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

RONALD E. MUTH,
Plaintiff,

v.

DENNIS A. WOODRING;
JEFFREY M. SCHRIVER;
CITY OF HARRISBURG, PA;
DAUPHIN COUNTY, PA; and
STATE FARM FIRE AND
CASUALTY COMPANY;
Defendants.

: Civil Action No.:
: (Filed: 9/16/2014)
:
: District Judge:
:
: CIVIL ACTION – LAW
:
: JURY TRIAL DEMANDED
:
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:

COMPLAINT

AND NOW comes the Plaintiff, Ronald E. Muth, by and through his undersigned counsel, Devon M. Jacob, Esquire, and the law firm of Jacob Litigation, and avers as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983.
2. Jurisdiction is founded upon 28 U.S.C. § § 1331, 1343, and 1367.

3. Venue is proper in this Court, as all parties are located within the Middle District of Pennsylvania, and the cause of action arose in the Middle District of Pennsylvania.

PARTIES

4. Plaintiff, Ronald E. Muth, is an adult individual, who lives in Dauphin County, Pennsylvania.

5. Defendant, Dennis A. Woodring, is an adult individual, who, during all relevant times, was employed by Dauphin County, Pennsylvania, in the Dauphin County Criminal Investigation Unit, as a Detective. All of Defendant Woodring's actions or inactions were taken under color of state law. He is sued in his individual capacity.

6. Defendant, Jeffrey M. Schriver, is an adult individual, who, during all relevant times, was employed by the City of Harrisburg, Pennsylvania, in the Harrisburg Police Bureau, as a Detective. All of Defendant Schriver's actions or inactions were taken under color of state law. He is sued in his individual capacity.

7. Defendant, City of Harrisburg, Pennsylvania, is the capital city of the Commonwealth of Pennsylvania, and the county seat of Dauphin County. It has a population of approximately 50,000 people. The authority and power vested in the City of Harrisburg is derived from the Commonwealth of Pennsylvania. The City

of Harrisburg is a “Third Class City” and operates under the Third Class City Code and the Optional Charter Law. The City of Harrisburg’s principal place of business is City Government Center, 10 North Second Street, Harrisburg, PA 17101-1678.

8. Defendant, Dauphin County, Pennsylvania, is one of 67 counties located in the Commonwealth of Pennsylvania. Dauphin County is a Third Class County, organized under The County Code, Act of Aug. 9, 1955, P.L. 323, as amended, with a population of approximately 275,000 people. Dauphin County’s principal place of business is Dauphin County Administration Building, 2 South Second Street, 4th Floor, Harrisburg, PA 17108.

9. Defendant, State Farm Fire and Casualty Company (“State Farm”), is a member of the State Farm Holding Company Group, and is a wholly owned subsidiary of State Farm Mutual Automobile Insurance Company. The Company was organized on June 12, 1935, under the laws of the State of Illinois. The Company is licensed to conduct business in all fifty states, the District of Columbia and in three provinces in Canada: Alberta, New Brunswick, and Ontario. State Farm solicits and conducts business in the Commonwealth of Pennsylvania. State Farm’s principal place of business is One State Farm Plaza, Bloomington, IL 61710-0001.

Material Facts

10. On June 10, 2009, at approximately 6:16 PM, a fire was reported at 2007 Manada Street, Harrisburg, Dauphin County, Pennsylvania, 17104; a property owned by Ronald E. Muth.

11. Firefighters involved in fighting the fire reported the following fire conditions:

- a. “A lot of lazy surface fire and a totally consumed sofa. Upon overhauling fire that was in a return vent sparks shot out of the vent from electrical wires.”
- b. “Wires inside the heat duct in basement.”
- c. “Floor was burning in front of furniture.”
- d. “[M]embers reported getting shocked.”
- e. “High venting fire on floor in front of couch that burned.”

12. Defendant, Dennis A. Woodring, a detective with the Dauphin County Fire, Explosion, and Terrorism Unit; Fire Chief Daniel Soulier, with the Harrisburg Bureau of Fire; and Defendant, Jeffrey M. Schriver, a detective with the Harrisburg Bureau of police; conducted an investigation of the cause and origin of the fire.

