

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

FILED (SG)  
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WESTERN DISTRICT OF KY  
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WALTER ELLIOTT and  
CONNIE ELLIOTT

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:02CV-769-C

CITY OF LOUISVILLE, et al

DEFENDANTS

**SETTLEMENT CONFERENCE STATEMENT OF  
PLAINTIFFS, WALTER AND CONNIE ELLIOTT**

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1. **Factual Background of Case** – On December 26, 2002, Walter Elliott and his mother, Connie Elliott, filed this action seeking a recovery for the violation of their Constitutional and civil rights at the hands of Mark A. Watson, acting as an officer in the Jefferson County-Louisville Metro Narcotics Task Force.

On January 18, 2000, Mark Watson fabricated a search warrant that he used to invade the property of Walter and Connie Elliott, located at 2406 West Muhammed Blvd., Apt. #2, Louisville, Jefferson County, Kentucky. This action constituted the criminal offense of Burglary, to which Watson pled guilty in Jefferson Circuit Court.

Mark Watson alleged that he found cocaine and three automatic weapons during the search. This fabricated search warrant resulted in Walter and Connie Elliott being charged with felonies in Jefferson Circuit Court Action No. 00-CR-0984. They were both exposed to possible confinement in the State penitentiary by these charges. Connie Elliott's charges were dismissed on October 23, 2001, when at that time, her son, Walter Elliott, entered a plea of guilty to the charges and was sentenced to 10 years in the custody of the Kentucky Department of Corrections.

On March 20, 2002, Walter Elliott's conviction in Jefferson Circuit Court, No. 00-CR-00984, was vacated. The Jefferson County Commonwealth Attorney's office joined in the motion to vacate the conviction of Walter Elliott due to the "lead detective," Mark Watson, being suspended and the case being brought in "violation of due process." (See attached Motion of the Commonwealth Attorney.)

After the dismissal of the charges against Walter Elliott and the disclosure of Mark Watson's admission of extensive criminal misconduct while a Louisville Metro Police Officer, this action was filed.

Plaintiffs have asserted a violation of due process and their right against an unreasonable search and seizure as protected by the Fourth Amendment and 42 U.S.C. Section 1983.

Plaintiffs assert that the City of Louisville knowingly and repeatedly failed to properly supervise Mark Watson, failed to properly investigate claims of his misconduct, failed to properly train Officer Christie Richardson, encouraged and condoned their arrests for the production of arrest statistics. All of which led directly to the violation of Plaintiffs' Constitutional rights.

It is Plaintiffs' position that under Monell v. Dep't. of Soc. Servs., 436 U.S. 658, 691, (1978), a governmental policy or custom resulted in the Plaintiffs' injury and thus the City is responsible under Section 1983. Plaintiffs allege a "deliberate indifference" is found by the encouraging of these arrests by the superiors of Officer Mark Watson and the ratification by the City of Louisville of these arrests in seeking and accepting Federal Grant money to operate the Jefferson County-Louisville Metro Narcotics Task Force.

In addition, Officer Christie A. Richardson, was not adequately trained in the obtaining of search warrants and electronic surveillance of transactions of confidential informants, while part of

the Louisville Metro Narcotics Task Force. The failure to train a police officer for an activity that is known an officer will encounter has been held to be “deliberate indifference,” Canton v. Harris, 489 U.S. 378, where it reads:

In light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in the violation of Constitutional rights, that the policymakers of the City can reasonably be said to have been deliberately indifferent to the need (Footnote 10). In that event, the failure to provide proper training may fairly be said to represent a policy for which the City is responsible, and for which the City may be held liable if it actually causes injury. (Footnote 11.) (Emphasis added.)

Plaintiffs’ claims that the lack of supervision of Mark Watson was due to the City’s desire for a high number of arrests and citations as supported by both the testimony of fellow officers and supervisors produced at the Jefferson Circuit Court criminal action against Officers Watson and Richardson, as well as supported by the assessment prepared by the Police Executive Research Forum of the Louisville Metro Narcotics Task Force. In its assessment the Police Executive Research Forum stated at page 49 that “Watson received immunity from oversight for nearly five years simply because he produced a high number of arrests and citations, strongly suggesting measurement systems were skewed toward high arrests.” The same report notes that supervisors were not present at the execution of search warrants as required and that Task Force policies were repeatedly violated by Officers Watson and Richardson according to street platoon officers (see Report, page 39-40).

At the criminal trial on January 21, 2003, Captain Sharrard testified that all search warrants were to be signed by a judge and four originals created. He testified that the search warrant used by Mark Watson at Connie and Walter Elliott’s home contained the forged signature of Judge Matt Eckert. Captain Sharrard identified approximately fifth (50) Narcotic Task Force files that obtained

false addresses, false names, and false signature that were attributed to Officer Mark Watson to buttress his claims of high arrest statistics (Tape 1/21/03; 15:28:01-15:30:00) and (Tape 1/22/03 at 9:47:00 - 10:01:30).

In addition, Officer John Butz, a supervisor of Mark Watson and Christie Richardson, testified that he did not observe the ten percent of their buys of narcotics as required nor could he recall the specific training of Christie Richardson when she joined the Metro Narcotic Task Force (Tape 1/29/03; 13:34:00). He did testify at trial on January 28, 2003, that the Metro Narcotics funding was from a federal grant and statistics were very important to maintaining this Metro Narcotic Task Force funding (Tape 1/29/03; 14:46:20 - 14:47:25). He added that he could not do "hands on" supervision of Watson and that policies and procedures were not followed. (Tape 1/29/03; 14:58:00.)

