

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS, TYLER DIVISION**

KERRY MAX COOK,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:17-cv-333-JDK
)	
CITY OF TYLER, SMITH COUNTY,)	Hon. Jeremy D. Kernodle
EDDIE CLARK, ERIC LIPTAK, DOUGLAS)	
COLLARD, ROBERT BOND, GERALD)	
HAYDEN, NELSON DOWNING, FRED)	JURY TRIAL DEMANDED
MAYO, KENNETH FINDLEY, RONALD)	
SCOTT, RONNIE MALLOCH, MARVIN T.)	
McLEROY, STUART DOWELL, JAKE)	
MASSEY, J.B. SMITH, and GENE)	
CARLSON,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiff KERRY MAX COOK, by his attorneys LOEVY & LOEVY, complains against Defendants CITY OF TYLER, SMITH COUNTY, EDDIE CLARK, ERIC LIPTAK, DOUGLAS COLLARD, ROBERT BOND, GERALD HAYDEN, NELSON DOWNING, FRED MAYO, KENNETH FINDLEY, RONALD SCOTT, RONNIE MALLOCH, MARVIN T. McLEROY, STUART DOWELL, JAKE MASSEY, J.B. SMITH, and GENE CARLSON as follows:

INTRODUCTION

1. These are the words of the Texas Court of Criminal Appeals, finding Plaintiff Kerry Max Cook actually innocent of a 1977 murder Cook has spent 47 years fighting: “[W]hen it comes to solid support for actual innocence, this case contains it all—uncontroverted *Brady* violations, proof of false testimony, admissions of perjury, and new scientific evidence.”

2. Kerry Max Cook was wrongfully arrested, charged, prosecuted, and convicted of the brutal rape and murder of 21-year-old Linda Jo Edwards. The crime occurred in Tyler, Texas in 1977.

3. Plaintiff was completely innocent. He was convicted not based on evidence, but because of a homosexual witch-hunt by police investigators.

4. In service of their witch-hunt, the defendants actively and systematically disregarded, downplayed, and concealed obvious evidence pointing to the victim's married, 44-year-old disgruntled ex-lover, James Mayfield.

5. Ample evidence available from the early days of the investigation implicated Mayfield as Edwards' killer: Edwards' roommate reported that on the night of the murder, she saw Mayfield in the room where Edwards' body was found the next morning; Mayfield had just been fired from his job at a prominent university because of his extramarital affair with Edwards, who was a secretary at the university and had worked under Mayfield at the library; Mayfield was reported to have possessed, before the crime, a law enforcement treatise on sex crimes containing examples of sexual mutilation similar to the wounds inflicted on Edwards; and after the crime, Mayfield was reported to have been asking how to beat a polygraph test.

6. Rather than follow the evidence, the defendants created a sham psychological profile of the killer as a homosexual man—fueled entirely by bigotry rather than police investigation—and set out to pin the murder on a gay suspect. Believing Plaintiff was gay, the defendants made him their target.

7. Because there was no credible evidence implicating Plaintiff—indeed, the blood, hair, and DNA at the scene didn't tie to Plaintiff, and the one eyewitness named Mayfield as the killer—the defendants fabricated evidence to make their case. They manufactured a false

fingerprint analysis, coerced false statements and testimony from witnesses—including jailhouse informants—and created knowingly and recklessly false investigative materials.

8. In addition, to ensure Plaintiff was convicted despite his innocence, the defendants concealed crucial exculpatory evidence.

9. As a result of the defendants' misconduct, Plaintiff spent more than 20 years in prison, nearly all of them on death row. There he endured unimaginable horrors, including repeated sexual abuses, that changed him forever. After his release, he struggled for another 25 years to clear his name.

10. Ultimately, the criminal case against Plaintiff fell apart.

11. Decades after Plaintiff's conviction, DNA testing conclusively established that Mayfield's semen was on the victim's underwear. Mayfield later admitted he had lied under oath in Plaintiff's criminal case for nearly 40 years about his interactions and relationship with Edwards in the days before her death.

12. On June 6, 2016, a Texas trial court recommended that Plaintiff's conviction be vacated based on violations of his constitutional rights.

13. And on June 19, 2024, the Texas Court of Criminal Appeals set aside Plaintiff's conviction, finding that Plaintiff's due process rights had been violated and that Plaintiff was actually innocent.

14. Despite all the evidence implicating him, Mayfield was never prosecuted or convicted.

15. Plaintiff now seeks justice for the harm the defendants caused and redress for the loss of liberty and the horrific hardship he endured over the last 47 years and continues to suffer because of the defendants' egregious misconduct.

JURISDICTION AND VENUE

16. Plaintiff brings this case under 42 U.S.C. § 1983 to redress the defendants' tortious conduct and their deprivation of Plaintiff's rights secured by the U.S. Constitution.

17. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331.

18. Venue is proper under 28 U.S.C. § 1391(b). Plaintiff resided in this judicial district at the relevant times, most of the defendants reside in this judicial district, and the events and omissions giving rise to Plaintiff's claims occurred within this judicial district.

PARTIES

19. Plaintiff Kerry Max Cook spent over two decades in prison—nearly all of them on death row—for a crime he did not commit.

20. Defendants Eddie Clark, Eric Liptak, Robert Bond, Gerald Hayden, Nelson Downing, Fred Mayo, Kenneth Findley, and Ronald Scott are current and former officers of the City of Tyler Police Department involved in supervising and conducting the Edwards murder investigation.

