

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

[1]BOBBY WAYNE HALEY, SR., an)
Individual; and [2]ANTHONY HALEY, an)
Individual, [3]ASHLEE HALEY, an individual,)
[4] S.H., [5] C.H., [6] D.H., [7] J.H., and)
[8] C.H., minors under the age of)
Eighteen,)

Plaintiffs,)

vs.)

THE CITY OF TULSA, OKLAHOMA;)
THE TULSA POLICE DEPARTMENT;)

Defendants.)

Case No. 10-CV-361-TCK-PJC

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW the Plaintiffs, Bobby Wayne Haley, Sr., and his children Anthony, S.H., C.H. and D.H., JH, and CH, minor children, by and through their attorneys of record, to bring this action for monetary damages for violation of their civil rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments under the Constitution of the United States of America. All claims for relief asserted herein shall be construed as claims against each defendant both jointly and severally unless specifically noted. Additionally, each claim shall incorporate and include the actions and inactions of each of the Defendant’s agents. In support of this Complaint, the Plaintiffs allege and state as follows:

I.

PRELIMINARY STATEMENT

1. Bobby Wayne Haley, Sr. was arrested, jailed, prosecuted, tried and ultimately convicted in the case of *United States of America vs. Bobby Wayne Haley, Sr., Case No. 04-CR-127-TCK.*

In this matter, Mr. Haley was originally charged with one count of possession of fifty grams or more of cocaine base with intent to distribute, and one count of possession of cocaine with intent to distribute. As part of this prosecution, evidence was introduced from a “reliable confidential informant” (“RCI”) in regards to drug activity personally witnessed by this RCI, including Mr. Haley selling drugs from his business in North Tulsa. The first trial in this case resulted in a deadlocked jury with a mistrial being declared by the Trial Judge the Honorable Terence Kern.

2. Thereafter, the trial court had concerns regarding whether this RCI had in fact witnessed Mr. Haley and not his son Bobby Wayne Haley Jr. selling drugs from these relevant location. Based upon these concerns, the trial court reopened Mr. Haley’s Motion for Disclosure of Confidential Informants that had been filed by his trial counsel Wesley Johnson on October 8, 2004 and denied prior to the first trial in this matter. The trial court ordered supplemental briefing on the matter of the identity of this RCI. On February 25, 2005 the United States in its supplemental briefing requested by the court provided the affidavit of Tulsa Police Department Officer Jeff Henderson (“Henderson”), who was the affiant in support of the original search warrant leading to the charges against Mr. Haley. Henderson testified before United States Magistrate Judge Paul Cleary on April 7, 2005 in an *ex parte* sealed hearing regarding the existence and identity of the purported confidential informant upon whom he relied in obtaining search warrants for Mr. Haley’s properties.

3. The transcript of that hearing was ordered unsealed on the 4th day of May, 2010. In this hearing conducted April 7th, 2005, Henderson stated as follows:

- a. “That the RCI (reliable confidential informant) had observed Bobby Haley selling a quantity of cocaine to another individual while at both locations, being the salvage

yard on North Lewis and the house on North Rockford.” (*See* Doc. 145, at Page 11 Line 8-10)

- b. That he had received this information from the RCI in a phone call “within a couple of days prior to the 27th of May (2004, emphasis added) (*See* Doc. 145, at Page 12, Line 2)
 - c. That in referring to the reliability of this confidential informant, “This person (RCI) has done, I would say less than a hundred, more than 50 deals, if you will, just with me, and that’s been an ongoing process for a number of years. I’ve known this person for years.” (*See* Doc 145, at Page 14 Line 24 through Page 15 Line 2), and when asked about subsequent convictions resulting from this particular confidential informants use Henderson responded “I would say as far as convictions, 90 percent.” (*See* Doc. 145 Page 15 Line 19). Henderson went on to testify that “I can honestly say every workday I speak to this person.” (*See* Doc. 145, at Page 25 Line 3) and that when questioned by Judge Cleary in regards to any guidance or advice to the RCI in preparation for testifying , Henderson responded “No coaching, no guidelines, nothing as far as putting words in the RCI’s mouth.” (*See* Doc. 145, at Page 48 Line 5-6).
4. After this hearing was concluded, Magistrate Judge Cleary recommended that Mr. Haley’s Motion for Disclosure should be denied. On July 8, 2005, strengthened by the testimony of this confidential informant, the United States filed a Superseding Indictment, adding a conspiracy charge to the two counts previously tried against Mr. Haley that had resulted in the original hung jury and subsequent mistrial. At this second trial, Mr. Haley was convicted of