13. Defendant Woodring made the following observations and reached the following conclusions:

- a. Fire personnel reported that the front and rear doors to the property “appeared to be secured” when they arrived, and the property “appeared to be vacant.”
- b. Evidence that “some type of tool was used to force the front door.”
- c. He observed “pieces of furniture and clothing, in the structure, although it didn’t appear that anyone was living in the house.”
- d. He observed that the “electrical service is energized at the time of the fire” but did not find “evidence of fault, failure, or malfunction” and “is eliminated as an ignition for the fire.”
- e. He eliminated the electrical outlet as a fire source after noting that there is “no evidence of any electrical activity on the remains” and that there “is no indication that anything was even plugged into the outlet at the time of the fire.”¹
- f. He discovered “the remains of a power strip and its electrical cord,” which he “considered and eliminated as a cause of the fire.”
- g. He eliminated the furnace as an ignition source.
- h. He noted that “after ignition the fire was a slow developing fire” and that “it doesn’t appear that the growth of the fire was assisted by any type of accelerant.”
- i. He noted that an Accelerant Detection K9 confirmed the lack of an accelerant.

¹ Notably, Defendant Woodring testified at Muth’s preliminary hearing that he did not trace and inspect the electrical wires in the property.

- j. He located “the remains of what appears to be a couch” with “heavy, even fire damage to the entire couch.”²
- k. He noted that “The fire patterns in the room of origin (middle first floor) show that the fire originated in the sofa.”
- l. He concluded “From all of the evidence and the fire patterns, the fire appears to have started on the couch cushions.”
- m. He searched for “smoking materials” but did not locate any “in the area of origin.”
- n. He concluded that “an open flame from a cigarette lighter or match was the ignition source.”
- o. He concluded that “There are no accidental causes for the fire” and that “This fire is being ruled arson.”
- p. He was advised “that a white male in a red vehicle was seen by neighbors, leaving the structure just prior to the fire.”

14. Defendant Schriver responded to the fire scene and obtained the following material information:

- a. A police officer from the Harrisburg Bureau of Police, advised Defendant Schriver of the following:
 - 1. That “vice had assisted the Dauphin County Drug Task Force and The PA State Police at the residence on 6/2.”
 - 2. A neighbor advised him “that the occupants were in jail, because the house was raided last week.”

² Defendant Woodring testified at Muth’s preliminary hearing that “we found a cold air vent on the floor underneath the couch where the fire originated[.]”

3. The same neighbor advised him “that about an hour before the fire he observed a red SUV pull up to the house and “Big” [sic] white male walked up to the house.”
 4. The neighbor reported that the male had brown hair, was wearing a green t-shirt, but he did not see his face.
 5. The neighbor said that he saw the male enter the property but that the unidentified male was not inside very long.
 6. The neighbor said that he thought he saw keys but did not know if the unidentified male had used a key to enter the property.
- b. Defendant Schriver found the rear door to the property to be secure, and determined that the front door had been forced open by the fire department.
 - c. It appeared to Defendant Schriver that the occupants of the property were in the process of moving out.
 - d. Defendant Schriver located the remains of a couch on the first floor in the middle room.
 - e. Defendant Schriver determined that there were no tripped electrical breakers in the electrical panel³ and he did not observe electrical devices near the couch.
 - f. An accelerant detection K9 did not indicate the presence of an ignitable liquid and there was no odor related to same.
 - g. Defendant Schriver concluded that “Because there was no accidental ignition source located, this fire is determined to be incendiary in nature.”

³ On June 15th, a private insurance adjustor and a State Farm claims examiner, however, found at least one tripped breaker.

15. At around 9:15 PM, Defendant Schriver arrived at Muth's residence, advised him about the fire, and noted the following:

- a. There was a red Nissan Xterra in the driveway and Muth was wearing a green t-shirt.
- b. Muth advised Defendant Schriver of the following:
 1. For approximately one year, the property had been rented to two adults – one male and one female.
 2. Pursuant to his agreement with his tenants, Muth did not have a key to the property.
 3. About one week prior, Muth determined with his tenants that the water heater at the property needed to be replaced.
 4. Muth advised his tenants that when the water heater arrived, he would contact them to schedule a time to install it.
 5. On the date of the fire, he called the female tenant's cellphone several times but was not able to reach her.
 6. At around 5:30 PM, he went to the property in the hopes of dropping off the water heater that was scheduled to be installed by a third party at 7:00 PM.
 7. Muth knocked on his tenants' door and again attempted unsuccessfully to call his tenant.
 8. After determining that his tenants were not home, Muth cancelled the water heater installation, went to pick up Chinese food that had been previously ordered, and returned home.
 9. The tenants were heavy smokers and usually had numerous items plugged in near the couch in question.