Thus, it appears that the City of Louisville by its lax supervision of Officer Mark Watson and its failure to enforce its own policies and procedures of the Jefferson County-Louisville Metro Narcotics Task Force, actually encouraged the unconstitutional acts of Officer Mark Watson in an effort to pad its statistics for purposes of obtaining and keeping federal funding under the Narcotics Control Assistance Program. This lack of supervision and urging for more statistics directly led to the burglary and improper search of the residence of Walter and Connie Elliott.

The fruits of this search resulted in Walter Elliott entering a plea of guilty to the charges that were brought in violation of his Constitutional due process.

Thus, it appears that as in the case of Monell v. Dept. of Soc. Servs., 436 U.S. 658 (1978), the City is liable for its failure to train and supervise these Defendants in its deliberate indifference to the Constitutional rights of the persons within its city. This is not a claim of a single act by a municipal employee being used to attribute liability to the City as found in Canton v. Harris, 489 U.S.

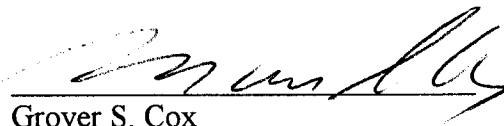
378 (1989). Here, Mark Watson pled guilty to 299 felonies and three misdemeanors including twenty-one counts of burglary, 133 counts of tampering with public records, 133 counts of criminal possession of a forged instrument in the second degree, five counts of perjury, and additional charges of theft, official misconduct, and bribing a witness (Tape 1/24/03; 9:53:00 and 14:38:00).. Such pervasive and repeated misconduct created a jury issue as to the City's failure to properly supervise Mark Watson and to train his partner, Christie Richardson.

Here, as in Rymer v. Davis, 754 F2d 198 (6<sup>th</sup> Cir. 1985), reaffirmed 775 F2d 756 (1985), a civil rights violation by the police force exposes a municipality to damages when there is a repeated pattern that infers a municipal custom that authorizes or condones police misconduct. Here, the supervisors were not properly trained to see the red warning flags of Watson's bogus arrests, bogus search warrants and bogus buys from confidential informants. The task force's emphasis on statistics of arrest encouraged and condoned Watson to run amok. This obsession with statistics to keep the grant money flowing condoned Watson's breaking of Task Force rules and constituted such "reckless or grossly negligent" supervision that his misconduct was "almost inevitable or substantially certain to result" as in the case of Vinson v. Campbell County Fiscal Court, 820 F2d 194 (1987). In Vinson the failure to train juvenile court workers on interstate custody jurisdiction was found to be a "policy" or "custom." Here, the testimony at trial was that Officer Watson's supervisor repeatedly failed to monitor 10% of all drug buys from confidential informants, failed to monitor dispositions of arrests by Watson, failed to review originals of the warrants used by Watson to invade homes and didn't train Officer Richardson on the proper procedures for obtaining four original search warrants (Tape 1/23/03; 14:40:30 and 1/29/03; 13:54:00 - 13:54:40, 1/29/03; 13:34:00, and 1/29/03; 14:58:00).

2. **Damages** - Walter Elliott was sentenced to the penitentiary for fifteen years, ten of which were attributed to the bogus charges of Mark Watson. He served time in the Kentucky Correctional Department's custody and was not released until after the vacating of the criminal charges attributed to Mark Watson.

His mother, Connie Elliott, was represented by a Public Defender at trial. She was exposed to public ridicule and humiliation by being indicted pursuant to the falsified search warrant. She also suffered the duress of not knowing whether she would be convicted of the felony charges attributed to her by Mark Watson. Her charges were not dismissed until her son, Walter, pled guilty to prevent her from going to prison.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Grover S. Cox", is written over a horizontal line.

Grover S. Cox  
**MUSSLER & ASSOCIATES**  
401 West Main Street, Suite 1700  
Louisville, Kentucky 40202  
(502) 583-1700  
**Counsel for Plaintiffs**

**CERTIFICATE OF SERVICE**

This is to certify that a true copy hereof was mailed this 14<sup>th</sup> day of November, 2005, to:

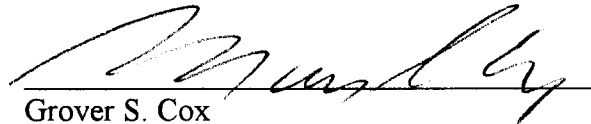
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Grover S. Cox

**RECEIVED MAR 15 2002**

NO. 00CR0984/00CR0590

JEFFERSON CIRCUIT COURT

DIVISION THREE (03)

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

NOTICE-MOTION-ORDER

WALTER ELLIOTT

DEFENDANT

\* \* \*

TO: Honorable Grover Cox  
Attorney at Law  
One Riverfront Plaza  
Louisville, Kentucky 40202

NOTICE

Please take notice that the undersigned will on Monday, March 18, 2002, at 9:30 a.m., tender the following Motion and Order.

MOTION TO SET ASIDE CONVICTION AND DISMISS CHARGES

Comes the Commonwealth of Kentucky, by counsel, Alex Dathorne, Assistant Commonwealth's Attorney for the 30th Judicial District of Kentucky, and states s follows:

1. The above named defendant pled guilty and was sentenced on October 6, 2000.
2. Based on an extensive investigation, the lead detectives have been suspended.

The above referenced case appears to be in violation of due process and thus justice requires immediate relief.



3. Upon stipulation of probable cause, the Commonwealth respectfully requests this honorable Court to dismiss with prejudice the above-styled case.

Respectfully submitted,



ALEX DATHORNE  
Assistant Commonwealth's Attorney  
514 West Liberty Street  
Louisville, Kentucky 40202-2887  
(502) 595-2340

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was on the 14<sup>th</sup> day of March, 2002, mailed to the Honorable Grover Cox, Counsel for Defendant at the address listed above.



ALEX DATHORNE  
Assistant Commonwealth's Attorney