counts 1, 3 and 4 of the Superceding Indictment, and was sentenced by the trial court on January 25, 2006 to 264 months on each count, each to run concurrently with the others.

5. In early 2009, Special Attorney Jane W. Duke was appointed to oversee an investigation in the Northern District of Oklahoma concerning law enforcement corruption. As a part of that investigation, the Special Attorney discovered credible evidence that Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent Brandon Jay McFadden and Henderson committed perjury in April 2008 in an unrelated jury trial. In July, 2009, the convictions obtained by the United States in that matter were ordered dismissed by Chief United States District Judge Claire V. Eagan in the case of *United States vs. Larry Barnes and Larita Barnes*, Case No. 07-CR-135-CVE, and the Barnes's were immediately released from federal custody.

6. On May 6, 2010, an Affidavit was completed by Rochelle Martin, the confidential informant utilized by Henderson in the prosecution of Bobby Wayne Haley, Sr. Her affidavit is as follows:

1. Today, I read a transcript of court proceedings relating to Bobby Wayne Haley, Sr. The transcript is marked "SEALED," and was filed in this case on April 15, 2005. My lawyer has informed me that the transcript was filed as Docket Number 145 in this case. The affidavit relates to testimony that is recorded in that transcript.
2. I am the person who is identified in the transcript as the "Confidential Informant."
3. The testimony I gave in that hearing was false.
4. I have never conducted any drug transactions with Bobby Haley, Sr. I have never been present with another person who conducted a drug transaction with Bobby Haley, Sr.

5. My false testimony was solicited by Jeff Henderson, who was at the time a Tulsa Police officer. Jeff Henderson and Bill Yelton (another Tulsa Police officer) coached me on what they wanted me to say to the judge. They drove me to the hearing together, and told me to testify that I had been to Bobby Haley's home and salvage yard, and that I had been present during drug transaction at those places.
 6. I did what they told me to do, although it was not truthful. My testimony was a lie, which I did because Jeff Henderson asked me to do it.
 7. To the best of my memory, Jeff Henderson called me the night before the hearing and asked me to testify as a favor to him. Before that night, I had never purchased any drugs from Bobby Wayne Haley, Sr., nor had I ever witnessed Bobby Wayne Haley, Sr., selling any drugs.
 8. I never told Jeff Henderson I bought drugs from Bobby Haley, Sr., or that I witnessed Bobby Haley, Sr., selling drugs. I falsely testified I told Jeff Henderson those things, because he and Officer Yelton told me to say that.
 9. I have never conducted any controlled drug purchases for Jeff Henderson or any other Tulsa Police officer.
7. Because of the material false and perjured testimony provided by Henderson and the "reliable confidential informant" Rochelle Martin at this April 7th, 2005 hearing, the May 6, 2010 affidavit of Rochelle Martin recanting her earlier testimony, along with additional information gathered during the continuing corruption investigation involving Henderson and other members of the Tulsa Police Department, the United States confessed Mr. Haley's 2255 Motion for Relief. Mr. Haley subsequently filed, on the 19th day of May, 2010, a Motion to Vacate his Judgment and Sentence and order his immediate release from prison. On the 21st day of May, 2010, the

Honorable Terence Kern granted the United States' request to vacate Mr. Haley's sentence and granted Mr. Haley's Motion to Vacate his Judgment and Sentence and ordered his immediate release from Federal Prison. Mr. Haley was released from Federal Custody on May 21st, 2010 after serving 4 years, 8 months and 21 days of post-conviction confinement.

II.

