128:2-3, 130:23-131:12.

100. Plaintiff knew that he was presenting an alibi defense at his criminal trial. Ex. 1 at 339:24-340:8.

101. Before Plaintiff's criminal trial, Diamond-Falk believed he had everything in his file that should have been in there. Ex. 5 at 136:10-14.

102. At Plaintiff's trial, Rubin called 23rd District lockup keeper, John Meindl, as a defense witness. Before Rubin called Meindl to testify at Plaintiff's trial, she interviewed him. Ex. 5 at 271:12-24; Ex. 6 at 165:18-166:2, 166:17-167:5, 167:21-168:4, 169:13-22, 171:16-19, 172:13-21, 173:7-9, 181:13-16.

103. Rubin did not ask Meindl to identify any other officers that worked in the lockup on November 16, 1992. Ex. 6 at 174:2-9; Ex. 46

104. When Rubin called Meindl to testify, she asked the following: "approximately, if you recall how many people were in the lockup that evening?" Meindl testified "I don't recall. I would have to look at a lockup intake report to see." Ex 6 at 175:5-16; Ex. 46 at 6:6-11.

105. Rubin then asked Meindl "you don't have that report with you today?" to which Meindl responded "no, I do not." Ex 6 at 175:5-16; Ex. 46 at 6:6-11.

106. Rubin did not take any steps before the end of Plaintiff's trial to locate the "lockup intake report" that Meindl referenced even though she believed it was an important document to try to obtain. Ex. 6 at 175:17-176:2,

107. Diamond Falk did not believe it was important to try to obtain the "lock up intake report" during the trial because he had Plaintiff's bond slip which he believed was adequate to support Plaintiff's alibi defense. Ex. 5 at 272:21-275:1.

108. McCoy testified at Plaintiff's trial that when she viewed the lineup she told the police that

she knew the people in the lineup from the community and that “it was none of the fellows in the first lineup that came out of the courtway” on the night of the murder. Ex. 45 at 124:21-125:6, 126:1-8.

109. The following items were not admitted as evidence at Plaintiff’s criminal trial: 1) statements of Plaintiff’s co-defendants 2) the lineup supplementary report and; 3) the Berti and Glinski Supplementary Report. *See Celotex Corp. V. Catrett*, 477 U.S. 317, 323 (1986)(party not bearing burden of proof may rely upon absence of evidence in seeking summary judgment; party not required to produce evidence negating element of opposing party’s claims).

PLAINTIFF’S PERJURY.

110. In Plaintiff’s Complaint, Plaintiff contends that in order to cast doubt on the validity of his lockup alibi, Berti and Glinski fabricated an encounter between themselves and Plaintiff on the night of the murders and then memorialized this false encounter in a fraudulent police report-the Berti and Glinski Supplementary Report-pursuant to a request by Villardita. Ex. 2 at ¶¶ 31-34; Ex. 32.

111. The alleged falsity of the Berti and Glinski Supplementary Report is a basis for the alleged framing of Plaintiff, Plaintiff’s *Brady* claim, coerced confession and fabricated evidence claims. Ex. 2 at ¶ 26, Ex. 40 at 8-10.

112. On June 3, 2014, Plaintiff answered Interrogatories under oath which required that he provide in “detail and with specific references to time” his movements and exact whereabouts from November 15, 1992 through November 17, 1992. Ex. 42 at 9-10. Plaintiff’s answer failed to listen any encounter or interaction with Berti and Glinski; instead, Plaintiff swore that after supposedly being released from the 23rd District lockup at 10:00 p.m., he went straight to the apartment of the

Phillips' family at 854 W. Agatite and later he left the apartment to go to Maryville Group Home.

Id

113. On September 4, 2014, Plaintiff provided similar answers about his whereabouts when he testified that after he was released from custody at 10:00 p.m., he went to the Phillips' apartment and when he left the apartment he went to the Maryville Group Home. Ex. 1 at 32:2-32:16, 185:2-185:8, 189:13-189:20, 189:21-190:4, 192:9-192:17, 192:18-193:11, 193:12-194:2, 194:3-194:6.

114. At Plaintiff's deposition, on the subject of the encounter described in the Berti and Glinski Supplementary Report, Plaintiff was unequivocal that such encounter never occurred and that he did not go with them to find Akia Phillips. Ex. 1 at 194:7-195:17, 200:23-201:2.

115. On March 6, 2017 at a parallel civil trial in *Deon Patrick v. City of Chicago et al.*, 14 CV 3648, when Plaintiff was called as a witness for the Deon Patrick, he testified that after he was released from the 23rd District lockup and as he approached the Phillips' apartment, an officer asked him if knew where Akia Phillips was and asked him to take them to Akia Phillips. Ex. 43 at 2971:8-2996:23. Plaintiff further testified that he went with the officers in a police car to Akia Phillips' girlfriend's house. *Id.*

116. When Plaintiff was impeached with his deposition testimony by the attorney for Deon Patrick, Plaintiff initially testified that at the time of his deposition he did not remember his interaction with police officers on the night of the murders, but that "it came back to me." Ex. 43 at 2294:5-2996:23. He then stated his deposition testimony was not truthful and was motivated by his belief that the incident with Berti and Glinski was "snitching" and that he was "ashamed" for taking police officers to look for a friend. *Id.*

117. On cross examination at the *Patrick* trial, Plaintiff admitted that his deposition testimony was

both an intentional lie and specifically motivated by Plaintiff placing loyalty to his street gang over his sworn oath to tell the truth. Ex. 7 at 2999:24-3000:7, 3001:11-3001:22.

118. On May 31, 2018, at Plaintiff's continued deposition in this case, Plaintiff testified that he always remembered taking the police to find Akia Phillips on November 16, 1992 and that there was never a period of time where he had forgotten this information. Ex. 41 at 75:11-17.

119. Plaintiff then testified that he intentionally lied at his deposition in September 2014 out of fear of what could happen to him. Ex. 41 at 75:18-77:3. He further testified that loyalty to the Vice Lord street gang was not one of the reasons he lied at his deposition in September 2014.

Respectfully submitted,

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