16. Defendant Schriver advised Muth that a drug raid had been conducted at the property on June 3, 2009, and that his tenants were incarcerated.

17. Defendant Schriver spoke to the neighbor who had been previously interviewed.

18. While the neighbor recounted a similar story, this time, the neighbor stated that the male was at the property for approximately 15 minutes, had a key, and at one point exited the property, obtained what appeared to be a glass container, and reentered the property.

19. The neighbor was not asked to pick Muth out of any line-up and never identified Muth as the male who he believed had entered the property.

20. Defendant Schriver located and interviewed both tenants who confirmed that on the date in question, Muth did not have a key to the property.

21. Had Defendant Schriver spoken to the appropriate persons on the Drug Task Force, he would have been advised that the door that had been forced open had been secured by the Task Force before they left the property.

22. On June 11, 2009, a neighbor informed Muth that on the date of the fire, the female tenant had cleaned out the property.

23. On the same date, Muth met with Defendant Schriver and advised him of what the neighbor had told him.

24. Defendant Schriver confirmed the information and advised Muth that it had been reported to him that the female tenant had been at the property with an elderly couple.

25. Subsequently, another neighbor advised Shriver that on either the date of the fire or the day prior to the fire, he had seen a young female at the property with a tan van.

26. Defendant Schriver refused to take receipt of Muth's receipts for the water heater and Chinese food.

27. Moreover, Defendant Schriver refused to contact the persons who were scheduled to install the water heater.

28. On June 15, 2009, at the request of Defendant State Farm, Lee McAdams of Fire and Explosion Investigations, LLC, examined the fire scene, and noted in relevant part the following:

Detective Dennis Woodring of the Dauphin County Criminal Investigation Unit investigated the fire and determined it to be deliberately set on the sofa. He could not find anything to indicate this fire was from an accidental cause. He indicated that someone had seen a maroon or red color SUV leave the front of the home just prior to the fire. Because of this he was able to eliminate the fire having started from any type of misplaced cigarette. He also said the owner has a similar color vehicle.

* * * * *

It is my opinion this fire started in the middle room on the first floor along the east wall at a point where a sofa was located. Based on my examination, along with my elimination of ordinary, accidental causes and the information from Detective Woodring regarding someone leaving the home just prior to the fire, I feel it was deliberately set on the sofa. I eliminated the only electrical source in the area of the sofa that was the receptacle and a power strip.

29. On July 8, 2009, Defendant Schriver conferred with Defendant State Farm who advised him that Defendant State Farm was investigating the fire loss claim.

30. Defendant State Farm and Defendant Schriver came to a meeting of the minds and agreed to help each other to establish an arson case against Muth.

31. Defendant State Farm knew that Defendant Schriver would rely on any information or evidence that it provided to him.

32. If Defendant State Farm could establish that Muth started the fire in question, Defendant State Farm could avoid having to pay Muth for the damages caused by the fire.

33. Defendant State Farm “recommended” that Defendant Schriver send Defendant State Farm an “Arson Immunity” letter “to obtain information” obtained during its investigation.

34. Defendant Schriver did so, and as a result, Defendant State Farm sent Defendant Schriver information regarding their investigation, which Defendant State Farm knew would influence Defendant Schriver's investigation.

35. Information received from Defendant State Farm influenced Defendant Schriver's criminal investigation and served as a basis for future criminal charges.

36. The Defendants knew that probable cause did not exist to criminally charge Muth with any crimes.

37. Regardless, on October 9, 2009, Defendant Schriver obtained a warrant for Muth's arrest.

38. Muth was criminally charged with (1) Arson Endangering Persons (Felony 1), 18 Pa.C.S. § 3301(a)(1)(i); (2) Causing or Risking Catastrophe (Felony 3), 18 Pa.C.S. § 3302(b); and (3) Insurance Fraud (Felony 3), 18 Pa.C.S. §4117(a)(2).