JURISDICTION AND VENUE

8. Jurisdiction is conferred by 28 U.S.C. § 1343, which provides for original jurisdiction of this Court in suits authorized by 42 U.S.C. § 1983, to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States, or by any act of Congress providing for equal rights of citizens or all persons within the jurisdiction of the United States.

9. Plaintiffs further invoke the supplemental jurisdiction of this Court to hear and decide claims arising under State Law pursuant to 28 U.S.C. § 1367.

10. Plaintiffs' action for damages is authorized by:

[a] 42 U.S.C. § 1983, which provides for redress for the deprivation under color of any statute, ordinance, regulation, custom or usage of any state or territory of any rights, privileges or immunities secured to all the citizens or persons within the jurisdiction of the United States;

[b] The Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States;

[c] Other causes of action either under federal or state law, which are unknown to the Plaintiffs at this time, but may be ascertained by discovery and asserted at a later time; and

[d] 42 U.S.C § 1988, which authorizes the Plaintiffs' application for attorney fees and provides that a court may award a reasonable attorney fee as part of costs in any action or proceeding to enforce a provision of 42 U.S.C. § 1983.

III.

THE PARTIES TO THIS LAWSUIT

11. The Plaintiffs and each of them were, at all times material to this Complaint, citizens of the State of Oklahoma and reside in the State of Oklahoma.

12. The Defendant, City of Tulsa, [hereinafter referred to as "City"] is a policy making governmental body both corporate and politic organized under the laws of the state of Oklahoma and is authorized to sue and be sued in its corporate name. Within the Defendant City there are numerous departments for which it is responsible, including the Tulsa Police Department.

13. The Defendant Tulsa Police Department is and has been, at all times material to this complaint, responsible for all executive and supervisory authority and control over those Departments and Units within the Tulsa Police Department charged with the investigation of drug and gang related activities including the "Special Investigations Division".

14. All of the Defendants and each of them, at all times material to this Complaint, were acting under the color of State law.

IV.

INJUNCTIVE RELIEF

15. Plaintiff's realize, restate and reaffirm all of the foregoing facts and circumstances alleged in paragraphs one [1] through fifteen [15] and further allege and state as follows:

16. Pursuant to the Federal Rules of Civil Procedure, Rule 65, the Plaintiffs are seeking an injunction ordering the Tulsa Police Department and any all defendants and any other law

enforcement persons or agencies associated with this case be enjoined from destroying any evidence, be it documentary, physical or forensic, and they be compelled to take great care to preserve same.

17. In support of this prayer for injunctive relief, the Plaintiffs allege that the recent history of non-existent, false and otherwise manufactured evidence to secure search warrants and convictions strongly suggest that this safeguard is absolutely essential to preserve the integrity of the judicial process.

18. This request will create no undue burden on the listed defendants and agencies.

WHEREFORE, premises considered the Plaintiffs request that this matter be immediately set for hearing and that this relief be granted.

V.

FACTUAL BACKGROUND

19. On the 4th day of August, 2004 the Plaintiff Bobby Wayne Haley, Sr., was indicted by a Federal Grand Jury in the Northern District of Oklahoma on the charges of Possession of Cocaine and Cocaine base with the intent to Distribute and Conspiracy to Distribute Cocaine and Cocaine base.

20. Mr. Haley was tried on the aforementioned charges to a Jury and, on the 27th of January, 2005, due to the jury being unable to reach a verdict, a mistrial was declared.

21. The United States advised the Court of its intention to retry the matter.

22. On the 25th day of February, 2005, Mr. Haley filed, through Counsel, a motion to require the disclosure of the identity of the confidential informant utilized by Henderson to secure the search warrant for Mr. Haley's properties.

23. This hearing was ordered before the Honorable Magistrate Judge Paul Cleary to be held on the 7th day of April, 2005. Henderson presented himself and his purported “confidential informant” Rochelle Martin and Henderson testified that this informant had provided substantial information in the past resulting in a significant number of arrests and convictions and that she did, in this instant case, observe Mr. Haley trafficking in drugs within seventy-two [72] hours prior to the issuance of the search warrant. Further, Rochelle Martin testified consistent with Henderson’s testimony.