21. Defendant Douglas Collard is a former officer of the City of Tyler Police Department involved in supervising and conducting the Edwards murder investigation.

22. Defendant Ronnie Malloch is the former Chief of the Tyler Police Department involved in supervising and conducting the Edwards murder investigation. At relevant times, he was the final policymaking authority for the Tyler Police Department.

23. Defendant Marvin T. McLeroy is a former officer of the Texas Department of Public Safety. He conducted polygraph examinations as part of the police investigation into the Edwards murder.

24. Defendant Stuart Dowell is a former officer of the Texas Department of Public Safety involved in conducting the Edwards murder investigation.

25. Defendant Jake Massey is a former sheriff's deputy in the Smith County Sheriff's Office involved in conducting the Edwards murder investigation. He worked with and was supervised by Defendant J.B. Smith ("J.B."), then-Sheriff of Smith County, in connection with the Edwards murder investigation.

26. Defendant J.B. is the former Sheriff of Smith County involved in supervising the Edwards murder investigation. At relevant times, he was the final policymaking authority for the Smith County Sheriff's Office.

27. Defendant Gene Carlson is the former Chief Jailor of the Smith County Jail and at all relevant times was an employee and/or agent of the Smith County Sheriff's Office.

28. Defendants Clark, Liptak, Collard, Bond, Hayden, Downing, Mayo, Findley, Scott, Malloch, McLeroy, Dowell, Massey, Smith, and Carlson are referred to collectively as the "Police Defendants" throughout this Complaint.

29. Defendant City of Tyler is a Texas municipal corporation that is or was the employer of Defendants Clark, Liptak, Collard, Bond, Hayden, Downing, Mayo, Findley, Scott and Malloch. Each Police Defendant acted as an agent of the City of Tyler while investigating the Edwards murder. Defendant City of Tyler is responsible for the policies and practices of the Tyler Police Department.

30. Defendant Smith County is a county of the State of Texas; its county seat is Tyler, Texas. Smith County is or was the employer of Defendants Massey, J.B., and Carlson. The Smith County Sheriff's Office is a short walk from the Tyler Police Department, and the two law enforcement agencies routinely worked together. Each Police Defendant acted as an agent of

Smith County while investigating the Edwards murder. Defendant Smith County is responsible for the policies and practices of the Smith County Sheriff's Office.

31. Each Police Defendant acted under color of law and within the scope of his employment at all times relevant to this complaint. Plaintiff sues each Police Defendant in his individual capacity unless otherwise noted.

FACTS

Linda Jo Edwards and James Mayfield's Affair

32. In 1977, 21-year-old Linda Jo Edwards was working as a secretary at Texas Eastern University, where 44-year-old James Mayfield was Dean of Learning Resources.

33. Mayfield was married and had three children.

34. But Mayfield and Edwards were secretly involved in a long-term extramarital affair.

35. In the spring of 1977, Mayfield left his wife and children and moved with Edwards to a rental apartment at the Embarcadero Apartments complex in Tyler, Texas.

36. After only a few days living with Edwards, Mayfield returned to his wife, after which Edwards attempted suicide.

37. Mayfield asked a colleague from the university, Paula Rudolph, who also lived in the Embarcadero Apartments, to take Edwards in while she recovered.

38. Thereafter, Mayfield and Edwards' affair became public.

39. As a result, Mayfield was fired from his job and his marriage was in trouble.

40. But Mayfield could not stay away from Edwards and kept returning to their volatile relationship.

The Rape and Murder of Linda Jo Edwards

41. On June 9, 1977, Edwards was living at the Embarcadero in Rudolph's apartment. Edwards and Rudolph each had their own room in the apartment.

42. Rudolph had gone out for drinks around 10:30 PM that night.

43. At some point between 10:30 PM on June 9, 1977 and 12:30 AM on June 10, 1977, a man came into the apartment without forcing entry and brutally raped and murdered Edwards.

44. Edwards was struck in the head with a statue, stabbed repeatedly with a knife and scissors, and her body was viciously mutilated. It was a gruesome murder.

45. The killer left the murder weapons—a knife, statue, and pair of scissors—at the scene.

46. When Rudolph walked in the apartment door at 12:30 am, she saw a man in Edwards' room she recognized as James Mayfield, Edwards' ex-boyfriend.

47. Rudolph knew Mayfield well because he was her boss at the university.

48. Rudolph told Mayfield, "Don't worry it's only me," and she went straight to bed.

49. Within a few minutes, without hearing any cries or commotion, Rudolph heard a person leave the apartment. A short time later, she fell asleep.

50. The next morning, Rudolph found the patio door in the apartment open. She went into Edwards' room and found Edwards' body.

51. Law enforcement officers from the Tyler Police Department and other agencies, including the Police Defendants, responded to the scene and investigated the crime.

52. Rudolph described the man she saw in Edwards' room to police as sleek and slender, with a tan and medium-length silver hair that touched his ears. She said he was wearing

white shorts.

53. That description perfectly matched Mayfield, who was known to wear white tennis clothes.

54. Police also learned of Mayfield and Edwards' affair and his subsequent firing from the university.

55. And Police obtained evidence pointing to additional suspects.

56. Within the first few days of investigating, however, the Police Defendants committed themselves to the false and discriminatory idea that the gruesome nature of the attack meant the perpetrator was a "deviant homosexual."

57. Neither Mayfield nor any other male suspect the police knew of was gay.

Kerry Max Cook

58. In the first days of August 1977, two months after the crime, while police were canvassing the Embarcadero complex for homosexual men, Plaintiff Kerry Max Cook came across their radar.

