UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH E. COTTERMAN 6018 Jackson Road Sidney, Ohio 45365 *Plaintiff*, v. SHELBY COUNTY, OHIO c/o Shelby County Sheriff's Department 555 Gearhart Road Sidney, Ohio 45365 -and- SHERIFF JOHN R. LENHART c/o Shelby County Sheriff's Department 555 Gearhart Road Sidney, Ohio 45365 -and- CHIEF DEPUTY SHERIFF JAMES FRYE c/o Shelby County Sheriff's Department 555 Gearhart Road Sidney, Ohio 45365 -and- DETECTIVE CHRIS BROWN c/o Shelby County Sheriff's Department 555 Gearhart Road Sidney, Ohio 45365 *Defendants*.	Case No. 18-177 Judge

COMPLAINT WITH JURY DEMAND

Plaintiff Joseph Cotterman, by and through the undersigned counsel, for his Complaint against the above-named Defendants, states as follows:

NATURE OF ACTION

1. This is a civil-rights and personal injury action brought under 42 U.S.C. §§ 1983 and 1988, as well as under Ohio state law, for malicious prosecution, abuse of process, civil conspiracy, intentional infliction of emotional distress, failure to train and/or supervise, and civil liability for criminal acts.

2. As set forth in detail in this Complaint, Plaintiff Joseph Cotterman, the former Police Chief of Jackson Center, Ohio, alleges that the Defendants, both individually and/or as part of a conspiracy, violated Plaintiff Joseph Cotterman's state and federal constitutional rights to due process of law under the Ohio Constitution and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution by intentionally, willfully, maliciously, and in bad faith, under color of official title, procuring, indulging, and/or uncritically accepting, in the face of exculpatory evidence of which the Defendants were aware, a demonstrably false allegation of a rape that had allegedly occurred more than seven years earlier, an allegation that the Shelby County Prosecutor acknowledged was unsupported and could not be established beyond a reasonable doubt.

3. Plaintiff Cotterman further alleges that the Defendants, both individually and/or as part of a conspiracy, violated Plaintiff Joseph Cotterman's state and federal constitutional rights to due process of law under the Ohio Constitution and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution by intentionally, willfully, maliciously, and in bad faith, under color of official title, using and deploying such false allegation to procure, bring about, effect, secure, and/or recommend Plaintiff Cotterman's criminal indictment and prosecution for rape.

4. Plaintiff Cotterman further alleges that the Defendants, both individually and/or as part of a conspiracy, violated Plaintiff Joseph Cotterman's state and federal constitutional rights to due process of law under the Ohio Constitution and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution by intentionally, willfully, maliciously, and in bad faith, under color of official title, suppressing, concealing, destroying, withholding, and/or preventing the disclosure to Plaintiff Cotterman's defense team of materially exculpatory and/or potentially useful evidence, for the purpose of increasing the likelihood that Plaintiff Cotterman would be wrongfully convicted of, or would succumb to the pressure and elect to plead guilty to, the rape charge.

5. Plaintiff Cotterman further alleges that the Defendants, both individually and/or as part of a conspiracy, violated Plaintiff Joseph Cotterman's state and federal constitutional rights to due process of law under the Ohio Constitution and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, when they intentionally, willfully, maliciously, and in bad faith, under color of official title, took the above-described actions and engaged in the above-described conduct for the purpose of increasing the likelihood that Plaintiff Cotterman would be wrongfully convicted of, or would succumb to the pressure and elect to plead guilty to, another charge then pending against him, of which he was ultimately acquitted by a jury.

6. Plaintiff Cotterman also alleges that Defendants frequently engage, in other criminal matters, in conduct similar to that to which Plaintiff Cotterman was subjected in this matter, and that they failed to properly train and/or supervise Defendants Frye and Brown, and that such conduct and such failure constitutes, and/or results from, illegal policies, practices and/or customs of Defendants that would cause constitutional violations to occur, and that did in fact cause constitutional violations of Plaintiff Cotterman's state and federal constitutional rights

to due process of law under the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

THE PARTIES

7. Plaintiff Joseph Cotterman is, and was at all times relevant to this Complaint, an adult residing in Shelby County, Ohio. He is the former Police Chief of Jackson Center, Ohio, which is located within Shelby County.

8. Defendant Shelby County is a political subdivision located within the State of Ohio, and more particularly within the Southern District of Ohio, and is subject to governmental liability in connection with the claims asserted in this Complaint.

9. Defendant John Lenhart is, and was at all times relevant to this Complaint, the elected Sheriff of Shelby County, Ohio, and an adult residing in that County.

10. Defendant James Frye is, and was at all times relevant to this Complaint, the Deputy Sheriff of Shelby County, Ohio, and an adult residing in that County.

11. Defendant Chris Brown is, and was at all times relevant to this Complaint, a detective employed by the Shelby County, Ohio Sheriff's Office, and an adult residing in that County.