39. The Affidavit of Probable Cause attached to the Criminal Complaint provides the following:

On 06/10/09 at approximately 1816 hours, the Harrisburg police and fire bureaus were summoned to 2007 Manada Street for a structure fire. Upon the arrival of the responding units, a fire was discovered inside of this home.

2007 Manada Street is attached to 2005 Manada Street, inside of 2005 Manada Street resides two males, one is disabled. Noone [sic] was

living inside of 2007 Manada Street at the time of the fire.

After the fire was extinguished by the Harrisburg fire bureau, a post-fire investigation into the cause of the fire was completed. This origin and cause investigation was accomplished by Detective Dennis Woodring of the Dauphin County Fire and Explosion Unit, Chief Daniel Soulier of the Fire Bureau, and your affiant.

The cause of the fire was determined to have been deliberately set in the middle room of the first floor. The fire consumed a couch by some windows on the east side of the house. The growing fire eventually caused these windows to fail and the fire was then discovered by persons residing at 2009 Manada Street. The venting fire caused minor damage to their structure.

While at the scene, Barry Dean was interviewed by the police. Dean resides across the street from 2007 Manada Street. Dean reported that he observed a white male driving a red sport utility vehicle pull up in front of the house, exit his vehicle, approach the front door and eventually enter the property. This white male then exited the front door and returned to his vehicle briefly and then reentered the house via the front door. Minutes later the fire was discovered.

The owner of 2007 Manada Street is Ronald Muth. Your affiant interviewed Muth at his residence in Swatara Township about two hours after the fire was extinguished. Muth admitted to being at the property shortly before the fire was discovered. I noted Muth drives a red Nissan Xterra and met the description provided by Dean.

Muth said he was at the property to do maintenance. He was renting the property to two individuals. Muth said when he went there he found noone [sic] home and left, he denied entering the house.

Muth denied entering the house in subsequent interviews with the police.

Through investigation, it was learned that Muth's tenants had recently

moved out without his knowledge. There were numerous problems inside the house caused by his former tenants. Muth had been trying to sell the house prior to the fire but had no offers.

Muth filed an insurance claim through State Farm to collect damages as a result of this fire.

Muth is charged with arson, risking catastrophe, and insurance fraud.

40. Any competent member of the bar of the Commonwealth of Pennsylvania, or properly trained law enforcement officer, would know that the Criminal Complaint and Affidavit of Probable Cause do not state the requisite probable cause for the crimes charged, and that the warrant that issued pursuant to same could not be relied upon in good faith.

41. The Affidavit of Probable Cause is woefully deficient in that it contains false or misleading statements, and fails to (a) identify the elements of the various crimes charged, (b) identify facts to support the elements of the crimes charged, (c) provide any facts that support the conclusion that Muth participated in or caused the crimes charged, and (d) include material exculpatory evidence known to the affiant.

42. The affidavit of probable cause includes the following false or misleading statements:

- a. "The cause of the fire was determined to have been deliberately set in the middle room of the first floor."

- b. "There were numerous problems inside the house caused by his former tenants."
- c. "Muth had been trying to sell the house prior to the fire but had no offers."

43. The affidavit of probable cause fails to include the following exculpatory information:

- a. That about one week prior, Muth determined with his tenants that the water heater at the property needed to be replaced.
- b. That Muth had advised his tenants that when the water heater arrived, he would contact them to schedule a time to install it.
- c. That on the date of the fire, he called the female tenant's cellphone several times but was not able to reach her.
- d. That at around 5:30 PM, he went to the property with the hope of locating his tenant(s), so that he could drop off the water heater that was scheduled to be installed by a third party at 7:00 PM.
- e. That Muth knocked on his tenants' door and again attempted unsuccessfully to call his tenant.
- f. That after determining that his tenants were not home, Muth cancelled the water heater installation, went to pick up Chinese food that had been previously ordered, and returned home.
- g. That at least one tenant had been in the property either on the day of or the day prior to the fire.
- h. That the tenants were the only person with keys to the property and still had their keys;

