

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Jawaun Fraser,

Plaintiff,

-against-

The City of New York, Undercover Officer  
Number 84, Detective Matthew Regina, and  
Detective Jason Deltoro, Individually and as  
Members of the New York City Police  
Department,

Defendants.

**AMENDED COMPLAINT**

Index No. 20-cv-4926

**JURY TRIAL DEMANDED**

Plaintiff Jawaun Fraser (“Plaintiff” or “Fraser”), by his attorneys, the Law Offices of Joel B. Rudin, P.C., respectfully alleges, upon information and belief, as follows:

**NATURE OF ACTION**

1. This is a civil action, pursuant to 42 U.S.C. §§ 1983 and 1988, seeking monetary damages for Plaintiff Jawaun Fraser because he spent two years wrongfully incarcerated based upon a robbery charge that a team of New York City narcotics officers fabricated.

2. Plaintiff’s damages also resulted from the failure of these police officers, and prosecutors, in violation of their obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), to disclose that members of the narcotics team who arrested Fraser had been sued for fabricating evidence and other constitutional violations at least 38 times.

3. A New York State Supreme Court Justice overturned Fraser’s conviction on the basis that civil lawsuit information had been wrongfully withheld from the defense, but not until he had endured the trauma of his prosecution, two years in state custody, and another year on strict parole supervision.

4. The City of New York is liable to Plaintiff for the damages caused by the *Brady* violation because it foreseeably resulted from the unlawful or deliberately indifferent policies, customs, and practices of the New York City Police Department (“NYPD”).

**JURISDICTION, VENUE, AND CONDITIONS PRECEDENT**

5. This action arises under 42 U.S.C. §§ 1983 and 1988.

6. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as the events giving rise to the claim occurred in Manhattan.

8. This action is timely because it was commenced within three years of the time that Fraser’s federal causes of action accrued.

9. Plaintiff has duly complied with all conditions precedent to the commencement of this action.

**THE PARTIES**

10. Plaintiff, Jawaun Fraser, is a citizen and resident of the State of New Jersey and the United States. He resides within the District of New Jersey.

11. Defendant City of New York (“City”), of which New York County is a subdivision, is a municipal corporation of the State of New York and is a resident of the Southern District of New York. The NYPD is an agency of the City.

12. Defendant Matthew Regina (“Regina”) was at all relevant times a narcotics detective employed by the NYPD, acting within the scope of his authority and under color of State law. He is named here in his individual and official capacities.

13. Defendant Undercover Officer Number 84 (“UC 84”) was at all relevant times an undercover narcotics officer employed by the NYPD, acting within the scope of his authority and under color of State law. He is named here in his individual and official capacities.

14. Defendant Jason Deltoro (“Deltoro”) was at all relevant times a narcotics detective employed by the NYPD, acting within the scope of his authority and under color of State law. He is named here in his individual and official capacities.

15. Defendants Regina, UC 84, and Deltoro will be referred to herein as “the individual defendants.”

### **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

#### **The Fabricated Allegation of Robbery**

16. At about 8 p.m. on October 21, 2014, Plaintiff Jawaun Fraser was walking to a store on the Lower East Side of Manhattan to buy some items for his mother.

17. Fraser was 18 years old at the time of this incident.

18. He had recently started working as a paid union apprentice for the Sheet Metal Workers Local 28.

19. Undercover Officer 84 approached Fraser near Avenue D and 8th Street.

20. UC 84 was accompanied by a woman and secretly backed up by a team of plainclothes narcotics officers who were part of a “buy and bust operation.”

21. Fraser recognized this woman from the neighborhood as a drug addict.

22. UC 84 asked to buy narcotics from Fraser.

23. UC 84 told Fraser that he had money and needed a “fix.”

24. Fraser refused, denying that he was selling drugs.

25. UC 84 was insistent.

26. UC 84 told Fraser that he was not a police officer, that he knew Fraser's mother, and that he lived in Fraser's apartment building.

27. UC 84, still insistent on buying drugs, handed Fraser his photo identification to prove his claim of identity.

28. Fraser used his iPhone to take a photograph of UC 84's identification.

29. When Fraser took the photo, UC 84 grabbed his wrist and the ID fell.

30. Several plainclothes officers from Narcotics Borough Manhattan South, including Detective Regina and Detective Deltoro, then rushed towards Fraser.

31. Surprised and fearful, Fraser fled.

32. Regina and other officers with him chased and apprehended Fraser.

33. They searched Fraser and found that he did not possess any narcotics.

34. To justify Fraser's arrest, UC 84, Regina, and Deltoro manufactured the false story that Fraser had robbed UC 84 of the latter's driver's license and \$20 in marked buy money and that Regina had found UC 84's identification on Fraser's person when he was arrested.

35. UC 84, Regina, and Deltoro caused various police records to be created documenting this false story.

36. They did so knowing these records would be transmitted to the Manhattan District Attorney's Office and would be relied on to formulate and pursue criminal charges against Plaintiff, and this was their intent.

37. Regina and Deltoro created a property voucher and an invoice for a photocopy of UC 84's driver's license, which falsely indicated that the driver's license was arrest evidence that had been found in Fraser's possession.

38. UC 84 created an expense report for the money that he falsely claimed Fraser stole from him.

39. UC 84 also wrote a complaint follow-up form, or DD5, giving his false version of events.

40. Regina swore to an affidavit for a warrant to search Fraser's cell phone that contained the false version of events.

41. Under penalty of perjury, Regina signed a Criminal Court complaint falsely accusing Fraser of robbery in the second degree.

42. Regina said in this criminal complaint that the robbery allegation was based upon what he had been told by UC 84.

#### **Pre-Trial Proceedings**

43. Fraser was arraigned in the Manhattan Criminal Court on the robbery charge.

44. Based upon the false allegations of the police, the judge set bail at \$2,500 and, in lieu of bail, ordered Fraser detained.

45. Fraser was held in jail for about three days before making bail and obtaining his release.

46. As a condition of his pretrial release, besides posting bail of \$2,500, Fraser had to check in once a week, and was not allowed to travel outside of New York State.

47. On October 29, 2014, based upon the "evidence" that the Defendants had fabricated, Fraser was indicted for robbery in the second degree, N.Y. Penal Law 160.10(1).

48. Regina and UC 84 testified in the grand jury in support of this indictment, repeating the false story they had manufactured.

49. Fraser retained a private criminal defense attorney to represent him at trial and paid this attorney a total of about \$11,000.

50. Plaintiff appeared in court on his case about a dozen times before trial and then each day during a week-long trial.

51. Each time, he had to miss work and lost income because he was not paid during his absence from work.

52. As a result of his arrest and his frequent court appearances for this case, Fraser lost his job.

### **The Trial Proceedings**

53. Plaintiff's trial commenced with jury selection on November 17, 2015, in the Supreme Court, New York County.

54. Assistant District Attorney Gregory Sangermano was the assigned prosecutor.

55. Before trial, ADA Sangermano provided Fraser's defense counsel with the names and index numbers of two civil rights lawsuits that had been filed against the testifying officers in the United States District Court, Southern District of New York: (1) *Penn v. City of New York*, 10-cv-4907 (RJS); and (2) *Baynes v. City of New York*, 12-cv-5903 (RJS).