JURISDICTION AND VENUE

12. This action arises under the laws of the United States, and jurisdiction is conferred on this Court under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (civil rights). Supplemental jurisdiction of this Court over the claims arising under state law is conferred by 28 U.S.C. § 1367 (supplemental jurisdiction).

13. Venue in the Southern District of Ohio, Western Division, is proper under 28 U.S.C. § 1391(b), because it is in this District that all Defendants reside and that all the events and omissions giving rise to Plaintiff Cotterman's claims occurred.

FACTUAL BACKGROUND

14. At all times relevant to this Complaint, Plaintiff Joseph Cotterman had clearly established state and federal constitutional rights to due process of law in criminal proceedings under the Ohio Constitution and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and to befree from unreasonable seizures under the Fourth and Fourteenth Amendments to the United States Constitution.

15. Plaintiff Cotterman is a life-long resident of Shelby County, Ohio. After graduating from high school, Mr. Cotterman worked full time at a factory in Sidney, Ohio and served as a volunteer for the Anna, Ohio Fire Department and Rescue Squad before developing an interest in law enforcement.

16. After enrolling in the police academy and completing his training, Mr. Cotterman secured part-time employment as a police officer with both the Botkins, Ohio and Jackson Center, Ohio police departments. When a full-time position became available in the Jackson Center department, Mr. Cotterman resigned his position with the Botkins department and, in 2002, was hired by Jackson Center. Defendant James Frye was the Chief of Police for Jackson Center at the time.

17. Defendant Frye ran the Jackson Center Police Department in an authoritarian and often less-than-forthright manner. Plaintiff Cotterman is aware of, having personally observed, several occasions on which Defendant Frye attempted to procure the prosecution of individuals both men knew to be innocent.

18. Well-documented issues and controversies eventually arose between Mr. Cotterman and Defendant Frye. Among the first of these arose when Defendant Frye, in an admitted effort to develop grounds to terminate an officer named Dwaine Sosby (with whom Frye frequently argued), ordered Mr. Cotterman to hide a GPS tracking device in Sosby's police cruiser and download the data every 48 hours. Mr. Cotterman did as he was instructed. Frye warned Mr. Cotterman to remain silent about the scheme or face criminal charges for interfering with an investigation.

19. When the tracking device detected improper use of the cruiser, Sosby was disciplined. Defendant Frye then claimed that Mr. Cotterman was responsible for the GPS-tracking scheme, and Mr. Cotterman was blamed and ostracized by most of the Jackson Center police force.

20. Defendant Frye also blamed Mr. Cotterman when information about an affair between Frye and a village clerk leaked out. Frye began to employ underhanded methods to incriminate Mr. Cotterman and get him fired. He even interviewed Mr. Cotterman's then-girlfriend, asking whether she had ever seen Mr. Cotterman use drugs. (She hadn't.)

21. At a meeting with Mr. Cotterman and the Jackson Center mayor and solicitor, Defendant Frye advised that "someone" had made an allegation that Mr. Cotterman had been in an apartment in which drugs were visible on the coffee table, but that Mr. Cotterman did nothing about it because he was a friend of the tenant. The allegation was completely false.

22. At Mr. Cotterman's insistence, and against Frye's wishes, the mayor and solicitor agreed to have the allegation investigated by an outside agency, namely the Botkins Police Department.

23. The subject who had accused Mr. Cotterman was charged with making false allegations against a police officer, but left the area before he could be arrested. When he returned to the area in 2012, he was arrested and given a $25 fine. When asked by the prosecutor for his input into how the case should be handled, Mr. Cotterman said he didn't care but did want to know why the subject had falsely accused him. The subject advised the prosecutor that Defendant Frye had asked him to do it and that Frye then advised him to leave town before he could be charged.

24. In early 2009, Defendant Frye resigned his post in Jackson Center and went to work for the Shelby County Sheriff, who at the time was Dean Kimpel. Mr. Cotterman served for a time as acting Chief of Police for Jackson Center before being formally appointed to the position in the Spring of 2009.

25. Village council instructed Mr. Cotterman to modernize the Police Department's facilities, equipment, and image, and was given substantial funds to achieve that goal. While Mr. Cotterman exceeded expectations in discharging those responsibilities, the project was strongly opposed by the County Sheriff's Office and, in particular, by Defendant Frye, who voiced his opposition on several occasions.

26. In or around 2012, a fatal accident occurred just outside Jackson Center, i.e., in the Sheriff's Office territory. Mr. Cotterman did not become involved in the investigation until he learned that one of his auxiliary officers, Kourtney Longberry, had been a passenger in the car. While other passengers claimed that the deceased individual had fallen out of the car while leaning on the door, Ms. Longberry truthfully reported that he had been "car surfing" and fell off the car's roof. Ms. Longberry's account was eventually verified via a polygraph examination, but not before she was charged with felony falsification. As part of its investigation, the Ohio Bureau

of Criminal Investigations (BCI) interviewed Mr. Cotterman. After disclosing to him that they knew he had done nothing wrong, BCI, puzzlingly, asked if Mr. Cotterman had ever had a sexual relationship with Ms. Longberry. When, following the interview, Defendant Frye mentioned to Mr. Cotterman that BCI had reported to him on everything that had been discussed, Mr. Cotterman reasonably surmised that the questions about the sexual relationship had been asked at Frye's request.