- i. That the tenants corroborated the fact that Muth did not have a key, and that the water heater leaked and needed to be replaced.
- j. That the tenants were heavy smokers, and that the Drug Taskforce had recently conducted a raid on the property and arrest the tenants for drug offenses.
- k. That store records confirmed that the water heater had been preordered and picked up on the date in question.
- l. That Muth's and/or the female tenant's phone records confirmed Muth's telephone calls.
- m. That Muth had a Chinese food receipt that confirmed his whereabouts.
- n. That the third parties confirmed that they were scheduled to install the water heater on the date/time in question.
- o. That the fire origin and cause investigation should have been conducted in accordance with the principles and practices provided in NFPA 921, 2011 ed., but was not.
- p. That the fire origin and cause investigation should have, but failed to, comply with §4.3.7 "Avoid Presumption," which provides in relevant part:

All investigations of fire and explosion incidents should be approached by the investigator without presumption as to origin, ignition sequence, cause, fire spread, or responsibility for incident until the use of scientific method has yielded a provable hypothesis which cannot be disproven by rigorous testing.

- q. That the point of origin for the fire is not known and cannot be identified.

- r. That the elements of the fire cause (e.g. ignition source, first fuel and ignition sequence), are all unknown and cannot be identified.
 - s. That both Lee McAdams and Defendant Woodring failed to identify any elements of a fire cause, e.g. ignition source, first fuel and ignition sequence.
 - t. That Defendant Woodring's opinion regarding fire cause, i.e. that the fire was started from an open flame, is sheer speculation and not supported by any evidence.
 - u. That despite knowing that the tenants smoked and finding ashtrays at the fire scene, no one at the fire scene attempted to find cigarette butts in the debris that had been located around the sofa but removed from the property during overhaul.
 - v. That both McAdams' and Detective Woodring's opinions, regarding fire cause, are supported only by the absence of evidence, and the elimination of "accidental causes"; which is not consistent with scientific method, and fails to meet the requirements of NFPA 1033, *Standard for Professional Qualifications for Fire Investigator*, §4.1.2.
 - w. That both McAdams' and Detective Woodring's opinions rely on the use of the "Negative Corpus Methodology," a methodology which at the time was not recognized in the industry as being able to yield valid or reliable results, and which was widely regarded in the industry as being improper and unethical.
 - x. That Defendant State Farm participated in and influenced the outcome of the criminal investigation.
44. On October 11, 2009, the Pennsylvania State Police served the warrant and arrested Muth.

45. Muth was placed in handcuffs, at his place of employment, in front of his coworkers and friends, and transported to a district justice's office, where he was arraigned and released on bail.

46. Muth was immediately suspended from his employment, without pay, pending an outcome of the criminal charges.

47. On October 12, 2009, Defendant Schriver faxed a second "Arson Immunity" letter to Defendant State Farm, who in response, again sent him information about its investigation.

48. The Defendants possessed exculpatory evidence that vitiated probable cause but failed to timely provide the evidence to the prosecutor; thereby circumventing and undermining the prosecutor's discretion.

49. Moreover, the Defendants knew that the prosecutor was relying on their purported expertise as trained and experienced fire investigators but failed to advise the prosecutor that (a) they conducted their investigation pursuant to defective policies and procedures, (b) they were not properly trained on current fire investigation standards and techniques, and that as a result, (c) their opinions relied on the use of the "Negative Corpus Methodology," a methodology which is not recognized in the industry as being able to yield valid or reliable results, and is widely regarded in the industry as being improper, unethical, and junk science.

50. The Defendants failed to present exculpatory evidence known to them at the preliminary hearing and failed to disclose to the Court the aforementioned deficiencies in their investigations, “expert” opinions, and the affidavit of probable cause.

51. As a result of the Defendants’ failure to provide the prosecutor with all available information and evidence, including exculpatory evidence, the prosecutor filed an Information against Muth for the crimes charged, and prosecuted Muth.

52. The criminal case was given docket number CP-22-CR-572-2010, in the Court of Common Pleas, Dauphin County, Pennsylvania.

53. Defendant State Farm engaged in the unlawful conduct discussed herein, not for the purpose of bringing Muth to justice for the crimes charged, but rather to protect its financial interests.

54. Moreover, the Individual Defendants engaged in the unlawful conduct discussed herein, not for the purpose of bringing Muth to justice for the crimes charged, but rather for the purpose of trying to prove to their employers and the public that they were competent fire investigators and detectives.