59. The Police Defendants became convinced Plaintiff was homosexual, in part because he had spent time working at gay nightclubs in Dallas and had been temporarily staying with a gay acquaintance at the apartment complex.

60. At the time of the murder, Plaintiff was 21 years old. He had grown up as an "army brat" with his father in the U.S. Army stationed overseas.

61. After his father's retirement from the military in 1973, his family moved from Fort Hood in Killeen, Texas to Jacksonville, Texas, where they opened a restaurant.

62. Plaintiff had spent the last few years working in various cities as a bartender.

63. In early June, he came to Tyler and found temporary lodging with an

acquaintance, James Taylor, at the Embarcadero Apartments.

64. The Police Defendants learned that Plaintiff had met Edwards at the apartment complex pool earlier in the week before she was killed. At least three witnesses told the Police Defendants that Edwards had invited Plaintiff into her apartment the day they met, a few days before she was found dead.

65. When the Police Defendants questioned Plaintiff about Edwards' murder, he told them he had nothing to do with it.

66. Plaintiff also told Defendants he had an alibi: he had spent the day with James Taylor's nephews and the evening with a friend of Taylor's named Robert Hoehn.

67. Plaintiff told police that he and Hoehn were together in the apartment and later went to buy cigarettes at the very time the murder was taking place.

68. The Police Defendants had ample additional evidence that Plaintiff was innocent.

69. Plaintiff did not match Paula Rudolph's description of the perpetrator: Plaintiff had shoulder-length, dark brown hair that covered his ears. Moreover, multiple witnesses had reported that on the night of the murder, Plaintiff was wearing blue and red swim trunks and put blue jeans over them when he went to the store with Hoehn.

70. With nothing to hide, Plaintiff gave the Police Defendants permission to search his car and apartment. The Police Defendants found no evidence whatsoever connecting him to the crime.

71. Nevertheless, fueled by their homophobic agenda, police focused on Plaintiff as a suspect. Not surprisingly, as he'd been a guest at Edwards' days before the murder, police found Plaintiff's fingerprints on a glass sliding door in the common area of Edwards and Rudolph's apartment.

72. But the Police Defendants found no physical evidence connecting Plaintiff to the crime: his fingerprints were not in Edwards' bedroom—the scene of the crime—nor were they on the murder weapons. Even a foreign hair found on the victim's body was tested, and Plaintiff was excluded as the source.

73. Though they knew the actual, innocent reason Plaintiff's fingerprints were on the sliding door, the Police Defendants seized on those fingerprints to frame Plaintiff for the murder based on their "profile" of the killer as a gay man and their belief Plaintiff was gay.

Police Steer the Investigation Away from the Obvious Suspect

74. In pursuing their vendetta against Plaintiff, the Police Defendants turned the investigation away from the obvious suspect: Edwards' ex-boyfriend, James Mayfield.

75. Numerous leads pointed to Mayfield.

76. For one, Rudolph saw Mayfield in Edwards' room on the night of the murder. The next morning, after calling the police, Rudolph told multiple people she'd seen James Mayfield.

77. Moreover, Mayfield had a motive: Edwards' suicide attempt had publicly exposed their affair. As a result, Mayfield had just been fired from Texas Eastern University, his marriage was falling apart, and one of his daughters, Louella Mayfield, was becoming emotionally unraveled.

78. Defendant Ronnie Malloch, the Chief of the Tyler Police Department knew that, in the days after the murder, Mayfield had failed multiple polygraph tests, and he had asked a colleague at Texas Eastern University for advice about how to beat a polygraph.

79. Defendant Malloch also knew that, after the murder, Mayfield had been seen with a law enforcement treatise containing graphic depictions of sexual mutilation like the injuries the killer inflicted on Edwards.

80. The Police Defendants had additional evidence pointing to the Mayfield family.

81. The Police Defendants learned that just two weeks before the murder that James Mayfield's daughter, Louella Mayfield, had been going to apartments around Tyler identifying herself as a Tyler police officer and saying she was investigating a murder involving James Mayfield and Linda Jo Edwards.

82. In addition, days before the murder, Louella Mayfield had gone to Texas Eastern University and threatened to kill Edwards because of her affair with Louella's father.

83. Defendant Hayden wrote in a police report that Louella was "mentally and emotionally unstable, very hyper, and a pathological liar."

84. What's more, the Police Defendants searched Louella Mayfield's car and found, in the trunk, a pair of wet blue jeans with a green substance and stains on the bottom, which they took into their custody. Meanwhile, police had discovered a "mysterious green leafy substance" in Edwards' closet next to where they found the knife used in the murder.

85. To frame Plaintiff, the Police Defendants concealed evidence pointing to Mayfield and his family.

86. For example, Malloch and the Police Defendants concealed from prosecutors, Plaintiff, and Plaintiff's criminal defense attorneys reports of the witness interviews and statements containing information about Mayfield's effort to beat the polygraph and his possession of the treatise.

87. Likewise, Defendant Hayden and the Police Defendants concealed the report in which he noted that Louella Mayfield was unstable.

88. The Police Defendants also concealed evidence that they knew Mayfield was lying when he told police he had not seen Edwards in weeks before her killing, and they

suppressed or destroyed reports of various witness interviews and statements linking Mayfield and Edwards soon before the murder.