27. Traditionally, there has been a tense relationship, emanating from frequent power struggles, between the Shelby County Sheriff's Department and the police departments of the County's constituent villages and townships, with the former typically declaring its superiority and acting accordingly.

28. Shelby County political infighting has claimed many victims. Former Sheriff Dean Kimpel is a prominent example. Kimpel, a veteran with 37 years of law-enforcement experience, was forced to resign his post after being charged, falsely and without probable cause, with sexual battery and violations of the OLEG (Ohio Law Enforcement Gateway) law, which had not even gone into effect at the time of Kimpel's prosecution. The validity of his guilty plea to one of the minor OLEG charges (which he entered only because he was unaware that the prosecution had intentionally withheld exonerating evidence) is currently on appeal with Ohio's Third District Court of Appeals. Defendant John Lenhart, who succeeded Kimpel as Sheriff, and his assembled political apparatus, including Defendant Frye and Prosecutor Tim Sell, sought to restore their own dominion over the County and were behind Kimpel's malicious prosecution.

29. After Defendant Lenhart became Sheriff, and Defendant Frye became Chief Deputy, they proposed to merge several village police departments into the Sheriff's Office. Mr.

Cotterman was initially considered for a Sheriff's Deputy position, with his office remaining in Jackson Center, until the Jackson Center mayor and council voted down the whole proposal.

30. The Village instead determined to hire a full-time police officer. Defendant Frye backed a particular candidate for the slot, but Mr. Cotterman investigated the candidate's background and learned that he had been fired from the Cridersville Police Department for having sex with a female while on duty. Council agreed with Mr. Cotterman that the candidate was ill-suited for the position. Defendant Frye was incensed by Mr. Cotterman's opposition to his chosen candidate. He did, however, manage to get one of his Office's dispatchers—Chuck Wirick—hired for the job. To Frye's continued consternation, Mr. Cotterman also opposed Wirick's hire because he suspected that he was a "plant" who had been installed to report back to Frye about the activities of Mr. Cotterman and his Department. Mr. Cotterman's suspicions were confirmed by various events and circumstances.

31. At an early 2016 meeting of area police chiefs, Mr. Cotterman learned that a group of citizens had filed a complaint against Defendant Lenhart seeking to have him removed from office. He also was given a copy of an email, slated for publication in a local newspaper, setting forth the group's grievances with Lenhart. No one instructed Mr. Cotterman to keep the information or the email confidential. Lenhart later called Mr. Cotterman to ask how the meeting went. When Mr. Cotterman mentioned the email, Lenhart asked for a copy. Mr. Cotterman agreed to give it to him provided he did not disclose where he had gotten it. When Prosecutor Tim Sell caught wind of the effort to unseat Defendant Lenhart, he acted swiftly to shut it down. Contrary to his promise, Lenhart had told both Sell and Defendant Frye that Mr. Cotterman had given him the email. It turned out that Frye was behind the effort to unseat Lenhart, and he was

none too pleased that Mr. Cotterman had helped Lenhart to avoid publication of the group's grievances and, indirectly, jeopardized another of Defendant Frye's political ambitions.

THE MERANDA SUTTLES CASE

32. In mid-January 2016, shortly after the above email incident, Mr. Cotterman and Chuck Wirick were called to a residence to address an attempted-suicide situation. After the two entered the residence, they discovered a female by the name of Meranda Suttles in the bathroom. She was wrapped in a towel and appeared to have just taken a shower. A search of her mobile phone revealed messages to her husband in which she had threatened to harm herself. Ms. Suttles assured the officers that she was just upset about some things but had no intention of taking her own life. Her mother arrived home shortly thereafter and, after some discussion, it was decided that Wirick would transport Ms. Suttles to a mental health facility for evaluation. Wirick then gave both women a business card that displayed both his and Mr. Cotterman's phone numbers. Mr. Cotterman told the women to call one of them if they ever needed help.

33. About a week later, on or about January 27, 2016, Meranda Suttles did call Mr. Cotterman. She was upset because she had found a notice from the Sheriff's Office hanging on her doorknob. Mr. Cotterman agreed to drive over and take a look. When he arrived, and with Ms. Suttles' mother on the phone, Mr. Cotterman advised that the paper was not an arrest warrant but just a notice asking that she come to the Sheriff's Office to sign some papers. Meranda Suttles stated that she had no way to get to the Sheriff's Office, and Mr. Cotterman, who was headed there anyway, agreed to take her. The two talked the whole way there and back.