56. UC 84 was a defendant in the *Penn* case.

57. Both UC 84 and Regina were defendants in the *Baynes* case.

58. ADA Sangermano did not disclose any additional lawsuits that had been filed against any of the testifying officers.

59. UC 84 and Regina testified at a suppression hearing and then again at trial.

60. On each occasion, UC 84 and Regina testified to the fabricated stories they had provided the District Attorney's Office to cause Plaintiff's arrest and prosecution.

61. Knowing of only the two civil lawsuits against UC 84 and Regina, Plaintiff's criminal defense counsel decided not to cross-examine the officers about them at trial.

62. UC 84 falsely testified at trial that Fraser had threatened him and forcibly taken his identification card and the \$20 in marked buy money.

63. Detective Regina falsely testified to observing some of these events and that he had found UC 84's driver's license in Fraser's possession.

64. Detective Deltoro testified that he and other officers moved in to arrest Fraser after UC 84 gave a non-verbal distress signal, falsely claimed that he saw UC 84 and Fraser "grappling," and stated that he participated in the police chase of Fraser.

65. Deltoro admitted that he later searched the area for the marked \$20 bill that UC 84 claimed Fraser had stolen from him but could not find it.

66. Three other members of the narcotics team were present for all or part of the incident involving Plaintiff and assisted the individual defendants.

67. These three officers included Undercover Officer 17, who was working as the "ghost" officer, Detective Hoiping Lee, who was assigned to the prisoner van, and Lieutenant John Patane, who supervised the entire buy and bust team. Regina testified that Lee and Patane were the officers who apprehended Fraser.

68. After a presentation of evidence that lasted one full day and two mornings (including the summations and jury charge), the jury deliberated for a full day.

69. At one point, the jury sent the trial judge a note indicating that it "appear[ed] to be at a deadlock," leading the judge to read the jury a modified *Allen* charge urging it to try to reach an unanimous verdict.

70. On November 24, 2015, the jury found Fraser not guilty of robbery in the second degree but found him guilty of the lesser-included offense of robbery in the third degree.

71. After the jury verdict, Fraser was remanded to jail.

72. Fraser had obtained a new position as a union apprentice while out on bail pending trial, but after he was convicted he lost this job and his spot in the union apprenticeship program.

### **Sentencing, Prison, and Reentry**

73. At sentencing on January 13, 2016, the court sentenced Fraser to a term of two to six years in prison.

74. Fraser spent about two years in custody, at which point he was released on parole.

75. Fraser then spent one year under strict parole supervision.

76. During this time, he had to report regularly to his parole officer, strictly observe a 9 p.m. curfew, refrain from traveling outside of New York City without permission, and attend and pay for a substance abuse program.

77. He was discharged early from parole supervision for good behavior in 2018.

78. Fraser was able to rejoin the Sheet Metal Workers Local 28 apprenticeship program, but he was forced to restart this program at the beginning and is presently at a lower pay scale than he would have been had his apprenticeship not been interrupted by his conviction and imprisonment.

### **The 440 Motion**

79. In May 2019, Fraser's assigned appellate counsel, the Center for Appellate Litigation (CAL), moved under New York Criminal Procedure Law § 440.10 to vacate Fraser's conviction.



80. The basis for this motion was that, at the time of the trial, the prosecution, in violation of Fraser’s constitutional right to disclosure of evidence favorable to the defense under *Brady v. Maryland*, 373 U.S. 83 (1963), had disclosed only two of the 35 civil lawsuits that CAL discovered had been filed against members of the team of narcotics officers who arrested Fraser.<sup>1</sup>

81. Of these 35 lawsuits, no less than *ten* named UC 84 as a defendant.

82. Sixteen of the lawsuits named Regina as a defendant.

83. Three of these lawsuits named Deltoro as a defendant.

84. In his response to CAL’s 440 motion, ADA Sangermano admitted that, prior to trial, a paralegal for the Manhattan DA’s Office had conducted a “*Garrett* search”<sup>2</sup> and found 13 lawsuits against the officers involved in the arrest—11 suits against Regina, one suit against UC 84 (*Penn*), and one suit against both of them (*Baynes*).

85. However, with the exception of *Penn* and *Baynes*, Sangermano had not disclosed these lawsuits to defense counsel. He disclosed only these two lawsuits to defense counsel.

86. On December 6, 2019, Justice Robert M. Stoltz of the New York County Supreme Court granted Fraser’s motion and vacated his conviction for robbery in the third degree. *See People v. Fraser*, Ind. No. 4844/14 (Sup. Ct. N.Y. Cnty. Dec. 6, 2019), attached as Exhibit B.

87. Justice Stoltz found that ADA Sangermano’s failure to fully disclose the prior civil lawsuits to the defense violated Plaintiff’s due process rights under *Brady*.

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<sup>1</sup> Plaintiff’s present counsel has discovered that there were in fact at least 38 lawsuits filed against the members of the Narcotics team who arrested him prior to his criminal trial. A list of these lawsuits is attached as Exhibit A to this complaint, and is incorporated by reference.

<sup>2</sup> This is a reference to *People v. Garrett*, 23 N.Y.3d 878 (N.Y. 2014).

88. Under the technicalities of New York law, the vacatur of the conviction meant that the third-degree robbery count was dismissed and the prosecution, if it wished to prosecute plaintiff any further for robbery, was required to seek a new indictment from a new grand jury.

89. The prosecution decided not to do so, and so the robbery charge was terminated in Fraser's favor.

90. The prosecution required Plaintiff to plead guilty to some offense in order to fully close the case.

91. In order to end his prosecution, Fraser pleaded guilty to disorderly conduct, N.Y. Penal Law § 240.20, a violation that is not a criminal offense.

#### **Damages and Injuries**

92. Plaintiff's injuries and damages include, but are not limited to, his:
- a. Wrongful arrest, prosecution, and conviction for robbery;
  - b. Loss of or restrictions on his liberty including three days of incarceration following his initial arraignment, pretrial bail restrictions, and, after his conviction, two years of incarceration followed by a year of parole supervision;
  - c. Loss of the services, society, companionship, and consortium of his family and friends;
  - d. Past and future mental and emotional suffering;
  - e. Fees paid to a private criminal defense attorney; and
  - f. Past and future loss or diminution of employment earnings in an amount determined by an economic expert to be over \$200,000.

**FIRST CAUSE OF ACTION**

**(42 U.S.C. § 1983; Denial of Liberty, Due Process, and a Fair Trial Under the Fourth, Fifth, Sixth, and Fourteenth Amendments by the Individual Defendants)**

93. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 92 of this Complaint.

94. Defendants UC 84, Regina, and Deltoro, individually, acting in concert, and/or aiding and abetting one another, deliberately, willfully, recklessly, and/or with deliberate indifference to the truth, manufactured false evidence against Plaintiff, including the allegations that Fraser had threatened UC 84 and stolen UC 84's identification card and marked \$20 bill, and caused such false allegations to be documented in police reports and other police paperwork and in a sworn Criminal Court complaint.

95. The false evidence was material to Plaintiff's prosecution for robbery in that it was the only evidence of guilt and it was reasonably likely to influence a jury to convict Fraser.

96. UC 84, Regina, and Deltoro forwarded, caused to be forwarded, or aided and abetted the forwarding of, this false evidence to the Manhattan DA's Office.