89. The Police Defendants also tampered with Paula Rudolph's identification of Mayfield as Edwards' killer.

90. Rudolph told Defendants Eddie Clark and Nelson Downing that she saw Mayfield at the crime scene. But the Police Defendants prepared a witness statement for Rudolph to sign excluding that crucial fact. Instead, they coerced Rudolph into signing a statement saying she "assumed" the person she saw was Mayfield.

91. In his report of the Rudolph interview, dated June 13, 1977, after the Police Defendants had committed to pinning the murder on a gay man, Defendant Clark left out James Mayfield's name and every aspect of Rudolph's description of the person she saw in Edwards' room that matched James Mayfield.

92. Over the ensuing weeks, the Police Defendants coerced Rudolph into entirely disavowing her statement that she saw James Mayfield, and instead falsely pointing the finger at Plaintiff, without disclosing anything about their actions to procure this false testimony.

93. What's more, other witnesses reported to the Police Defendants that Rudolph had said the person she saw was Mayfield. The Police Defendants did not disclose their reports of those interviews, instead suppressing or destroying those reports so they were not available to Plaintiff at trial.

94. In addition, the Police Defendants improperly destroyed biological evidence that likely would have inculpated Mayfield in the crime and exculpated Plaintiff.

95. One such piece of key evidence was a hair with a bloody root found on Edwards' buttocks during her autopsy. The potentially exculpatory value of the hair sample was apparent:

police knew the hair was likely to have come from Edwards' killer.

96. The Police Defendants sought to have the hair tested. But they failed to disclose any results from that testing before they singled out the hair among other physical evidence in the case and asked for it to be destroyed.

97. Defendants Clark, Collard, and others caused the hair sample to be destroyed without allowing Plaintiff the opportunity to have it tested himself. The Police Defendants did so in bad faith, without authorization, and in violation of applicable Texas law.

The Police Defendants Conceal Numerous Other Leads

98. In addition to ignoring the many leads pointing to James Mayfield, the Police Defendants downplayed, suppressed, or destroyed leads pointing to potential suspects that did not fit their predetermined profile of the killer.

99. One such suspect was Greg Smith, who was visiting friends at the Embarcadero apartment complex the night of the murder.

100. Edwards joined Smith and his friends from approximately 10:00 pm to 10:25 pm and then informed them she was going back to her apartment and would be there alone.

101. The Police Defendants learned that Smith watched Edwards walk back to her apartment, and then stayed at his friends' apartment until before midnight, when he left alone.

102. Smith, like the person Rudolph described seeing in Edwards' room later that night, was wearing white tennis shorts.

103. Defendant McLeroy administered a polygraph examination on Smith, which showed that Smith lied when he denied knowing who killed Linda Jo Edwards.

104. McLeroy and Defendant Eddie Clark, together with the other Police Defendants, deliberately concealed this evidence from prosecutors, Plaintiff, and his criminal defense

attorneys.

105. Instead, Defendants fabricated a false narrative that Smith had been cleared as a suspect.

The Police Defendants Frame Kerry Max Cook

106. With no evidence against Plaintiff, and a mountain of compelling evidence against James Mayfield and other suspects, the Police Defendants lacked probable cause to arrest Plaintiff for the Edwards murder.

107. The Police Defendants therefore set out to manufacture false evidence to frame Plaintiff, while concealing that their manufactured evidence was false.

108. The Police Defendants also improperly coerced, encouraged, and manipulated witnesses to falsely implicate Plaintiff in the crime, without disclosing anything about their actions to procure this false testimony.

109. And independent of the serious misconduct described above, the Police Defendants repeatedly and deliberately withheld evidence that further demonstrated Plaintiff's innocence.

False Fingerprint Evidence

110. First, Defendant Sergeant Doug Collard of the Tyler Police Department, in collaboration with Defendant Clark and other Police Defendants, advanced the bogus claim that Plaintiff's fingerprints on the apartment sliding door were only hours old when Collard lifted them at 9 AM on June 10, 1977.

111. That is, Defendant Collard claimed to know that Plaintiff's fingerprints were left on Edwards' apartment door right around the time of her murder.

112. The Police Defendants fabricated this claim to falsely rule out the possibility that

Plaintiff left his prints on the door days before the murder when, as at least three witnesses had told police, Edwards had invited Plaintiff to her apartment.

113. Years later, Defendant Collard admitted that he knew, at the time he first offered the opinion, that there was no sound, supported basis in forensic science for it. Indeed, as Collard was aware, Federal Bureau of Investigation experts have explained that it is scientifically impossible to offer opinions like the one Defendant Collard conjured.

114. Yet, the Police Defendants concealed from prosecutors, Plaintiff, and Plaintiff's criminal defense attorneys documents and information showing the fingerprint evidence was fabricated.

115. At the same time the Police Defendants were concocting a bogus opinion to link Plaintiff's fingerprints to the time of the murder, they were working to conceal evidence of the fingerprints' innocent source.

116. Three witnesses—Plaintiff's host, James Taylor, and Taylor's nephews Randy and Rodney Dykes—told the Police Defendants that Plaintiff and Edwards had a romantic encounter at Edwards' apartment a few days before the murder.

117. The Police Defendants withheld their handwritten and typed notes containing this information.

118. The Police Defendants then improperly manipulated those witnesses—including 17-year-old Randy Dykes and 12-year-old Rodney Dykes—into giving false testimony at Plaintiff's trials.

119. The Police Defendants concealed this manipulation too, and they suppressed or destroyed records reflecting the manipulation.

False Evidence of Plaintiff's "Confession"

120. To bolster their case against Plaintiff, the Police Defendants recruited individuals to give false evidence implicating Plaintiff in the murder.