34. When, during the drive back, Suttles complained that she had no working cell phone, Mr. Cotterman offered to let her have one of his old phones. They stopped at Mr. Cotterman's house so that he could retrieve it. Once inside, Mr. Cotterman went upstairs to grab

the phone from a storage closet in his room. Suttles followed him up the stairs and into the room, where she sat on his bed and leaned back against the pillows. Mr. Cotterman sat next to her and handed her the phone. Suttles gave Mr. Cotterman a hug and, in a momentary lapse of Mr. Cotterman's professionalism, the two began to embrace and kiss. Neither Mr. Cotterman nor Suttles attempted to advance the activities any further. No intercourse or other sexual contact occurred. The two voluntarily stopped the activities and left the house. Mr. Cotterman drove Suttles home.

35. That evening, Mr. Cotterman received a call from Defendant Chris Brown asking that Mr. Cotterman come to the office and speak with him. Brown had already spoken with Suttles, who had misrepresented many of the events and omitted many others. But Brown chose to believe Suttles and disbelieve Mr. Cotterman.

36. Mr. Cotterman voluntarily went back to the office two weeks later, on February 4, 2016, this time accompanied by his lawyer, for a more thorough interview. He admitted to kissing and hugging Suttles, and acknowledged that his behavior on that day had been less than professional. But he denied that anything else of a sexual nature occurred because nothing else did. It was apparent to Mr. Cotterman that Defendant Brown and Prosecutor Tim Sell were not "buying it" and for that matter were not interested in anything Mr. Cotterman had to say. Indeed they repeatedly called him a liar.

37. On February 18, 2016, before any fact investigation or trial had occurred, Defendant Brown contacted the Ohio Police Officers Training Academy and sought to have Mr. Cotterman decertified.

38. Mr. Cotterman was arrested for gross sexual imposition on February 25, 2016 and arraigned on March 3, 2016.

39. The Sheriff's Office never asked to search Mr. Cotterman's house or to take his clothing or anything else. The only "investigation" they did was to take an oral swab from Mr. Cotterman and prepare a rape kit on Suttles. (These tests, as discussed below, yielded results consistent with Mr. Cotterman's account of events and inconsistent with Suttles' version.)

40. Throughout the Spring and Summer of 2016, Defendants Brown and Frye launched a full-bore smear campaign against Mr. Cotterman. Mr. Cotterman received phone calls from numerous people, including old employees, ex-girlfriends, and participants in the Police Department's "Explorers' Club" (a program for youths interested in learning about police work) advising him that they were being contacted by either Defendant Brown or Defendant Frye, often on several separate occasions. The callers described very aggressive interrogations in which Brown or Frye sought to dig up any possible dirt on Mr. Cotterman. The Defendants were described as becoming very upset with, and openly hostile toward, individuals who failed to deliver "useful" information. One Explorer who had endured several such contacts finally told them to stop contacting her and her family.

41. It was also during the Spring and Summer of 2016 that Defendants Brown and Frye went door to door in the Village in the hopes that, somehow, they could learn information damaging to Mr. Cotterman.

42. On May 22, 2016, Jackson Center placed Mr. Cotterman on administrative leave.

43. After several scheduled trial dates came and went, the Meranda Suttles case finally went to trial on October 3, 2016.

44. On the third day of trial, prosecutors played video clips of detectives' interview of Mr. Cotterman, including portions where Defendant Brown is seen badgering Mr. Cotterman about a polygraph exam. The prosecutors immediately stopped the proceedings and, in

chambers, moved the court for a mistrial, which request was granted. A second trial was then scheduled for January 2017.

45. At the second trial, Suttles' husband, Kindal Spradlin, testified *on behalf of Mr. Cotterman and against Suttles*. The thrust of Spradlin's testimony is that Suttles is a liar and was lying about having been raped by Mr. Cotterman.

46. At trial, the prosecution also introduced the results of the DNA test that they had conducted on Suttles and her clothing. The results showed that, while Mr. Cotterman had possibly deposited DNA on Suttles' ear lobes and neck, he was "excluded" as a possible depositor of DNA on Suttles' pubic area, underwear, or jeans. These results conclusively refuted Suttles' claim that Mr. Cotterman had inserted his hand into her pants.

47. At the conclusion of the trial, a jury returned a verdict of "not guilty" on all counts.

THE ALLISHA MCELFRESH CASE

48. On September 1, 2016, shortly before the Meranda Suttles trial was scheduled to begin, Mr. Cotterman was arrested again. The charge came completely out of the blue. While Mr. Cotterman was told that the arrest was for a rape charge, he was given no additional information.

49. After being released on bond, Mr. Cotterman was told that his accuser was a young woman named Allisha McElfresh. Mr. Cotterman was stupefied, since he had known both Mclefresh and her family for a long time, and knew that the family was very well connected with Defendant Frye. McElfresh's mother, indeed, was a well-known informant for Frye.