24. Mr. Haley was convicted on the 30th day of September, 2005, at the conclusion of the second trial and was subsequently sentenced to a term of two hundred and sixty-five [265] months in the custody of the United States Bureau of Prisons.

25. Mr. Haley thereafter filed a Petition for Relief under Title 28, U.S.C. § 2255.

26. On the 27th day of April, 2010 Assistant United States Attorney Jane Duke did, on behalf of the United States of America, file an Entry of Appearance after initiating an investigation into this and other matters of corruption within the Tulsa Police Department.

27. The United States did, thereafter, on the 30th day of April, 2010 with a supplemental Response filed on the 10th day of May, 2010, request that Mr. Haley’s conviction be vacated as to all counts and that he be ordered to be immediately released from custody due to the false and material testimony of Henderson and Rochelle Martin on the 7th of April 2005.

29. On the 19th day of May, 2010, by and through instant counsel, Plaintiff filed a Motion to Vacate and Set Aside Mr. Haley’s conviction.

30. Mr. Haley’s convictions were vacated and set aside and he was ordered released from Federal Prison pursuant to an Order entered by the Honorable Judge Terence Kern on the 21st day of May, 2010.

31. As a result of the wrongful conviction of Bobby Wayne Haley, Sr., Plaintiff Ashlee Haley was required to become the caretaker of her minor siblings, the Plaintiffs S.H. and C.H. The Plaintiffs Anthony Haley and D.H., J.H. and C.H., minor children, were forced to live with relatives and were separated from their father and other siblings during the period of Mr. Haley's wrongful incarceration.

FEDERAL CLAIMS

COUNT I.

Claim under 42 U.S.C. § 1983 Against The City of Tulsa and The Tulsa Police Department

32. The Plaintiffs and each of them hereby incorporates by reference Paragraphs 1 through above, as though fully set forth herein.

33. The City of Tulsa, Oklahoma, and the Tulsa Police Department had in effect, both before and at the time of the events alleged in this Complaint, policies, practices and customs that operated to deprive Mr. Haley of his constitutional rights.

34. These policies included, but are not limited to the following:

- a) A policy, practice and custom of failing to properly train, and supervise officers in the procurement of search warrants;
- b) A policy, practice and custom of using "Reliable Confidential Informants" in manners designed to prove a case against a convenient suspect by procuring and presenting false evidence of the existence of a Confidential Informant;
- c) A policy, practice and custom of failing to identify and discipline officers who violate established constitutional provisions or otherwise transgress

the rights of citizens who are either suspects or “persons of interest” during investigations; and

- d) A policy and practice of being deliberately indifferent to the violations by its officers of constitutional rights of the accused.

35. These interrelated policies, practices and customs, separately and together, were implemented intentionally, willfully and maliciously to deprive citizens designated as possible suspects or “persons of interest” in criminal investigations of their constitutional rights and were a direct and proximate cause of the constitutional violations and injuries as set forth in this Complaint.

COUNT II.

Claim of Deprivation of Associational Rights and Loss of Familial Privacy

36. The Plaintiffs and each of them hereby incorporates by reference Paragraphs 1 through 35 above, as though fully set forth herein.

37. Anthony Haley, Ashlee Haley, S.H., C.H. and D.H., J.H., and C.H., minor children, Plaintiffs above are children of Bobby Wayne Haley, Sr. They all grew into their teen years and young adulthood during the period of Mr. Haley’s incarceration.

38. The Plaintiffs Anthony Haley, S.H., C.H. and D.H., J.H., and C.H., minor children each have constitutionally protected rights under the First and Ninth Amendments to the United States constitution, made applicable to the state actors through the Due Process Clause of the Fourteenth Amendment, to association and familial privacy with Mr. Haley.

39. Mr. Haley has a constitutionally protected right under the First and Ninth Amendments to the United States constitution, made applicable to the state actors through the Due Process

Clause of the fourteenth Amendment, to association and familial privacy with the Plaintiffs Anthony and Ashley Haley, and S.H., C.H. and D.H., J.H., and C.H., minor children.