121. Some of these individuals agreed to falsely report that Plaintiff had confessed to them, when, in fact, no such confessions ever occurred.

122. A particularly egregious example is the Police Defendants' recruitment of jailhouse snitch Edward "Shyster" Jackson to offer the completely fabricated claim that Plaintiff confessed to him and made other inculpatory statements.

123. The Police Defendants coerced Jackson into giving a fabricated statement, and then pursued a series of coercive and threatening acts against Jackson to ensure he would falsely testify against Plaintiff.

124. Among other things, Defendant McLeroy administered multiple polygraph examinations of Jackson, which revealed that Jackson was being deceptive about the supposed confession. Jackson then admitted to McLeroy he was lying.

125. McLeroy and the other Police Defendants, acting together and in conspiracy, deliberately concealed the results of the polygraph tests that Jackson failed and concealed Jackson's statements admitting he was lying.

126. These Defendants drugged Jackson with valium so he would pass a third polygraph test as part of their effort to fabricate out of whole cloth a false "confession" from Plaintiff.

127. After Jackson later recanted his false testimony against Plaintiff and admitted to being coerced and pressured, the Police Defendants beat him to the point of breaking his arm.

128. The Police Defendants took those violent and threatening acts to prevent Jackson

from coming forward about the falsity of his original testimony and about the police misconduct.

129. The Police Defendants concealed documents and information about fabricating the Jackson evidence.

130. Jackson is merely one example. There were other jailhouse snitches and witnesses the Police Defendants recruited and caused to provide false evidence implicating Plaintiff in the crime, all while knowing that these statements were entirely false.

131. To procure this false testimony, the Police Defendants made improper, undisclosed promises and offered impermissible incentives to these individuals, and they coerced others to tell lies.

132. In another instance, the Police Defendants fabricated an entirely false and incredible “confession” through sheriff’s deputy Robert Wickham, who escorted Plaintiff through the courthouse during his criminal proceeding.

133. Wickham, a friend of Defendant Sheriff J.B. Smith, worked with Defendant Eric Liptak, to create false documents claiming that years earlier, Plaintiff confessed Edwards’ murder to Wickham when the two were alone in a courthouse elevator.

134. Liptak communicated this false information to the prosecutor’s office before Plaintiff’s trial, and the fabricated confession was one of the bases upon which the prosecutor pursued the false case against Plaintiff.

135. Through the actions described above and others, the Police Defendants produced a series of false and fraudulent police reports and related memoranda, which they inserted into their case file.

136. These documents contained statements and described events the Police Defendants fabricated and knew were false. The Police Defendants prepared and signed off on

these reports, both as investigators and as supervisors, despite knowing the information in the reports was entirely false.

137. The information in the documents became evidence in the case against Plaintiff, and it was used to show Plaintiff's purported connection to the crime.

138. The Police Defendants concealed the misconduct described above from Plaintiff, his criminal defense attorneys, and the prosecutors involved in his criminal case.

139. Information about the Police Defendants' actions to obtain false testimony from witnesses would have been powerful evidence of Plaintiff's innocence. Plaintiff could also have used the information at his trial to impeach both the witnesses who testified falsely against him and the Police Defendants.

140. The Police Defendants' misconduct also deprived Plaintiff of evidence that would have pointed toward the person who had actually committed the crime.

141. Supervisors among the Police Defendants knew of the Police Defendants' misconduct and their fabrication of a case against Plaintiff. These supervisors nevertheless intentionally ignored and approved the Police Defendants' misconduct and decided to frame Plaintiff for a crime he did not commit rather than directing the officers under their supervision to find the person who raped and killed Linda Jo Edwards.

142. The Police Defendants continue to conceal evidence in their possession demonstrating Plaintiff's innocence. And they continue to hide their own fabrication of evidence and their improper manipulation of witnesses.

**The City of Tyler's and Smith County's Policy and Practice
of Wrongly Convicting Innocent People in Violation of the Constitution**

143. The City of Tyler and Smith County are responsible, by virtue of their official policies, for inflicting miscarriages of justice in scores of criminal cases like Plaintiff's case.

144. In the mid-1970s, during the years leading up to the Edwards murder, law enforcement officials working for the City of Tyler and Smith County operated under an unwritten policy to rid the County of “undesirable” citizens, including LGBT people, by fabricating evidence to implicate those people in crimes they did not commit.

145. In 1979, for example, convictions involving over 100 defendants in drug-related cases were thrown out after it came to light that Tyler Police Department officers fabricated false evidence and/or suppressed exculpatory evidence to cause convictions in violation of the individuals’ civil rights.

146. In many of those cases, Tyler police officers used the same tactics Defendants employed against Plaintiff in this case, including fabricating evidence and concealing exculpatory evidence to secure the arrest, prosecution, and conviction of a person without probable cause or regard for the person’s actual guilt.

147. Indeed, two of the officers involved in those wrongful convictions later admitted that they framed the individuals for drug crimes at the behest of their superiors at the department, who instructed the officers to plant evidence.

148. The City of Tyler and Smith County knew about this widespread practice of fabricating evidence and suppressing exculpatory information long before the events at issue in this case.

149. Before and during the period when Plaintiff was falsely charged and convicted, the City of Tyler and Smith County also operated a dysfunctional disciplinary system for law enforcement officers accused of serious misconduct. The City and County almost never imposed significant discipline against officers accused of violating the civil and constitutional rights of members of the public. Further, the disciplinary apparatus had no mechanism for identifying

police officers who were repeatedly accused of engaging in misconduct.