97. UC 84, Regina, and Deltoro knew that the evidence of robbery they had fabricated and caused to be transmitted to the DA's Office was likely to influence the decision by prosecutors whether to prosecute Fraser, the decision by the court concerning whether and on what conditions to release him on bail, the decision by the grand jury whether to indict him, and the decision by a trial jury whether to convict him.

98. In fact, the fabricated evidence was a substantial and proximate cause of Plaintiff's deprivation of liberty and other injuries, including but not limited to his prosecution,

detention, release on restrictive bail conditions, indictment, conviction, imprisonment in state prison, and time on parole supervision.

99. The prosecution for robbery caused by the fabricated evidence was terminated in Plaintiff's favor.

100. The individual defendants are therefore liable to Fraser, under 42 U.S.C. §§ 1983 and 1988, for all the reasonably foreseeable injuries that their unlawful conduct caused and for Plaintiff's attorneys' fees, costs, and expenses.

### **SECOND CAUSE OF ACTION**

#### **(42 U.S.C. § 1983; Malicious Prosecution Under the Fourth, Fifth, and Fourteenth Amendments by the Individual Defendants)**

101. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 100 of this Complaint.

102. UC 84, Regina, and Deltoro knowingly, willfully and with actual malice initiated, or caused the initiation and continuation of, Fraser's prosecution for robbery, without probable cause.

103. They caused Fraser to be deprived of his liberty.

104. The prosecution for robbery was terminated in Fraser's favor.

105. The individual defendants' conduct was outrageous and shocking to the conscience.

106. Their conduct was a substantial and proximate cause of the deprivation of Plaintiff's right to be free of unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution, as well as his right to substantive and procedural due process under the Fifth and Fourteenth Amendments.

107. The individual defendants are therefore liable to Fraser, under 42 U.S.C. §§ 1983 and 1988, for all the reasonably foreseeable injuries that their unlawful conduct caused and for Plaintiff's attorneys' fees, costs, and expenses.

**THIRD CAUSE OF ACTION**

**(42 U.S.C. § 1983; Denial of Due Process and a Fair Trial  
Under the Fifth and Fourteenth Amendments by the  
Individual Defendants)**

108. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 107 of this Complaint.

109. At the time of Fraser's trial, the six officers who made up the narcotics team that arrested Fraser had been named as defendants in at least 38 lawsuits alleging civil rights violations.<sup>3</sup>

110. At least 23 of these suits alleged that police officers had fabricated evidence.

111. ADA Sangermano disclosed only two of these 38 lawsuits to the defense.

112. At the time of trial, Regina knew that he had been sued at least 14 times.

113. He did not disclose any of these lawsuits to the prosecution.

114. ADA Sangermano was unaware of at least the following two lawsuits against Regina:

- a. In *Gaymon v. City of New York*, 06-cv-26-RJD-RML (E.D.N.Y.), the plaintiff alleged that Regina and other officers falsely arrested him for possession of marijuana, then falsely told a prosecutor that he had possessed marijuana.

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<sup>3</sup> As noted above in footnote one, a list of these lawsuits can be found in Exhibit A. This exhibit is incorporated by reference into the complaint.

- b. In *Bumbrey v. City of New York*, 10-cv-5188-ENV-RML (E.D.N.Y.), the plaintiffs alleged that Regina and other officers falsely arrested them in their home, destroyed their personal property, made false allegations under oath in the criminal complaint, and falsely testified in the grand jury.

115. At the time of trial, UC 84 knew that he had been sued at least eight times.

116. He did not disclose any of these lawsuits to the prosecution.

117. ADA Sangermano was unaware of at least the following six lawsuits against UC

84:

- a. In *Cook v. City of New York*, 09-cv-10238-CM (S.D.N.Y.), the plaintiff alleged that police officers had falsely arrested him and then falsely told a prosecutor that the plaintiff had possessed and sold “fake” cocaine.
- b. In *Best v. City of New York*, 11-cv-5611-CM (S.D.N.Y.), the complaint alleged that UC 84 was part of a group of officers who falsely arrested the plaintiff, roughing him up in the process, and then misrepresented to prosecutors that the plaintiff sold and possessed marijuana, signing a false criminal court complaint to this effect.
- c. In *Parris v. City of New York*, 13-cv-6686-NRB (S.D.N.Y.), the complaint alleged that UC 84 was part of a team of officers that illegally searched plaintiff and then made a false sworn statement that he had sold narcotics.
- d. In *Bahadur v. City of New York*, 15-cv-978-AJN (S.D.N.Y.), the complaint alleged that UC 84 persistently attempted to purchase drugs from the plaintiff; when plaintiff refused to sell him drugs, UC 84 and another officer punched him and then falsely claimed that the plaintiff tried to strike an officer.

- e. In *Pieralisi v. City of New York*, 15-cv-3785-RA (S.D.N.Y.), the complaint alleged that UC 84 was part of a team of officers that illegally searched plaintiff and then made a false sworn statement that he had possessed and sold narcotics, even though they had found no contraband during the search.
  - f. In *Wright v. City of New York*, 15-cv-4498-VSB (S.D.N.Y.), the plaintiff alleged that he was standing with another individual when UC 84 approached and asked to buy drugs; even though he walked away rather than participating in the drug sale, plaintiff was arrested and the police officers prepared false or misleading reports that were forwarded to the district attorney's office.
118. At the time of trial, Deltoro knew that he had been sued at least five times.
119. He did not disclose any of these lawsuits to the prosecution.
120. ADA Sangermano was unaware of any of these five lawsuits against Deltoro.
121. At least three of these suits alleged that the police fabricated evidence:
- a. In *Loglisici v. City of New York*, 09-cv-1220-SHS (S.D.N.Y.), the complaint alleged that Deltoro and other officers falsely arrested the plaintiff during a narcotics "buy- and-bust operation" even though he had committed no crime.
  - b. In *Murray v. City of New York*, Index No. 307520/2009 (Sup. Ct. Bronx Cty.), the complaint alleged that Deltoro and another officer falsely arrested the plaintiff, filed or caused the filing of a felony complaint falsely accusing him of crimes, and provided false or misleading information to prosecutors.
  - c. In *Nunez v. City of New York*, 09-cv-8789-DLC (S.D.N.Y.), the complaint alleged that Deltoro and other officers falsely arrested the plaintiffs for criminal possession of a weapon and criminal possession of a forged

instrument, even though the plaintiffs had neither a weapon nor a forged instrument.

122. Under New York law, the defense in a criminal case may cross-examine police officers about the specific allegations contained in unrelated civil lawsuits in order to impeach their general credibility, demonstrate their dishonesty and disrespect for the law, or show a pattern of similar behavior.

123. Allegations that the police officers involved in this case had previously been accused of fabricating evidence and other dishonest or illegal behavior would have assisted Fraser and his attorney in impeaching their credibility and showing Fraser's innocence and thus was favorable to the defense under *Brady*.

124. UC 84, Regina, and Deltoro had a constitutional duty to inform the prosecution of information known to them that was favorable to a criminal defendant under *Brady* and potentially material to the outcome of the trial so that the prosecutor could disclose such information to the defense.

125. This obligation included the civil lawsuits that had been filed against them.

126. The information they failed to disclose was material to the outcome of the trial because, had such information been timely disclosed, there is a reasonable probability that Plaintiff would have been acquitted of all charges or achieved a more favorable outcome to the trial.