40. The arrest of Mr. Haley and his subsequent wrongful conviction unconstitutionally deprived him of his rights of association and familial privacy with his family, thereby causing them damages.

COUNT III.

Conspiracy

41. The Plaintiffs and each of them hereby incorporates by reference Paragraphs 1 through 40 above, as though fully set forth herein.

42. The Tulsa Police Department officers Jeff Henderson and Bill Yelton, while acting under color of State law and in their official capacities as officers of the Tulsa Police Department did conspire and act in concert with themselves and others unknown at this time to prepare an affidavit to secure a search warrant that contained false statements that the affidavit was based upon the existence and use of a “Reliable Confidential Informant” and these Defendants knew at the time that the affidavit was false.

43. The officers Henderson and Yelton further conspired and acted in concert together each with the other, while in their official capacities as officers of the Tulsa Police Department and while acting under color of state law, to procure and coach an individual on their testimony to be proffered to the United States District Court, and presented that individual to Federal Magistrate Judge Paul Cleary as the “Reliable Confidential Informant”.

44. The officers Henderson and Yelton intended to illegally search and wrongfully convict Mr. Haley and, while in their official capacities as officers of the Tulsa Police Department and while acting under color of state law conspired together and acted in concert to do just that.

COUNT 1V.

Abuse of Process

45. The Plaintiffs and each of them hereby incorporates by reference Paragraphs 1 through 44 above, as though fully set forth herein.

46. The Defendants each acting in concert with the other, did willfully, unlawfully, maliciously and feloniously use the Court's process, primarily for an ulterior and illegal purpose, and as a result of these actions and omissions Plaintiffs above did suffer great pain, distress, anguish and fear and suffered monetary damages thereon.

CLAIMS FOR DAMAGES

A. The actions of the Defendants deprived the Plaintiff Bobby Wayne Haley, Sr. of his civil rights under the First, Fourth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution and Deprived the Plaintiffs Anthony Haley and Ashley Haley and S.H., C.H. and D.H., JH, and CH,.of their civil rights under the First and Fourteenth Amendments to the United States Constitution.

B. The unlawful, malicious acts of the Defendants and each of them constituted negligence, malicious prosecution, intentional infliction of emotional distress, abuse of process, false arrest and wrongful conviction of a Federal Offense.

C. The unlawful, wanton, malicious, cruel and purposefully criminal actions of the Defendants caused the Plaintiffs severe emotional distress, pain and suffering and other damages for which they are entitled monetary relief.

PRAYER FOR RELIEF

WHEREFORE, premises considered, The Plaintiffs and each of them request the following relief:

1. That this Court assume jurisdiction of this cause to determine this controversy and this case for trial on the merits;
2. That this court award compensatory damages to Bobby Wayne Haley, Sr. in an amount in excess of Seventy-Five Thousand [\$75,000.00] dollars for each of his claims for relief;
3. That this Court award compensatory damages each to Anthony Haley, Ashley Haley, S.H., C.H. and D.H., JH, and CH, minor children of Bobby Wayne Haley, Sr., in an amount in excess of Seventy-Five Thousand [\$75,000.00] dollars for each of their individual claims for relief;
4. That this court award punitive damages against the Defendants and each of them to the Plaintiffs and each of them individually in an amount in excess of Seventy-Five Thousand [\$75,000.00] dollars for each of their individual claims for relief;
5. That this Court, pursuant to 42 U.S.C. § 1988, allow the Plaintiffs costs and attorney fees herein, and also grant such alternative relief as this Court may deem to be just, proper and equitable;
6. That this court issue an Order to the listed law enforcement agencies enjoining them from destroying any evidence in this matter and compelling them to use great care in their possession and control of same,
7. That a jury trial, pursuant to the Seventh Amendment of the United States Constitution, is herewith demanded as to all claims for damages.

Dated this 3rd day of June, 2010.

Respectfully Submitted,

S/WESLEY E. JOHNSON

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