150. For example, one of the officers admittedly involved in planting evidence on drug suspects in the mid-to-late 1970s, Kim Wozencraft, has publicly acknowledged that a code of silence existed within the Tyler Police Department at that time, which was condoned and facilitated by municipal policy makers and department supervisors. Under the code of silence, officers refused to report and otherwise lied about their colleagues' misconduct, including misconduct like that at issue in this case.

151. As a result of the City of Tyler's and Smith County's established practices, officers (including the Police Defendants here) came to believe they could violate civilians' civil rights and cause innocent people to be charged with serious crimes without fear of adverse circumstances.

152. The practices that enable this belief include failing to track and identify police officers repeatedly accused of serious misconduct, failing to investigate cases where police were involved in a wrongful charge or conviction, failing to discipline officers accused of serious misconduct, and facilitating a code of silence within the law enforcement agencies. As a result of those policies and practices of the City of Tyler and Smith County, members of law enforcement acted with impunity when they violated the constitutional and civil rights of citizens.

153. The City of Tyler and Smith County also failed in the years before Plaintiff's wrongful conviction to provide adequate training to law enforcement officials in many areas, including the following:

- a. The constitutional requirement to disclose exculpatory evidence, including how to identify such evidence and how to ensure such evidence is made part of the criminal proceeding.

- b. The need to refrain from physical and psychological abuse, and manipulative and coercive conduct, in relation to suspects and witnesses.
- c. The risks of wrongful conviction and the steps police officers should take to minimize risks.
- d. The risks of engaging in tunnel vision during investigation.
- e. The need for full disclosure, candor, and openness on the part of all officers who participate in the police disciplinary process, both as witnesses and as accused officers, and the need to report misconduct committed by fellow officers.

154. The need for police officers to be trained in these areas was and remains obvious. The City's and County's failure to train police officers working in Smith County as alleged in the preceding paragraph caused Plaintiff's wrongful conviction and his injuries.

155. The City's and County's failure to train, supervise, and discipline its officers, including the individual defendants in this case, condones, ratifies, and sanctions the kind of misconduct that the Police Defendants committed against Plaintiff.

156. The City of Tyler and Smith County and final policymaking officials within the Tyler Police Department and the Smith County Sheriff's Office failed to remedy the patterns of abuse described in the preceding paragraphs, despite actual knowledge of the pattern of misconduct. They thereby perpetuated the unlawful practices and ensured no action would be taken (independent of the judicial process) to remedy Plaintiff's ongoing injuries.

157. The policies and practices described in the foregoing paragraphs were also approved by the City's and County's policymakers, who were deliberately indifferent to the violations of constitutional rights described in this complaint.

Plaintiff's Wrongful Conviction and Imprisonment

158. Though Plaintiff was innocent of the murder, and Defendants had no legitimate evidence implicating him, on August 4, 1977, Defendant Clark swore out an affidavit to arrest and charge Plaintiff with Edwards' rape and murder.

159. In his affidavit, Defendant Clark included the knowingly false, fabricated claim that Defendant Collard had determined Plaintiff's fingerprints were left at the time of the murder. He also falsely swore out portions of the affidavit discussing Paula Rudolph's statement, omitting that she initially identified the perpetrator as James Mayfield.

160. As a direct result of Defendants' misconduct, Plaintiff was falsely arrested, charged, and tried for the Edwards murder.

161. In 1978, Plaintiff was wrongfully convicted of capital murder, and sentenced to death for a crime he did not commit.

162. Plaintiff spent more than two decades fighting for his life from a prison cell on death row, and he lived branded as a rapist and deviant homosexual murderer for almost four decades.

163. Without Defendants' extreme misconduct described above, Plaintiff would never have been arrested, prosecuted, or convicted.

Plaintiff's Exoneration

164. On June 6, 2016, a Texas trial court judge recommended that Plaintiff's conviction be vacated.

165. Smith County prosecutors agreed to throw out the conviction and charges against Plaintiff in part because James Mayfield had recently admitted for the first time that he had sex with Edwards the day before her murder, and that he had given false and perjurious testimony at

Plaintiff's trial. The prosecutors admitted that Plaintiff's constitutional due process rights had been violated.

166. On June 19, 2024, the Texas Court of Criminal Appeals granted Plaintiff's request to set aside his conviction, and it declared him factually innocent of Linda Jo Edwards' rape and killing.

167. On October 2, 2024, a Texas court ordered the indictment to be dismissed, and after 47 years Kerry Max Cook was finally free.

168. Plaintiff's four-decade legal battle was finally over, but the wounds from his fight for his life will never heal.

169. Plaintiff's whole life was turned upside down with no warning when Defendants focused their attention on him. Plaintiff's 20s, 30s, 40s, 50s, and into 60s—the vast majority of his life—were consumed by the horror of his persecution, wrongful prosecution, and imprisonment.

170. Because of Defendants' misconduct, Plaintiff was taken away from his family and friends. He missed out on all the profound moments of their lives. Plaintiff lost the familial and social relationships and shared experiences that are the centerpiece of every person's ability to experience joy and meaning. And upon his release, those relationships were unsalvageable due to death and the passage of time.

171. Plaintiff was stripped of his young and middle adulthood. He was deprived of opportunities to gain an education, engage in meaningful labor, develop a career, and pursue his interests and passions.

172. Indeed, Plaintiff was deprived of all the basic pleasures of human experience that free people enjoy as a matter of right, including the freedom to live his life as an autonomous

human being.