127. The individual defendants' failure to disclose information about prior civil lawsuits was a substantial and proximate cause of Plaintiff's injuries, including his conviction, incarceration in state prison, and time on parole supervision.



128. The individual defendants failed to disclose such civil lawsuits to the prosecutor knowingly, willfully, intentionally, recklessly, negligently, or with deliberate indifference to their obligation to do so.

129. Regina, UC 84, and Deltoro are therefore liable to Fraser, under 42 U.S.C. §§ 1983 and 1988, for all the reasonably foreseeable injuries that their unlawful conduct caused and for Plaintiff's attorneys' fees, costs, and expenses.

#### **FOURTH CAUSE OF ACTION**

##### **(*Monell*/42 U.S.C. § 1983 Claim Against Defendant City of New York for *Brady* Violations by the NYPD)**

130. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 127 of this Complaint.

131. Prior to Plaintiff's trial, policymaking officials of the NYPD, due to their deliberate indifference to the *Brady* rights of criminal defendants, implemented inadequate policies, procedures, regulations, practices, customs, training, supervision, and discipline concerning the duty of police officers to make timely disclosure to prosecutors of material evidence or information favorable to criminal defendants, including evidence or information impeaching the credibility of prosecution witnesses, such as the police officers themselves.

132. This disclosure was necessary so that prosecutors could determine whether to provide such information to criminal defendants and their counsel under *Brady* and its progeny.

133. More specifically, policymaking officials at the NYPD knew that members of the force often acted as essential witnesses in criminal prosecutions and that many of them face, or have faced, lawsuits alleging they engaged in various types of misconduct, including fabricating evidence, stealing, other acts of dishonesty, and making arrests without probable cause.

134. Even though such civil lawsuit allegations may have a crucial bearing on the credibility of such police witnesses, at the time of Fraser's trial in November 2015 the NYPD had adopted no policy, practice, or procedure requiring such police witnesses to provide such civil lawsuit information to District Attorneys or Assistant District Attorneys.

135. Prior to Plaintiff's trial, the NYPD failed to even train or instruct members of service concerning their *Brady/Giglio*<sup>4</sup> obligation to disclose evidence impeaching the credibility of prosecution witnesses such as police officers to prosecutors, and failed to supervise such members to ensure they fulfilled their obligation under the law to make such disclosures.

136. Although the issue of whether to disclose various forms of impeachment material to prosecutors (including civil lawsuit information) regularly arises, prior to Fraser's trial NYPD policymaking officials issued no Patrol Guide provision or other written directive to officers concerning when, if at all, to disclose such impeachment information to prosecutors.

137. Instead, in trainings given at the Police Academy, the NYPD instructed officers only that *Brady* material consists of "exculpatory evidence that tends to clear someone's guilt."

138. The training on *Brady* given to NYPD recruits did not mention *Giglio* or instruct officers that they had a duty to disclose impeachment material to prosecutors.

139. Moreover, at all times relevant to this case, the NYPD failed to discipline members of service for failing to provide *Brady* material, including impeachment evidence and/or civil lawsuit information, to prosecutors.

140. As a result of the NYPD's inadequate training, supervisory and disciplinary policies and practices, the individual defendants failed to disclose to prosecutors in Plaintiff's

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<sup>4</sup> *Giglio v. United States*, 405 U.S. 150 (1972) (holding that, under *Brady*, prosecutors have a due process obligation to disclose information impeaching prosecution witnesses to the defense).

case the existence of the civil lawsuits against them accusing them of fabricating evidence and other dishonest activities, and this was a substantial cause of the prosecutor's failure to fully disclose such information to the defense and of Plaintiff's conviction and resultant injuries.

141. The Police Commissioner and/or other municipal policymakers knew or should have known that whether to disclose impeachment evidence favorable to a criminal defendant, including civil lawsuits against police witnesses, presents the kind of difficult or non-obvious choice that instruction, training, supervision, and discipline would make less difficult.

142. The Police Commissioner and/or other municipal policymakers knew or should have known that the failure of police officers to disclose such material impeachment evidence would frequently cause the deprivation of the constitutional rights of criminal defendants.

143. Under the principles of municipal liability for federal civil rights violations, the Police Commissioner (or his authorized delegates), has final responsibility for training, instructing, supervising, and disciplining police personnel with respect to the constitutional requirements governing the disclosure of *Brady* material.

144. The Police Commissioner, personally and/or through his authorized delegates, at all relevant times had final authority, and constitutes a City policymaker for whom the City is liable, with respect to compliance by NYPD employees with their *Brady* obligations.

145. During all times material to this Complaint, the Police Commissioner owed a duty to the public at large and to Plaintiff, which he knowingly and intentionally breached, or to which he was deliberately indifferent, to implement policies, procedures, customs, practices, training and discipline sufficient to prevent or deter conduct by his subordinates violating the due process and fair trial rights of criminal defendants and of other members of the public.

146. The *Brady* violations in this case were directly, foreseeably, proximately, and substantially caused by conduct, chargeable to Defendant City, amounting to deliberate indifference to the constitutional rights of persons, including Plaintiff, who are investigated, arrested, or prosecuted for alleged criminal activities by the New York City Police Department.

147. By virtue of the foregoing, Defendant City is liable, under 42 U.S.C. §§ 1983 and 1988, for all the reasonably foreseeable injuries that its unlawful conduct caused and for attorneys' fees, costs, and expenses.

**DAMAGES DEMAND**

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- a. For compensatory damages of not less than \$6 million;
- b. For punitive damages of not less than \$2 million;
- c. For reasonable attorneys' fees, together with costs and disbursements, pursuant to 42 U.S.C. § 1988 and to the inherent powers of this Court;
- d. For pre-judgment interest as allowed by law; and
- e. For such other and further relief as this Court may deem just and proper.

Law Offices of Joel B. Rudin, P.C.

By: \_\_\_\_\_  
          /s/ \_\_\_\_\_  
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*Attorneys for the Plaintiff*