50. Mr. Cotterman also knew that he had never even touched McElfresh, let alone raped her.

51. McElfresh is a convicted felon. She is currently serving a three-year sentence for drug trafficking. This was the most recent in a series of felonies of which McElfresh has been convicted.

52. As a teenager in 2011 or 2012, McElfresh, armed with a parental-consent form, attended a meeting of the Jackson County Explorer's Club (a club sponsored by the Boy Scouts of America that enabled interested youths to learn about police work, ride along in cruisers, etc.) and submitted an application for membership. Her application was voted down, however, because of two prior felony convictions. She therefore never became an Explorer.

53. At the time of her August 2016 videotaped accusation, Ms. McElfresh was being detained and interviewed by the Allen County's Sheriff's Office for the crime for which she is currently serving time. On information and belief, McElfresh, during the course of the nearly day-long interview, and in an apparent attempt to curry favor with investigators and secure leniency, offered allegedly incriminating information on multiple individuals, including Mr. Cotterman.

54. Mr. Cotterman's defense team requested a copy of the videotaped interview on multiple occasions. It was not until the judge presiding over the case ordered that the tape be produced, however, that the prosecution produced any portion of it. And then, it produced only that portion of the tape in which McElfresh mentioned Mr. Cotterman. Requests for the entire tape were denied on the (pretextual) ground that it was being used in connection with an ongoing investigation. Defense counsel thus were deprived of the opportunity to learn what led up to McElfresh's mention of Mr. Cotterman's name or learn other potentially relevant information. They were also deprived of the opportunity to learn what other allegations McElfresh had made

against other individuals and to test their veracity, and to consider the significance of McElfresh's apparent "shotgun" approach to criminal finger-pointing.

55. Defendant Brown, according to an Ohio Uniform Incident Report that he prepared on the same day, participated in a portion of the interview. In his Report, Defendant Brown states that he was requested to contact the Allen County Sheriff's Office because a female detainee was claiming that "she does not trust cops because she was raped by Chief Cotterman from the Jackson Center Police Department."

56. McElfresh, according to Defendant Brown's Report, agreed to speak with him after her mother, whom she insisted be present, explained that she knew Brown from high school.

57. Asked to explain what happened with Mr. Cotterman, according to Brown's Report, McElfresh replied that, at the age of 16 or 17, she became a member of the Jackson Center Police Explorer's Club, for which Mr. Cotterman served as an advisor. According to Brown, McElfresh stated that Mr. Cotterman would give her rides to and from Club meetings in his cruiser and had made several sexual comments.

58. This was a lie. The Explorer's Club never met during the first half of 2009, as McElfresh alleged. Nor was McElfresh ever a member of the Club. The events she described could therefore never have occurred. This could easily have been verified by a capable and non-partisan investigator with a modicum of effort.

59. On the evening in question, according to Brown's Report, a Club meeting at the police station had ended and only McElfresh and Mr. Cotterman remained in the room. Mr. Cotterman allegedly asked her if she wanted to go to his house for a couple of drinks.

60. The two allegedly drove to Mr. Cotteman's house, according to McElfresh, and Mr. Cotterman went inside to lock up his dog "Kimbo." (Mr. Cotterman has never owned a dog named Kimbo, a fact that Defendant Brown could easily have verified simply by asking Mr. Cotterman.) Once inside, McElfresh claims, she took off her Explorer Shirt (which she never could have owned) and sat down. Mr. Cotterman allegedly went to the kitchen and came out with two beers.

61. According to McElfresh, Mr. Cotterman then asked if she wanted to see the house and "escorted her upstairs" and "sat down on the bed." He then allegedly said "come here a second" and then "started kissing her and her neck." Mr. Cotterman then allegedly tried without success to remove McElfresh's blue jeans, but was able to reach into her jeans and place a finger inside her vagina. He also allegedly pulled down his own pants and placed McElfresh's hand on his penis. After she cried, according to McElfresh, Mr. Cotterman stopped.

62. As the two went back downstairs, Mr. Cotterman allegedly "told her not to tell anyone because he knows where she lives and he can make bad things happen to her." He then drove her back to her grandparents' home.

63. McElfresh's entire story was a lie. First and most verifiable is the fact that Mr. Cotterman was married at the time of the alleged incident, and that his wife lived with him at his house, did not work, and stayed in the house 24/7. Mr. Cotterman certainly would never have brought a teenage girl into his house, let alone upstairs to his bedroom, under those circumstances. Yet Defendants did not even bother to interview (then former) Mrs. Cotterman or verify any other aspect of McElfresh's story.