173. During more than two decades of wrongful imprisonment, Plaintiff was detained in harsh and dangerous conditions in maximum security prison. His ordeal can only be described as a horror.

174. Plaintiff fell to the mercy of a brutal prison environment having been labeled a sexual deviant and convicted of violently raping and murdering a young woman. Prisoners exacted their own revenge. Plaintiff was raped, sodomized, and violently attacked dozens of times, sometimes in gang fashion.

175. Moreover, because Plaintiff had been sentenced to death, he lived every day with the fear that the State of Texas would one day execute him for a crime he did not commit.

176. In addition to the severe trauma of wrongful prosecution and imprisonment and Plaintiff's loss of liberty, Defendants' misconduct continues to cause Plaintiff extreme physical and psychological pain and suffering, humiliation, constant fear, anxiety, deep depression, despair, anger, and other physical and psychological effects.

COUNT I
42 U.S.C. § 1983 – Violation of Due Process

177. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

178. As described above, the Police Defendants, while acting individually, jointly, and in conspiracy with each other, as well as under color of law and within the scope of their employment, deprived Plaintiff of his constitutional right to a fair trial.

179. In the manner described more fully above, the Police Defendants deliberately withheld exculpatory and impeachment evidence from Plaintiff and from prosecutors, among others, thereby misleading and misdirecting Plaintiff's criminal prosecution.

180. In addition, the Police Defendants fabricated and solicited false evidence,

including testimony that they knew to be false and perjured and fabricated police reports, implicating Plaintiff in the crime, obtained Plaintiff's conviction using that false evidence, and failed to correct fabricated evidence they knew was false when it was used against Plaintiff at his criminal trial.

181. The Police Defendants also concealed and fabricated additional evidence that is not yet known to Plaintiff.

182. The Police Defendants' misconduct directly resulted in Plaintiff's unjust criminal conviction, thereby violating Plaintiff's right to a fair trial guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

183. Absent this misconduct, Plaintiff's prosecution could not and would not have been pursued.

184. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally, with malice, with reckless indifference to the rights of others, and in total disregard of the truth and Plaintiff's clear innocence.

185. As a result of Defendants' misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT II
42 U.S.C. § 1983 – Illegal Detention/Malicious Prosecution

186. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

187. In the manner described above, the Police Defendants, while acting individually, jointly, and in conspiracy with each other, as well as under color of law and within the scope of their employment, accused Plaintiff of criminal activity and exerted influence to unreasonably seize him and initiate, continue, and perpetuate judicial proceedings against Plaintiff without any

probable cause for doing so, despite knowing Plaintiff was innocent, in violation of his rights secured by the Fourth and Fourteenth Amendments.

188. Through their misconduct, the Police Defendants caused Plaintiff to be unreasonably seized without probable cause during the entirety of his wrongful prosecution and conviction.

189. Through their misconduct, the Police Defendants accused Plaintiff of criminal activity and exerted influence to initiate, continue, and perpetuate judicial proceedings against Plaintiff without any probable cause for doing so despite knowing Plaintiff was innocent.

190. Based on the above, Defendants maliciously caused Plaintiff to be unreasonably seized and subjected improperly to judicial proceedings, resulting in injury.

191. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally, with malice, with reckless indifference to the rights of others, and in total disregard of the truth and Plaintiff's clear innocence.

192. The proceedings were ultimately terminated in Plaintiff's favor in a manner indicative of innocence.

193. The State of Texas does not provide an adequate post-deprivation state tort remedy for the more than two decades of wrongful incarceration Plaintiff suffered from his illegal detention and malicious prosecution. This includes but is not limited to the fact that the Texas Tort Claims Act absolutely immunizes governmental employees such as the Police Defendants acting within the scope of their employment, and it absolutely immunizes governmental units from suit for intentional torts, including false arrest and malicious prosecution.

194. As a result of the Police Defendants' misconduct described in this Count, Plaintiff

suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT III
42 U.S.C. § 1983 – Violation of Substantive Due Process

195. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

196. As described more fully above, the Police Defendants, while acting under color of law and within the scope of their employment, deprived Plaintiff of his rights under the Fourteenth Amendment to the U.S. Constitution.

197. In the manner described more fully above, the Police Defendants engaged in deliberate, arbitrary, and conscience-shocking behavior by fabricating false evidence; deliberately withholding material exculpatory evidence from Plaintiff; providing false inculpatory evidence used to obtain Plaintiff's wrongful conviction at his criminal trial; and coercing witnesses to testify falsely and provide false statements used to convict Plaintiff at his criminal trial. As a result of the Police Defendants' misconduct, Plaintiff was wrongfully convicted and imprisoned. Thus, Defendants violated Plaintiff's right to substantive due process guaranteed by the Fourteenth Amendment to the U.S. Constitution.

198. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with deliberate indifference to Plaintiff's constitutional rights.

199. As a result of the Police Defendants' misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT IV
42 U.S.C. § 1983 – Destruction of Evidence

200. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

201. In the manner described more fully above, one or more of the Police Defendants destroyed evidence that Plaintiff could have used to further prove his innocence.

202. The exculpatory value of that evidence was apparent to the Police Defendants. In the alternative, the evidence was potentially exculpatory, and the Police Defendants knew that.

203. Nonetheless, the Police Defendants negligently destroyed the evidence. In the alternative, Defendants acted in bad faith in destroying the evidence.