Dated: New York, New York  
August 24, 2021

# Exhibit A

## Civil suits against the officers involved in Jawaun Fraser's arrest filed prior to his trial

### I. Jason Deltoro

1. *Loglisci v. City of New York et al.*, 09-cv-01220-SHS (S.D.N.Y.)
  - a. Date Filed: 2/10/2009
  - b. Date of Incident: 5/28/2008
  - c. Outcome: Settled for \$50,000 on 9/21/2009.
  - d. Summary of Allegations: Deltoro, Patane, and other members of service were part of a team conducting a “buy-and-bust.” Plaintiff was falsely arrested, handcuffed behind his back for five hours in a police car, and subjected to a strip search at the precinct. Dismissing the case, the District Attorney’s Office stated that it could not prove guilt beyond a reasonable doubt.
2. *Murray v. City of New York et al.*, Index No. 307520/2009 (Sup. Ct. Bronx Cty.)
  - a. Date Filed: 09/15/2009
  - b. Date of Incident: 2/10/2007
  - c. Outcome: Settled for \$80,000 on 8/2/2018.
  - d. Summary of Allegations: Deltoro and a sergeant unlawfully arrested plaintiff, filed or caused the filing of a felony complaint against plaintiff falsely accusing him of crimes, provided false and/or incomplete information to the District Attorney’s Office, conducted an unlawful strip search and cavity inspection, and used excessive force while seizing plaintiff during his arrest.
3. *Nunez et al. v. City of New York et al.*, 09-cv-08798-DLC (S.D.N.Y.)
  - a. Date Filed: 10/8/2009
  - b. Date of Incident: 4/14/2008
  - c. Outcome: Settled for \$30,000 on 3/24/2010.
  - d. Summary of Allegations: Deltoro and other defendants entered plaintiffs’ home without a valid search warrant, and falsely arrested them for criminal possession of a weapon and criminal possession of a forged instrument, though no contraband was found in their custody or control.
4. *Green v. Doe et al.*, 11-cv-09690-PGG (S.D.N.Y.)
  - a. Date Filed: 12/29/2011
  - b. Date of Incident: 3/3/2010
  - c. Outcome: Dismissed, for failure to serve the summons and complaint on defendants, on 4/2/2013.
  - d. Summary of Allegations: Deltoro and another officer punched and kicked plaintiff without provocation, and Deltoro searched plaintiff by inserting a finger into his rectum.
5. *A.T. v. City of New York et al.*, 12-cv-04146-JSR (S.D.N.Y.)

- a. Date Filed: 5/24/2012
- b. Date of Incident: 5/9/2011
- c. Outcome: Settled for \$35,000 on 12/26/2012.
- d. Summary of Allegations: Deltoro and eight other members of service, along with “John Doe” officers, were named as defendants. Plaintiff, a 15-year old female, was handcuffed and interrogated while naked in her own home. She was falsely arrested and charged with an unspecified felony that was dismissed.

## II. Matthew Regina

1. *Drennon et al. v. City of New York et al.*, 05-cv-02486-CBA-KAM (E.D.N.Y.)
  - a. Date Filed: 5/19/2005
  - b. Date of Incident: 2/5/2005
  - c. Outcome: Settled for \$62,500 on 8/11/2005.
  - d. Summary of Allegations: Regina and other members of service falsely arrested and charged plaintiffs with selling and possessing a controlled substance (though neither plaintiff possessed or sold such a controlled substance), slammed Plaintiff Drennon to the ground, and illegally strip-searched the plaintiffs at the precinct. One or more of them made false statements to the prosecutor resulting in plaintiffs’ prosecution.
2. *Hogarth v. City of New York et al.*, 05-cv-04850-RJD-RML (E.D.N.Y.)
  - a. Date Filed: 10/17/2005
  - b. Date of Incident: 9/7/2005
  - c. Outcome: Settled for \$22,500 on 7/28/2006.
  - d. Summary of Allegations: Regina was part of a group of officers that, in the course of arresting plaintiff, handcuffed him excessively tightly, threw him onto a hard floor, maced him, struck him on his back, forcefully pressed a foot against his face, slammed his head into a police car and into the door of a jail cell, and unlawfully strip searched him. Those officers who did not participate in the beating failed to intervene.
3. *Gaymon v. City of New York et al.*, 06-cv-00026-RJD-RML (E.D.N.Y.)
  - a. Date Filed: 1/4/2006
  - b. Date of Incident: 9/20/2005
  - c. Outcome: Settled for \$5,000 on 6/30/2006.
  - d. Summary of Allegations: Regina and other members of service falsely arrested plaintiff and charged him with possessing marijuana, and made a misrepresentation to the ADA that plaintiff possessed marijuana. Two officers also conducted a strip search of plaintiff.
4. *Butler v. City of New York et al.*, 09-cv-02559-ILG-VVP (E.D.N.Y.)

- a. Date Filed: 6/15/2009
  - b. Date of Incident: 10/25/2008
  - c. Outcome: Settled for \$15,000 on 4/20/2010.
  - d. Summary of Allegations: Regina and other members of service falsely arrested plaintiff for criminal trespass while he was waiting for his foster mother's son in the lobby of his foster mother's building.
5. *Peterson v. Regina et al.*, 10-cv-01692-JSR-GWG (S.D.N.Y.)
- a. Date Filed: 1/22/2010
  - b. Date of Incident: 1/21/2007
  - c. Outcome: Settled for \$10,000 on 5/17/2013.
  - d. Summary of Allegations: Regina was the arresting officer for plaintiff's arrest for criminal sale of a controlled substance, which was ordered by a lieutenant though plaintiff did not sell any drugs to an undercover officer who approached him, and did not possess any drugs or pre-recorded buy money.
6. *Boyd et al. v. City of New York et al.*, 10-cv-02096-SLT-RML (E.D.N.Y.)
- a. Date Filed: 5/7/2010
  - b. Date of Incident: 2/13/2009
  - c. Outcome: Settled for \$14,000 on 4/23/2012.
  - d. Summary of Allegations: Regina and other members of service broke open a door, handcuffed the plaintiffs, and imprisoned them in a vehicle and at the precinct, before releasing them without charging them.
7. *Molina v. City of New York et al.*, 10-cv-01370-VM (S.D.N.Y.)
- a. Date Filed: 5/26/2010
  - b. Date of Incident: 2/20/2007
  - c. Outcome: Settled for \$10,000 on 7/13/2010.
  - d. Summary of Allegations: Regina and other members of service handcuffed plaintiff and searched him, and failed to find any contraband, yet falsely arrested and charged him with criminal possession of a controlled substance, filling out false and misleading police reports forwarded to prosecutors, and repeatedly giving false and misleading testimony regarding the incident.
8. *Bumbrey et al. v. City of New York et al.*, 10-cv-05188-ENV-RML (E.D.N.Y.)
- a. Date Filed: 11/9/2010
  - b. Date of Incident: 8/11/2009
  - c. Outcome: Settled for undisclosed amount on 4/1/2013.
  - d. Summary of Allegations: Regina and other members of service directly participated in and/or failed to intervene in relation to the false arrest and prosecution of plaintiffs.



9. *Hackshaw v. City of New York et al.*, 10-cv-06005-BMC (E.D.N.Y.)
  - a. Date Filed: 12/28/2010
  - b. Date of Incident: 9/30/2009
  - c. Outcome: Settled for \$10,000 on 10/18/2011.
  - d. Summary of Allegations: A group of members of service including Regina, in an unmarked vehicle, caused plaintiff's bicycle to crash, threatened to shoot him when he ran away, jumped on plaintiff's back and struck him on his head and body while he was on the ground (including with a hard object and while he was restrained with handcuffs), illegally searched him, injured his wrists by tight and prolonged handcuffing, and delayed his medical treatment.
  
10. *Bell et al. v. City of New York et al.*, 11-cv-01885-KAM-RML (E.D.N.Y.)
  - a. Date Filed: 4/15/2011
  - b. Date of Incident: 1/25/2010
  - c. Outcome: Settled for \$17,500 on 4/4/2013.
  - d. Summary of Allegations: Regina and another officer stopped, without reasonable suspicion, a car in which three of the plaintiffs were traveling, ordered them to exit their vehicle, and illegally searched them and the car.
  