55. As a result of the criminal charges filed against him, Muth faced a lengthy incarceration and significant fines.

56. As a result of the criminal charges filed against him, Muth was ostracized from the community, lost numerous friends, and suspended from his employment without pay.

57. Moreover, Muth lost a substantial amount of money defending against the false criminal charges.

58. Muth also lost wages and benefits while he was suspended by his employer without pay.

59. To date, Defendant State Farm has refused to pay Muth for his fire loss, causing the property to sit in disrepair and to continue to degrade, which has caused Muth to be unable to rent or sell the property.

60. On October 15, 2012, the Commonwealth filed Commonwealth's Application for a *Nolle Prosequi*, because it was "not in the best interest of the Commonwealth to continue the prosecution of this matter."

61. On October 26, 2012, the Court granted the Commonwealth's Application for a *Nolle Prosequi*, and dismissed the false criminal charged that had been asserted against Muth.

COUNT I

Plaintiff v. Individual Defendants Fourth and Fourteenth Amendments – Malicious Prosecution Pursuant to 42 U.S.C. § 1983

62. Paragraphs 1-61 are incorporated herein by reference.

63. To prevail on a Section 1983 malicious prosecution claim, a Plaintiff must establish that: (1) Defendants initiated a criminal proceeding; (2) the criminal proceeding ended in Plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) Defendants acted maliciously or for a purpose other than bringing plaintiffs to justice; and (5) Plaintiffs suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. See DiBella v. Borough of Beachwood, 407 F.3d 599 (3d Cir. 2005); Estate of Smith v. Marasco, 318 F.3d 497 (3d Cir. 2003).

64. Although a prosecutor may initiate criminal proceedings, a prosecutor does so only after independently reviewing the evidence that is provided to him/her. See Reed v. City of Chicago, 77 F.3d 1049, 1053 (7th Cir. 1996).

65. A police officer may be held to have "initiated" a criminal proceeding if he knowingly provided false information to the prosecutor or otherwise interfered with the prosecutor's informed discretion. See Reed, 77 F.3d at 1054.

66. In such cases, “an intelligent exercise of the ... [prosecutor’s] discretion becomes impossible,” and a prosecution based on the false information is deemed “procured by the person giving the false information.” Restatement 2d Torts § 653, cmt. g.

67. Defendants Woodring and Schriver knowingly provided false and/or misleading information to the prosecutor and withheld exculpatory information from the prosecutor.

68. As a result, Defendants Woodring and Schriver interfered with the prosecutor’s informed discretion.

69. As such, Defendants Woodring and Schriver collectively initiated a criminal proceeding against Muth.

70. The criminal charges were not supported by the requisite probable cause and based on a flawed non-scientific “methodology.”

71. The “methodology” used by Defendants Woodring, and Schriver is flawed because pursuant to the “methodology,” if the ignition source is missing, moved, removed, discarded, consumed, or simply not recognized by investigators, the cause of the fire will always be determined to be “intentional.”

72. Likewise, pursuant to the “methodology,” anytime an investigator fails to find or recognize a potential ignition source, the cause would be “intentional.”

73. Eliminating known ignition sources, however, does not prove the existence of some other ignition source for which there is no evidence.

74. The criminal charges were not asserted for the purpose of bringing Plaintiff to justice for the crimes charged.

75. Rather, the criminal charges were asserted for personal and/or financial gain.

76. The criminal charges were resolved in the Plaintiff's favor under circumstances evidencing the Plaintiff's innocence.

77. The Defendants' conduct violated Muth's rights pursuant to the Fourth and Fourteenth Amendments to the Federal Constitution.

78. As a direct and proximate result of the malicious prosecution, Muth suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

79. As a direct and proximate result of the malicious prosecution, Muth has incurred attorneys' fees and other costs associated with his defense.

COUNT II

**Plaintiff v. Individual Defendants and State Farm
Conspiracy to Violate Fourth and Fourteenth Amendments
(Malicious Prosecution)
Pursuant to 42 U.S.C. § 1983**

80. Paragraphs 1-79 are incorporated herein by reference.

81. “To state a claim for conspiracy under § 1983, a Plaintiff must demonstrate (1) the existence of a conspiracy involving state action; and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy.” Eichelman v. Lancaster Cnty., 510 F.Supp.2d 377, 392 (citing Marchese v. Umstead, 110 F.Supp.2d 361, 371 (E.D.Pa.2000)).