204. The evidence had unique evidentiary value, and Plaintiff could not obtain comparable evidence by any other means.

205. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with deliberate indifference to Plaintiff's constitutional rights.

206. As a result of the Police Defendants' misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT V

42 U.S.C. § 1983 – Conspiracy to Deprive of Constitutional Rights

207. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

208. After Edwards' murder, the Police Defendants, acting in concert with other co-conspirators, known and unknown, reached an agreement among themselves to frame Plaintiff for a crime he did not commit and thereby deprive him of his constitutional rights, all as described in this Complaint.

209. In so doing, these co-conspirators conspired to accomplish an unlawful purpose by an unlawful means. In addition, these co-conspirators agreed among themselves to protect each other from liability for depriving Plaintiff of these rights.

210. In furtherance of their conspiracy, each co-conspirator committed overt acts and

was otherwise a willful participant in joint activity.

211. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally, with malice, with reckless indifference to the rights of others, and in total disregard of the truth and Plaintiff's clear innocence.

212. As a result of Defendants' misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT VI
42 U.S.C. § 1983 – Failure to Intervene

213. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

214. In the manner described above, during the constitutional violations described in this complaint, one or more of the individual Defendants stood by without intervening to prevent the violation of Plaintiff's constitutional rights, even though he had the opportunity to do so.

215. As a result of Defendants' failure to intervene to prevent the violation of Plaintiff's constitutional rights, Plaintiff suffered pain and injury, as well as emotional distress. These Defendants had ample, reasonable opportunities to prevent this harm but failed to do so.

216. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally, with malice, reckless indifference to the rights of others, and in total disregard of the truth and Plaintiff's clear innocence.

217. As a result of Defendants' misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT VII
42 U.S.C. § 1983 – Municipal Liability

218. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

219. Plaintiff's injuries were caused by the policies and practices of the City of Tyler and Smith County in that Defendants Malloch and J.B. Smith were the final policymakers of the Tyler Police Department and Smith County Sheriff's Office, respectively, and the final policymakers of the City of Tyler and Smith County in the area of law enforcement at all relevant times, and they took the unconstitutional actions against Plaintiff described above.

220. Further, Plaintiff's injuries were caused by the policies, practices, and customs of Defendants City of Tyler and Smith County, in that employees and agents of the City of Tyler and Smith County and its constituent agencies and municipalities—including the Tyler Police Department and the Smith County Sheriff's Office—regularly failed to disclose exculpatory evidence to criminal defendants, fabricated false evidence implicating criminal defendants in criminal conduct, elicited false and coerced witness testimony, pursued wrongful prosecutions and convictions through profoundly flawed investigations, and otherwise violated due process in a similar manner to that alleged herein.

221. The above-described widespread practices, which were so well-settled as to constitute the *de facto* policy of the City of Tyler Police Department and Smith County Sheriff's Office, were allowed to exist because municipal policymakers with authority over the same exhibited deliberate indifference to the problem, thereby effectively ratifying it. Furthermore, the widespread practices described in the preceding paragraphs were allowed to flourish because the Tyler Police Department and Smith County Sheriff's Office declined to implement sufficient training or any legitimate mechanism for oversight or punishment of officers and agents who withheld material evidence, fabricated false evidence and coerced witness testimony, and

pursued wrongful convictions, thereby leading officers to believe that they could violate citizens' constitutional rights with impunity.

222. The misconduct described in this Count was undertaken pursuant to the policy and practices of the Tyler Police Department and Smith County Sheriff's Office in that the constitutional violations committed against Plaintiff were committed with the knowledge or approval of people with final policymaking authority for the Tyler Police Department and Smith County Sheriff's Office or were actually committed by people with such final policymaking authority.

223. The policies, practices, and customs set forth above were the moving force behind the numerous constitutional violations in this case and directly and proximately caused Plaintiff to suffer the grievous and permanent injuries and damages set forth above.

224. As a result of the misconduct described in this Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation, degradation, physical and emotional pain and suffering, and other grievous and continuing injuries and damages as set forth above.

COUNT VIII
Local Law Claim – Indemnification

225. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

226. The City of Tyler must pay any tort judgment for damages rendered against some or all of the Police Defendants in accordance with the City of Tyler Ordinances, Sec. 2-62 and any predecessors.

227. The Police Defendants were employees, members, and agents of the City of Tyler, acting at all relevant times within the course and scope of their employment in committing the misconduct described herein.

WHEREFORE, Plaintiff KERRY MAX COOK respectfully requests this Court enter a judgment in his favor and against Defendants CITY OF TYLER, SMITH COUNTY, EDDIE CLARK, ERIC LIPTAK, DOUGLAS COLLARD, ROBERT BOND, GERALD HAYDEN, NELSON DOWNING, FRED MAYO, KENNETH FINDLEY, RONALD SCOTT, RONNIE MALLOCH, MARVIN T. McLEROY, STUART DOWELL, JAKE MASSEY, J.B. SMITH, and GENE CARLSON, awarding compensatory damages, attorneys' fees and costs against each Defendant, punitive damages against each individual Defendant, and any other relief this Court deems just and appropriate.

JURY DEMAND

Plaintiff KERRY MAX COOK hereby demands a trial by jury under Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: November 14, 2024

Respectfully submitted,
KERRY MAX COOK

By: /s/ Anand Swaminathan
One of His Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that, on the date below, I caused the foregoing document to be filed via the Court's electronic filing system, which effected service on all counsel of record.

Dated: November 14, 2024

/s/ Anand Swaminathan
Counsel for Kerry Max Cook