11. *Canelo v. City of New York et al.*, 11-cv-00052-WFK-MDG (E.D.N.Y.)
  - a. Date Filed: 6/29/2011
  - b. Date of Incident: 10/7/2009
  - c. Outcome: Settled for \$37,500 on 5/24/2012.
  - d. Summary of Allegations: Regina was part of a group of members of service that, following an unlawful seizure of plaintiff from a vehicle, searched plaintiff's rectal area, choked and slammed him to the ground, kned him on the back, pepper-sprayed him, held him in a police vehicle with his hands handcuffed behind his back for approximately two hours, and refused to provide him medical attention. To cover up this abuse of authority, the members of service initiated a prosecution of him on a false charge, based on false statements made by one of them.
  
12. *Walker v. City of New York et al.*, 12-cv-00385-CBA-LB (E.D.N.Y.)
  - a. Date Filed: 1/26/2012
  - b. Date of Incident: 1/2/2011
  - c. Outcome: Settled for \$1,501 on 5/30/2012.
  - d. Summary of Allegations: Regina and another member of service stopped a car in which plaintiff was a passenger, and searched the car with other officers who arrived. Another officer took away plaintiff's phone, preventing her from photographing the incident. Plaintiff was held in police custody for 10 minutes before being released. Regina and the other

officers had no reasonable basis or probable cause to stop the car and demand that the passengers step out.

13. *Stewart v. City of New York et al.*, 12-cv-00750-PKC-CLP (E.D.N.Y.)
  - a. Date Filed: 2/15/2012
  - b. Date of Incident: 3/20/2010
  - c. Outcome: Settled for \$50,000 on 6/2/2014.
  - d. Summary of Allegations: Regina and other members of service unlawfully stopped and detained plaintiff, searched him but failed to find contraband, and arrested him. Plaintiff was arraigned on false charges based upon false statements made by one of the other officers.
  
14. *Baynes v. City of New York et al.*, 12-cv-05903-RJS (S.D.N.Y.)
  - a. Date Filed: 8/2/2012
  - b. Date of Incident: 5/23/2012
  - c. Outcome: Settled for \$25,000 on 1/29/2013.
  - d. Summary of Allegations: After unsuccessfully attempting to purchase drugs from plaintiff, UC #84 purchased drugs from another individual and attempted to hand them to plaintiff, who immediately threw them to the ground and walked away. Regina and other members of service grabbed plaintiff, who was handcuffed tightly and violently, causing injury to his wrist, and falsely arrested for criminal sale of a controlled substance. Plaintiff was unlawfully strip searched at the precinct.

### III. UC #84

1. *Cook v. City of New York et al.*, 09-cv-10238-CM (S.D.N.Y.)
  - a. Date Filed: 12/16/2009
  - b. Date of Incident: 5/23/2009
  - c. Outcome: Settled for \$12,500 on 9/18/2010.
  - d. Summary of Allegations: Plaintiff was falsely arrested and charged with selling “fake” cocaine, handcuffed excessively tightly, and strip searched. It was misrepresented to a prosecutor that plaintiff had possessed and sold “fake” drugs.
  
2. *Penn v. City of New York et al.*, 10-cv-04907-RJS (S.D.N.Y.)
  - a. Date Filed: 6/23/2010
  - b. Date of Incident: 4/29/2009
  - c. Outcome: Settled for \$45,000 on 2/19/2011.
  - d. Summary of Allegations: UC #84 and other members of service falsely arrested plaintiff.
  
3. *Best v. City of New York et al.*, 11-cv-05611-CM (S.D.N.Y.)

- a. Date Filed: 8/11/2011
  - b. Date of Incident: 11/21/2009
  - c. Outcome: Settled for \$22,500 on 3/7/2012.
  - d. Summary of Allegations: UC #84 was part of a group of members of service who falsely arrested plaintiff, and in the course of arresting him, slammed him into the ground, punched him in the face, pushed at least one knee into his neck, and handcuffed him excessively tightly. One of the other officers, with the other officers' knowledge and approval, charged him with sale and possession of marijuana and resisting arrest, misrepresented to prosecutors that he committed these crimes, and signed a Criminal Court complaint.
4. *Baynes v. City of New York et al.*, 12-cv-05903-RJS (S.D.N.Y.)
- a. *See above* (Regina section) (2013 – Settled for \$25,000).
5. *Parris v. City of New York et al.*, 13-cv-06686-NRB (S.D.N.Y.)
- a. Date Filed: 9/20/2013
  - b. Date of Incident: 7/3/2012
  - c. Outcome: Settled for \$17,500 on 6/10/2014.
  - d. Summary of Allegations: UC #84 and two other members of service illegally searched plaintiff. One of the other two officers made a false sworn statement that plaintiff was involved in the sale of a narcotic.
6. *Bahadur v. City of New York et al.*, 15-cv-00978-AJN (S.D.N.Y.)
- a. Date Filed: 2/10/2015
  - b. Date of Incident: 10/9/2013
  - c. Outcome: Following a trial, the jury found UC #84 not liable, but found another officer liable and awarded \$150 in compensatory damages and \$10,000 in punitive damages.
  - d. Summary of Allegations: UC #84 approached plaintiff and persistently attempted to purchase drugs from plaintiff (who refused), and then, along with another officer, punched him in the face and head. The defendant officers falsely claimed that plaintiff tried to strike an officer. The other defendant officer who was alleged to have punched plaintiff was found liable, though UC #84 was not.
7. *Pieralisi v. City of New York et al.*, 15-cv-03785-RA (S.D.N.Y.)
- a. Date Filed: 5/15/2015
  - b. Date of Incident: 12/28/2013
  - c. Outcome: Settled for \$9,000 on 1/27/2016.
  - d. Summary of Allegations: UC #84 and other members of service illegally searched plaintiff, found no contraband, and falsely arrested him. One of

the other officers signed an accusatory instrument falsely claiming that plaintiff had possessed and sold a controlled substance.

8. *Wright v. City of New York et al.*, 15-cv-04498-VSB (S.D.N.Y.)
  - a. Date Filed: 6/10/2015
  - b. Date of Incident: 11/12/2014
  - c. Outcome: Settled for \$2,500 on 10/17/2018.
  - d. Summary of Allegations: UC #84 approached plaintiff and another individual and asked to buy heroin, plaintiff walked away, and the other individual gave UC #84 crack cocaine. Plaintiff was arrested and searched by defendant officers, and though no evidence of criminal activity was recovered, was charged with selling a controlled substance. Defendants prepared false and/or misleading police reports that were provided to the District Attorney's Office.

#### **IV. Hoiping Lee**

1. *Finney v. City of New York et al.*, 04-cv-09929-VM (S.D.N.Y.)
  - a. Date Filed: 12/16/2004
  - b. Date of Incident: 9/16/2000
  - c. Outcome: Settled for \$15,000 on 7/21/2005.
  - d. Summary of Allegations: Lee and other members of service arrested plaintiff for operating an illegal, unlicensed after-hours club, and for criminal possession of a weapon, falsely alleging that he threw a firearm behind a vending machine. Lee and other officers subjected him to taunts and racial slurs. Plaintiff's personal effects were lost or stolen by the arresting officers.
2. *McKnight v. City of New York et al.*, 06-cv-03220-PAC (S.D.N.Y.)
  - a. Date Filed: 4/26/2006
  - b. Date of Incident: 10/02/2004
  - c. Outcome: Settled for \$45,000 on 4/23/2008 with \$40,000 paid by City and \$5,000 paid by Lee.
  - d. Summary of Allegations: After a search of plaintiff by another member of service that yielded no contraband, Lee held plaintiff in custody for four hours without probable cause. Plaintiff was strip searched by other members of service, and Lee issued him a Desk Appearance Ticket for criminal possession of marijuana.
3. *Cubero v. City of New York et al.*, 07-cv-02640-VM (S.D.N.Y.)
  - a. Date Filed: 3/30/2007
  - b. Date of Incident: 1/18/2006
  - c. Outcome: Settled for \$45,000 on 11/16/2007.