82. “To demonstrate the existence of a conspiracy under section 1983, a Plaintiff must show that two or more conspirators reached an agreement to deprive him or her of a constitutional right under color of law.” Royster v. Beard, 308 F.App’x 576, 579 (3d Cir. 2009) (quoting Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 7000 (3d Cir.1993), abrogated on other grounds, United Artists Theatre Circuit, Inc. v. Twp. of Warrington, 316 F.3d 392 (3d Cir.2003)).

83. Thus, a claim for conspiracy under § 1983 requires the Plaintiff to make “factual allegations of combination, agreement, or understanding among all or between any of the defendants [or coconspirators] to plot, plan, or conspire to carry

out the alleged chain of events.” Hammond v. Creative Fin. Planning Org., Inc., 800 F.Supp. 1244, 1249 (E.D. Pa. 1992) (citing Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974)).

84. In the Third Circuit, “a civil rights conspiracy claim is sufficiently alleged if the complaint details the following: (1) the conduct that violated the plaintiff’s rights, (2) the time and the place of the conduct, and (3) the identity of the officials responsible for the conduct.” Oatess v. Sobolevitch, 914 F.2d 428, 432 n. 8 (3d Cir.1990).

85. The Defendants agreed to shared information and resources in an attempt to develop a factual scenario whereby Muth could be criminally prosecuted for the crime charged.

86. The Defendants agreed to knowingly use and rely upon a non-scientific and widely unaccepted “methodology” to improperly influence the criminal prosecutor.

87. The Defendants agreed to not provide the criminal prosecutor with available exculpatory evidence that they possessed, which vitiated probable cause.

88. The Defendants knew that probable cause did not exist to prosecute Muth for the crimes charged, yet they failed to intervene to attempt to stop the criminal prosecution.

89. The Defendants agreed to maliciously prosecute Muth for personal and/or financial gain.

90. The Defendants' conduct violated Muth's rights pursuant to the Fourth and Fourteenth Amendments to the Federal Constitution.

91. As a direct and proximate result of the malicious prosecution, Muth suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

92. As a direct and proximate result of the malicious prosecution, Muth has incurred attorneys' fees and other costs associated with his defense.

COUNT III

Plaintiff v. Defendant Municipalities Fourth and Fourteenth Amendments—Municipal Liability Pursuant to 42 U.S.C. § 1983

93. Paragraphs 1-92 are stated herein by reference.

94. The applicable standards for evaluating the quality and competency of a fire investigator are NFPA 1033 *Standard for Professional Qualifications for Fire Investigator* and NFPA 921 *Guide for Fire and Explosion Investigations*.

95. Additionally, there are ASTM (American Society for Testing and Materials) Standards that are appropriate in assisting the investigator in applying the

scientific method to investigations, and likewise, can be used to assist in evaluating investigator performance.

96. These are *ASTM E678, Standard Practice for Evaluation of Technical Data*, *ASTM E620, Standard Practice for Reporting Opinions of Technical Experts*, and *ASTM E1020-96, Standard Practice for Reporting Incidents That May Involve Criminal or Civil Litigation*.

97. Other resources helpful in developing and evaluating hypotheses and conclusions are texts such as “Asking the Right Questions” and “The Power of Critical Thinking.”

98. Collectively, these documents establish a basis for the fire investigator’s conclusions and provide the criteria regarding the content of an investigator’s written report.

99. As a result, these documents should be used to analyze and evaluate a fire investigator’s conclusions and the methodology and reasoning utilized to reach the conclusions in the investigator’s written reports or testimony.

100. The requirements for a fire investigator are found in NFPA 1033, *Standard for Professional Qualifications for Fire Investigator*.

101. This document forms the basis of conducting a critical review of an investigators opinion or written report.

102. NFPA 1033 is the appropriate standard for anyone who renders an opinion regarding the origin and cause of fires.

103. Three sections of particular and specific importance to conducting a critical review of a written report or testimony are §4.1.3 (application of the Scientific Method), §4.6.5 (elements of opinions) and §4.7.1 (contents of a written report).