64. Equally verifiable is the fact that McElfresh was never even a member of the Explorer's Club. Indeed the Club was essentially defunct, and held no meetings, during most of

the time period during which McElfresh alleged that the rape could have taken place. (This was because, following Defendant Frye's departure at the end of 2008, Mr. Cotterman was the only full-time police officer on the Jackson Center force and lacked the time or resources to devote to the Club.) The described events, then, could therefore never have occurred. Again, all this could easily have been confirmed by a capable and non-partisan investigator with a modicum of effort.

65. It is true that, *in 2011 or 2012* (Mr. Cotterman isn't sure which), McElfresh attended a Club meeting and applied for membership. Her application was rejected, though, when McElfresh's history of felony convictions was discovered.

66. All this might have been verified but for the suspect disappearance of McElfresh's Explorer Club file. Mr. Cotterman has seen the file, and knows it can establish the date(s) of McElfresh's attendance, application, and rejection. As Officer Chuck Wirick can attest, however, at some point after Mr. Cotterman's indictment, either Defendants or other Sheriff's Department personnel showed up to inspect the Explorer Club's files. Thereafter, McElfresh's file (and hers alone) was missing.

67. Defendant Brown's Report also contains no specifics regarding the date of the alleged incident. It states only that, according to McElfresh, "it was cold out" and "around the same time when [McElfresh's] father Tim McElfresh father was arrested" on two counts of rape, which according to the Report was "in 2009."

68. This explains why Mr. Cotterman's September 1, 2016 Indictment states only that the incident occurred "[d]uring the time period of January 1, 2009 through May 31, 2009," i.e., at some unspecified time within a five-month time period nearly seven and a half years before the day on which, facing felony drug-trafficking charges, McElfresh decided to report the incident to police.

69. Defendant Brown also fails to mention in his Report that *he* was involved in the arrest and prosecution of McElfresh's father. Nor does he mention that the charge for which her father was arrested was the alleged rape *of McElfresh herself*.

70. At and before the time of McElfresh's accusation, details of the Meranda Suttles case, then pending against Mr. Cotterman, were widely publicized in the area. Anyone interested in the matter could easily learn the circumstances surrounding Suttles' accusation.

71. Defendant Brown was also the lead investigator on the Suttles case. He knew the circumstances of that case as well as anyone.

72. Upon interviewing McElfresh, then, Brown could scarcely have avoided noticing the similarities between her allegations and those made by Suttles. Both incidents are alleged to have taken place in Mr. Cotterman's home and after he had driven his accuser there. On both occasions, the accusers reported having entered Mr. Cotterman's house, followed him upstairs, and sat on his bed. Both incidents, according to the accusers, began with kissing, including on the accusers' necks.

73. The striking similarities between the two alleged incidents would have caused a reasonable investigator, in particular one who had investigated the earlier incident, to consider whether the later accuser might simply be concocting a story out of the familiar and well-publicized ingredients of another case. They ought, in other words, to have put a reasonable investigator on notice of the need to dig deeper and attempt to verify (or disconfirm) the story he was being told.

74. Defendant Frye was also involved in the Suttles case. As part of his effort to "dig up dirt" on Mr. Cotterman, he and Defendant Brown sought out and badgered any person who might conceivably have information that fit their agenda. It is highly unlikely that Defendant

Frye would not, as part of this effort, have contacted McElfresh's mother, who was widely known to have frequently served as an informant for Frye. Transmission of the Suttles case details from Frye to McElfresh's mother, and in turn to McElfresh, who adapted them to suit her purposes, is a distinctly plausible scenario.

75. Defendant Brown's Report was prepared on August 10, 2016, the same day that he reports having interviewed McElfresh. The Report concludes with the sentence: "This case will be present [*sic*] to the Shelby County Prosecutor and Grand Jury for violation of section 2907.02 Rape of the Ohio Revised Code." Brown thus had, the very same day, concluded that there was no need to conduct any additional investigation or to attempt to verify any of the numerous details that McElfresh had given him. He was content to take everything McElfresh had told him at face value and announce an unconditional determination that the case "*will be*" presented to the prosecutor and grand jury.

ALLISHA MCELFRESH'S FORMER GIRLFRIEND, KRISTA BUNDY, CONTRADICTS MCELFRESH'S STORY.

76. In her August 10, 2016 interview, McElfresh did mention to Defendant Brown that she had told her then-girlfriend, Krista Bundy, about the rape.

77. Defendants Brown and Frye located and interviewed Bundy. When asked by Mr. Cotterman's defense counsel if they had done so, however, they repeatedly denied it. Defendant Brown told Mr. Cotterman's defense attorney that he had been unable to locate Krista Bundy to obtain a statement from her. He also denied having taken any other witness statements. Defense counsel knew that Defendants were lying because they had independently learned of the existence of various witness interviews and statements.

78. Following Mr. Cotterman's indictment and several times thereafter, his defense attorney requested copies of all relevant or potentially exculpatory materials. Defendants

consistently denied the existence of any such materials. When the defense learned of the existence of such materials, Defendants denied their materiality and continued to refuse to produce them. Even after being ordered by the trial court to produce the materials, Defendants refused and/or neglected to produce everything, choosing to dismiss the case rather than comply with the court's order.