- d. Summary of Allegations: Lee and other members of service approached plaintiff at gunpoint without reasonable suspicion or probable cause, tried to remove plaintiff from his vehicle, struck him on the back of his head and on his hands, and threw him to the street, where they continued to beat him. Plaintiff was also illegally strip searched at the precinct. The criminal charges against him were “fabricated” by the defendant officers.
4. *Tingling v. City of New York et al.*, 10-cv-00874-HB (S.D.N.Y.)
  - a. Date Filed: 2/3/2010
  - b. Date of Incident: 11/6/2008
  - c. Outcome: Settled for \$50,000 on 11/17/2010.
  - d. Summary of Allegations: Lee and other members of service threw plaintiff to the ground and struck him repeatedly in the face, leaving him with a facial fracture and causing loss of consciousness.
5. *McIlwain v. City of New York et al.*, 10-cv-07946-PAC (S.D.N.Y.)
  - a. Date Filed: 10/15/2010
  - b. Date of Incident: 3/19/2010
  - c. Outcome: Settled for \$10,000 on 8/29/2011.
  - d. Summary of Allegations: Lee and other members of service subjected plaintiff to an illegal strip search that yielded no contraband, yet nonetheless falsely charged him with criminal possession of a controlled substance, preparing false police reports that were provided to the District Attorney’s Office, and giving false testimony concerning the circumstances of his arrest.
6. *Gonzalez et al. v. City of New York et al.*, 10-cv-09039-PKC (S.D.N.Y.)
  - a. Date Filed: 12/3/2010
  - b. Date of Incident: 9/9/2009
  - c. Outcome: Settled for \$17,500 on 7/7/2011.
  - d. Summary of Allegations: Lee and other members of service falsely arrested plaintiffs. Other officers conducted illegal strip searches of which Lee and others had knowledge, but failed to intervene. A detective, the arresting officer, created police reports containing false allegations that plaintiffs had possessed and sold narcotics, and made such misrepresentations to the District Attorney’s Office, but Lee and others failed to intervene, despite their knowledge of his conduct.
7. *Vera v. City of New York et al.*, 12-cv-06925-NRB (S.D.N.Y.)
  - a. Date Filed: 9/12/2012
  - b. Date of Incident: 3/26/2012
  - c. Outcome: Settled for \$27,500 on 7/2/2013.

- d. Summary of Allegations: Lee and other members of service stopped plaintiff while he was driving, and he was then taken to a precinct and strip searched, and falsely charged with reckless driving.
8. *Robinson v. City of New York et al.*, 5-cv-05850-LGS (S.D.N.Y.)
- a. Date Filed: 7/24/2015
  - b. Date of Incident: 9/12/2013
  - c. Outcome: Judgment in favor of defendants entered on 11/13/2017, following jury verdict on 10/23/2017.
  - d. Summary of Allegations: Lee and other members of service falsely arrested and illegally searched plaintiff. A detective made false statements to an ADA, including a statement that Lee recovered two ten-dollar bills from the ground that plaintiff dropped, causing him to be charged with criminal possession of a controlled substance. Lee made contradictory statements at trial regarding the money allegedly dropped by plaintiff.

**V. John Patane**

1. *Arnold v. City of New York et al.*, 06-cv-02729-AKH (S.D.N.Y.)
- a. Date Filed: 4/7/2006
  - b. Date of Incident: 9/10/2005
  - c. Outcome: Settled for \$50,001 on 9/16/2006.
  - d. Summary of Allegations: Patane and other members of service stopped the car in which plaintiff was a passenger and, without provocation from the plaintiff, punched plaintiff in the face several times, hit him in the face with their radio(s), pepper-sprayed him once he was handcuffed, dragged him out of the vehicle and to the floor, and beat him. The officers then falsely charged him with resisting arrest, attempted assault and harassment in the second degree.
2. *Loglisci v. City of New York et al.*, 09-cv-01220-SHS (S.D.N.Y.)
- a. *See above* (Deltoro section) (2009 - Settled for \$50,000).
3. *Henderson v. City of New York et al.*, 11-cv-01611-HB (S.D.N.Y.)
- a. Date Filed: 3/7/2011
  - b. Date of Incident: 11/11/2010
  - c. Outcome: Settled for \$650 on 10/21/2011.
  - d. Summary of Allegations: Patane approved an unlawful cavity search of plaintiff, who had been arrested for a misdemeanor drug offense.
4. *McAvoy v. City of New York et al.*, 11-cv-04819-ALC-DCF (S.D.N.Y.)
- a. Date Filed: 7/13/2011
  - b. Date of Incident: 5/5/2008

- c. Outcome: Summary judgment in favor of defendants.
- d. Summary of Allegations: Patane stole money from an arrestee during the execution of a search warrant, and plaintiff, a retired NYPD detective, claimed he was retaliated against for reporting Patane's theft.

**VI. UC #17**

- 1. *Williams v. City of New York et al.*, 11-cv-02619-JGK (S.D.N.Y.)
  - a. Date Filed: 4/18/2011
  - b. Date of Incident: 8/15/2009
  - c. Outcome: Settled for \$5,000 on 9/9/2011.
  - d. Summary of Allegations: UC #17 and other members of service arrested plaintiff without probable cause, strip searched him at the police precinct, failed to find any contraband, and commenced his prosecution by forwarding false information to the District Attorney's Office.

# Exhibit B



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 72**

-----X  
**THE PEOPLE OF THE STATE OF NEW YORK, :**

**-against- :**

**JAWAWN FRASER,**

**Defendant.**

**DECISION AND ORDER**

**Ind. No. 4844/14**

-----X  
**ROBERT M STOLZ, J.:**

Following a jury trial, the defendant was convicted of Robbery in the Third Degree in violation of PL §160.05. He was sentenced on January 13, 2016, to a term of imprisonment of two to six years. In a motion filed on May 2, 2019, defendant has moved to vacate the judgment of conviction pursuant to CPL §440.10(1)(h), claiming that the People failed to disclose *Brady* material prior to trial. The People oppose the motion. For the following reasons, the motion is granted.

**Factual Background**

At trial, Undercover Officer 84 ("UC/84") testified that on October 21, 2014, he attempted to purchase crack-cocaine from an unidentified woman in the courtyard of a public housing building. When the woman left to procure the drugs, defendant approached the undercover; asked whether he was a police officer; and demanded his identification. In response, the officer handed over a fake driver's license and, inadvertently, a twenty dollar bill of pre-recorded buy money. The defendant pocketed the items. When UC/84 asked defendant to return them, defendant threatened to "fuck him up" as a small crowd gathered, encouraging defendant to hit the officer. UC/84 made a distress signal to the field team. As the field team moved in, the defendant ran but was soon apprehended. Detective Regina, who was the

assigned arresting officer and had watched the transaction unfold alongside the assigned “ghost” officer, joined in the chase and Regina recovered, from the defendant, two cellular telephones, the fake license and over \$100.00, in United States currency, which did not include the buy money.