104. NFPA 1033-09, in section §4.1.3, provides that the appropriate analytical process to be used by fire investigators is the Scientific Method.

105. NFPA 921 *Guide for Fire and Explosion Investigations, 2011 Ed.*, §4.2 “Systematic Approach” also provides that the appropriate organizational and analytical process for conducting fire investigations is the Scientific Method.

106. NFPA 921 further provides and describes the steps for its application to fire investigation.

107. The Defendant municipalities maintained policies, practices, and customs, which were the moving force that resulted in Muth’s constitutional rights being violated.

108. Specifically, the Defendant municipalities failed to adopt policies that incorporated the aforementioned standards in the industry and that failed to explain how a proper fire investigation should be conducted.

109. Moreover, the Defendant municipalities failed to adopt policies that precluded fire investigators from using the Negative Corpus Methodology.

110. The Defendant municipalities were on notice of a need for further training related to the issues discussed herein but failed to provide the training, which resulted in Muth's constitutional rights being violated.

111. Specifically, it is widely known in the industry that the aforementioned standards were applicable, and that the "Negative Corpus Methodology," is not regarded as an acceptable methodology; yet the Defendants failed to provide any training to its investigators regarding same.

112. The Defendant municipalities failed to implement policies, practices, and training regarding how to identify:

- a. an ignition source;
- b. the first fuel ignited; and
- c. the ignition sequence, or how the first fuel and the heat source combined to create a hostile fire.

113. The Defendant municipalities failed to implement policies, practices, and training regarding how to identify exculpatory evidence and the scope of information that must be provided to an independent judicial officer and a criminal prosecutor.

114. The Defendant municipalities failed to implement policies, practices, and training regarding how to identify the existence of probable cause.

115. The Defendant municipalities failed to implement policies, practices, and training regarding how to protect criminal investigations from being improperly influenced by third parties.

116. The Defendant municipalities failed to implement policies, practices, and training regarding how to protect an individual's federal civil rights.

117. It is believed that discovery will reveal, and therefore averred, that the Defendant municipalities failed to implement a policy, enforce a policy, or train officers on the Fourth or Fourteenth Amendments to the U.S. Constitution.

118. It is believed that discovery will reveal, and therefore averred, that the Defendant municipalities failed to implement an effective process to ensure that policies and training of the Defendant municipalities are followed by its law enforcement personnel.

119. It is believed that discovery will reveal, and therefore averred, that when it has been determined that officers have violated the constitutional or statutory rights of persons, or used unlawful force against persons, or when officers have been named in citizen complaints, or when the Defendant municipalities have settled civil lawsuits, the Defendant municipalities have not required officers to receive

corrective or additional training.

120. It is believed that discovery will reveal, and therefore averred, that the Defendant municipalities did not follow its internal affairs policy and investigate, discipline, or retrain the Individual Defendants for the conduct discussed in this Complaint.

121. If it is ultimately determined that an internal affairs investigation occurred, it is believed that discovery will reveal, and therefore averred, that the investigation was triggered as a result of the instant litigation (so as to be a defense to the litigation), as opposed to when the Defendant municipalities first learned of the failed prosecution discussed herein.

122. The Defendant municipality's policies and practices caused Muth to suffer the constitutional injuries described herein.

123. As a direct and proximate result of the Defendants' conduct, Muth suffered and will continue to suffer embarrassment, humiliation, emotional distress, physical and psychological injury, pain and suffering, and financial harm, some or all of which may be permanent.

124. Furthermore, as a direct and proximate result of Defendants' conduct, Muth has incurred attorneys' fees and other costs.

WHEREFORE, Muth, respectfully requests the following relief:

- A. That the Court provide him with a federal jury trial;
- B. That judgment be entered in his favor and against the Defendants;
- C. That the Court declare that the Defendants' actions violated his constitutional rights;
- D. That the Court award him compensatory damages;
- E. That the Court award him punitive damages;
- F. That the Court award him his attorney's fees, costs, and interest; and
- G. That the Court award such other financial or equitable relief as is reasonable and just.

Respectfully Submitted,



DEVON M. JACOB, ESQUIRE

Pa. Sup. Ct. I.D. 89182

Counsel for Plaintiff

Date: September 16, 2014

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