79. The audio recording of Defendants' interview of Krista Bundy is eye-opening.

80. Bundy described for Defendants a tale of a lesbian relationship that lasted from 2011 to 2014 and ended because Bundy could no longer tolerate McElfresh's constant lies and deceit. "There's just so much crap with her," Bundy told Defendants.

81. While, according to Bundy, McElfresh claimed to have been raped by Mr. Cotterman, the story she (McElfresh) told her *bears no resemblance whatsoever* to that which McElfresh told Defendant Brown and indeed alleges events occurring at least two years later.

82. In fact, at different times, McElfresh herself told Bundy at least two completely different stories. "I notice her story kind of changed," Bundy told Defendants. "It [the rape] only happened once but her story changed twice."

83. In one account, McElfresh told Bundy that Mr. Cotterman, while on patrol, had put her in the back of his patrol car, tied her up, choked her, and put handcuffs on her. He proceeded to have intercourse with her (not just the "fingering" act McElfresh had described to Defendant Brown), McElfresh claimed, and did not use protection.

84. Just a couple of days later, however, McElfresh's story changed completely. This time, she told Bundy, the rape occurred at Mr. Cotterman's house in Jackson Center. McElfresh had gone to Mr. Cotterman's house to borrow money, on this version of events, and was raped "beside the TV, on the couch."

85. Apparently McElfresh had even told Bundy a third version of events, since Bundy at that point exclaimed that "You told me that he raped you in the bedroom! Can you tell me what you seen around you at the time?" Bundy told Defendants that "I was gonna go to his house and see if I seen the same things … to see if she's lying to me or telling the truth." (Bundy thus was proposing to conduct a much more thorough investigation than Defendants, who never inspected Mr. Cotterman's house, interviewed his ex-wife, or otherwise tried to verify McElfresh's rape story, ever undertook.)

86. McElfresh then contradicted herself again. "No," she said, "It was beside the TV, on the couch, big screen TV, bunch of DVDs lined up on the bottom case."

87. McElfresh's story kept going back and forth—from the car to the house—so often that Bundy finally confronted her about the inconsistencies. "So which one was it?," Bundy asked her. Feeling backed into a corner, McElfresh replied "Both."

88. But Bundy had finally had enough, and stopped believing McElfresh altogether. "I just told her I didn't know what to believe anymore. I just got so sick of all the stories because she lied *a lot*. I just couldn't put up with it." "I was kinda lied to and I couldn't take it no more."

89. Having been McElfresh's girlfriend for three years, Bundy could always tell when McElfresh was lying. "When she changed her story she would stutter, can't look you in the face, her face would turn flush. When Allisha would lie, I would know by the dilation of her pupils."

90. McElfresh's family was well acquainted with McElfresh's strained relationship with the truth. "Her brother didn't believe her" about the rape, Bundy told Defendants. And according to McElfresh's mother, "There's a lot about Ally you just don't know." she told Bundy. Her mother also confirmed for Bundy that McElfresh was still using drugs at the time, while McElfresh herself swore to Bundy that she hadn't touched them.

91. Bundy agreed with Defendants that McElfresh was making up these stories "because she just wanted the attention."

92. Another likely motive for the story arose when Bundy accompanied McElfresh to Marysville Hospital in 2013. McElfresh had been experiencing vaginal bleeding and, while at the hospital, was diagnosed with Chlamydia. (In response to a question Defendants posed, Bundy denied that there was any evidence of vaginal tearing.) Upon learning of the diagnosis, Bundy "was pissed" and demanded to know who had given McElfresh that condition. McElfresh replied that it was Mr. Cotterman. It is no stretch at all, however, to surmise that McElfresh identified Mr. Cotterman to avoid having to disclose how she had in fact contracted the condition.

93. Not even the timing of the alleged rape, as related to Bundy, matches up with anything McElfresh told Defendant Brown in August 2016. In fact it is way off.

94. While Bundy was not specific about when McElfresh claimed that the rape occurred, she makes clear that it was while the two were dating, i.e., at some point during the 2011-2014 time frame. Bundy recounts having questioned McElfresh's decision not to go to the police shortly after being told of the rape. The two would not have had this type of interaction either before their relationship had begun or after it had ended.

95. Bundy also told Defendants that McElfresh never mentioned that anything had occurred with Mr. Cotterman before the two began dating, i.e., before 2011.

96. The incident that McElfresh described to Defendant Brown allegedly occurred in the first part of 2009.

97. As the interview was wrapping up, Defendant Frye asked for Bundy's phone number and whether it would be okay to call her. Explaining his possible need to do so, Frye remarks that "Some of this stuff is not consistent."