### **Procedural History**

Following the defendant’s indictment, his then attorney, James McQueeney, Esq., filed an omnibus motion, making only a general request for *Brady* material. He did not specifically request material about whether any of the subject police officers were, or had been, the subject of civil lawsuits or disciplinary proceedings.

At the trial, UC/84 and Detective Regina were the principal witnesses for the prosecution. Detective Regina testified concerning his observations and his seizure of property he recovered from defendant. The defense focused on the inconsistencies between UC/84 and Regina’s trial testimony and hearing testimony, and argued that their versions of the events was implausible.

On June 18, 2018, defendant perfected his appeal arguing that the suppression hearing should not have been re-opened to allow UC /84 to testify and that the conviction was against the weight of the evidence. Oral argument was heard by the Appellate Division on December 5, 2018. The Court has yet to issue its decision.

### **The Civil Lawsuits**

Shortly before the appellate argument, defense counsel learned that on October 2, 2018, Justice Laura Ward of this Court had granted a CPL §440.10 motion in the case of *People v. Gary Harris*, Ind. No. 4781/13 (“The Harris trial”), a case which also involved UC/84 and

Detective Regina. That trial had concluded in March of 2016, shortly after the trial of defendant herein. Two years later, on September 12, 2018, the People had advised Justice Ward that before the Harris' trial, and therefore before the trial of this defendant, they had known of approximately twelve lawsuits against Detective Regina, one of which also named UC/84 as a defendant. Those lawsuits alleged false arrest, malicious prosecution, excessive force, and illegal strip searches. In response to Mr. Harris' CPL §440.10 motion, the People argued that these lawsuits would have been of little or no impeachment value because they were neither favorable or material. Justice Ward, however, rejected that argument, holding that the determination of materiality rests with the Court, not the People, and that the People had erred in withholding the information on that basis.

The defendant has now filed a motion, arguing that after his trial he discovered at least 35 civil lawsuits alleging misconduct by UC/84, Regina, and other members of the field team. After discovering these lawsuits, defendant's current counsel contacted defendant's trial counsel, Geoffrey Stewart, Esq.,<sup>1</sup> and learned that prior to defendant's trial the People had disclosed only two such lawsuits. Mr. Stewart advised that he did not use the two cases of which he had been apprised to impeach the officers because he believed they would simply deny the allegations, and it would appear that he was "quibbl[ing] with them." Mr. Stewart further advised that, had he known of all of these lawsuits he would have endeavored to impeach the officers with them because their sheer number would have "persuaded the jury that the officers were not being truthful." The People respond that they conducted a pre-trial "*Garrett* search" and discovered

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At the defendant's request Mr. McQueeny had been relieved and Mr. Stewart was assigned through trial

thirteen lawsuits against officers in this case which they believe were disclosed to Mr. Stewart pre-trial. These lawsuits did not include the 12 suits that were not disclosed in Harris' case or this case.

### Discussion

To establish a *Brady* violation, defendant must show: (1) the evidence is favorable to the defendant because it is exculpatory or impeaching in nature; (2) it was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material. *People v. Garrett*, 23 NY3d 878, 885 (2014); *People v. Fuentes*, 12 NY3d 259, 263 (2009); *People v. LaValle*, 3 NY3d 88, 109-110 (2004). Where a defendant makes a request for specific information under *Brady/Giglio*, materiality is established if there is a "reasonable possibility" that the outcome of the proceedings would have been different had defendant timely possessed the information. When no specific request is made, materiality turns on whether there is a "reasonable probability" that had the material been provided, the outcome would have been different. *People v. Garrett, supra* at 888; *People v. Fuentes, supra* at 263; *People v. Vilardi*, 76 NY2d 67, 73 (1990). Here, the "reasonable probability" standard controls since it is undisputed that only a general request was made.

The first prong to establish a *Brady* violation has been satisfied. I have reviewed the undisclosed files which were in the People's possession prior to the *Harris* trial as well as those discovered and submitted by defense counsel, and find that they constitute impeachment evidence favorable to the defense. *See People v. Garrett, supra*; *People v. Smith*, 27 NY3d 652, 669 (2016), *supra, reargument denied sub nom People v. McGhee*, 28 NY3d 1112 (2016), *supra* (defendant properly questioned officer about allegations in a federal lawsuit alleging false arrest

because participation in a false arrest was relevant to assessment of officer's credibility). Although the People argue that the defendant would have been precluded from inquiring about these lawsuits because they were not "material" that determination rests with the trial judge, not the prosecutor. *See Harris, supra*. Impeachment based on information in civil lawsuits, like any other bad acts, is generally permissible. *See People v. Smith*, 27 NY3d 652, 662; *People v. Holmes*, 170 AD3d 532, 533-534 (1<sup>st</sup> Dept 2019); *People v. Ducret*, 95 AD3d 636 (1<sup>st</sup> Dept 2012), *lv. denied* 19 NY3d 996 (2012).

The second prong requires defendant to show that the information was suppressed by the People. Here it is clear that while the prosecutor was personally unaware of the lawsuits discovered after the *Harris* trial, to wit: the 12 civil suits against Detective Regina, he nonetheless had constructive or "institutional knowledge" of them before trial and they should have been disclosed. *See Garrett, supra* at 887; *People v. Wright*, 86 NY 2d 591, 598 (1995), *citing Giglio v. United States*, 405 US 150, 154 (1972) (the mandate of *Brady* extends beyond any particular prosecutor's actual knowledge). Accordingly, the second prong is established with respect to those 12 civil suits only.<sup>2</sup>

The third and final prong hinges upon a determination of whether prejudice arose because the suppressed evidence was material. As stated earlier, I must find that there was a

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With respect to the 13 suits the People believe they disclosed and the additional lawsuits defendant discovered, defendant has not demonstrated that the People suppressed them. After all, the prosecutor's duty to learn of impeachment material known to those "acting on the government's behalf" extends only to information directly related to the prosecution or investigation of the *defendant's* case." (emphasis added). *People v. Garrett, supra* at 888. Here, defendant has not alleged that any of these lawsuits directly relate to him. Thus, it cannot be said that the People suppressed them. However, the same cannot be said of the aforementioned twelve lawsuits.


“reasonable probability” that the suppressed evidence would have changed the outcome of the trial. Because the case hinged on the credibility of the witnesses, I find that the suppressed lawsuits were material and that defendant was prejudiced by his inability to cross-examine the officers about instances of misconduct. I further find that there was a reasonable probability that the suppressed impeachment evidence would have resulted in a different verdict. *See, People v. Harris, supra; People v. Wigfall, Ind. No 443/10 (Sup Ct, NY County 2015, Hon. Charles Solomon)* The defendant has therefore satisfied the third prong of a *Brady* violation.

The motion to vacate the conviction is granted and a new trial ordered.

This constitutes the decision and order of the Court.


Dated: December 6, 2019

DEC 06 2019

  
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J.S.C.  
**HON. ROBERT STOLZ**

DEC 24 2019

I hereby certify that this is a true and correct copy of the original as read, filed in my office.

  
County Clerk of the Court of the  
Supreme Court New York County  
OFFICIAL USE