98. As of at least March 2017, then, Defendants Frye and Brown had become aware of numerous inconsistencies in what McElfresh had told them and others. They had become aware, in particular, of at least the following, mutually inconsistent stories McElfresh had told:

(a) The rape occurred sometime within the first five months of 2009;

(b) The rape occurred in the 2011-2014 time frame;

(c) Mr. Cotterman used his fingers to commit the rape;

(d) Mr. Cotterman used his penis to commit the rape (and did not use protection);

(e) The rape occurred in Mr. Cotterman's bedroom;

(f) The rape occurred in the backseat of Mr. Cotterman's police cruiser;

(g) The rape occurred on Mr. Cotterman's couch, next to his TV;

(h) Mr. Cotterman choked McElfresh, tied her up, and applied handcuffs;

(i) The rape occurred following an Explorer's Club meeting after Mr. Cotterman had driven McElfresh to his house;

(j) The rape occurred when McElfresh walked to Mr. Cotterman's house to borrow money.

99. Despite learning of these numerous inconsistencies, and aware of the plethora of circumstances that cast fatal doubt on McElfresh's accusation, Defendants Frye and Brown took no steps to suspend or terminate the prosecution of Mr. Cotterman.

100. Instead, Defendants Frye and Brown continued to actively and aggressively encourage, promote, and/or participate in the prosecution.

101. Interviewed later by a private party, Bundy made additional, significant observations. She said, for example, that Defendant Frye, during his interview of her, stated that

he didn't think that Mr. Cotterman was guilty of the crime "because there were too many mix-ups in the story."

102. In that later interview, Bundy also stated that McElfresh had falsely "cried rape" on multiple prior occasions. She mentioned an incident that allegedly occurred in Lima, and another in which a black assailant had allegedly gotten her pregnant (but after which McElfresh refused a pregnancy test that Bundy had offered to get for her). She reiterated that McElfresh had lied to her so many times that she "did not believe what was going on" when McElfresh accused Mr. Cotterman.

103. Few things of significance or importance regarding Shelby County criminal proceedings happen without Defendant Sheriff John Lenhart's approval and/or input.

104. Defendant Lenhart was an active participant in, and/or authorized, or acquiesced in, Mr. Cotterman's prosecution.

105. Defendant Lenhart held a televised interview in which he publicly asserted Mr. Cotterman's guilt without the benefit of a trial.

THE ACCUMULATING EVIDENCE OF MR. COTTERMAN'S INNOCENCE, AND A COURT ORDER COMPELLING PRODUCTION OF EXCULPATORY EVIDENCE, CAUSE THE STATE TO DISMISS ITS CASE AGAINST MR. COTTERMAN.

106. Defendants Brown and Frye videotaped their interview of Ms. Bundy and maintained a copy. Despite repeated requests from Mr. Cotterman's defense team, however, Defendants Brown and Frye consistently denied that they had interviewed Ms. Bundy and that any such videotape existed.

107. Mr. Cotterman's defense team knew through independent means that the videotape existed.

108. Defendants knew that, if they produced the materials they had in their possession to Mr. Cotterman's defense team, they would never be able to secure a conviction.

109. Mr. Cotterman's defense team moved the court to compel production of all videotapes and other materials relating to the case.

110. The court granted the motion to compel on or about Friday, May 19, 2017.

111. On Monday, May 22, 2017, the day before trial was scheduled to begin, the State dismissed the case against Mr. Cotterman in its entirety. It never did produce all the materials the court had ordered produced, but instead produce only the Bundy interview and a small portion of McElfresh's videotaped interview.

112. Shortly after moving to dismiss the case, Prosecuting Attorney Tim Sell commented publicly on the case. He acknowledged that the alleged rape had occurred in 2009, seven and a half years before it was finally reported, and that there was no physical evidence. "This case came to us as a late-reported rape," Sell stated.

113. Sell went on to comment that, two months earlier, the witness whom McElfresh had identified was arrested on another charge, was interviewed in connection with the McElfresh case, and made statements inconsistent with McElfresh's story. "Because of the conflict between the two statements, I felt there would be a problem in making the case beyond a reasonable doubt," Sell lamented. "I felt the new statement impacted our ability to secure a conviction," Sell commented, adding that "We won't be refiling new charges in the case."

114. Neither Sell nor Defendants turned anything over to Mr. Cotterman's defense team until ordered to do so by the trial court on May 19, 2017. Even then, Defendants produced only two of the items covered by the court's order, and omitted other witness statements and other evidence.

115. Neither Sell nor Defendants have ever explained their failure to comply with the court's order, their repeated denials that exculpatory evidence existed when they knew it did, their failure to produce the evidence when it became available, and their failure to take any steps to dismiss the case once they recognized that the evidence they had developed failed to support Mr. Cotterman's guilt. Instead they acted, or omitted to act, in a manner calculated to ensure that Mr. Cotterman continued to languish under suspicion of a horrific crime that he did not commit and continued to face a criminal trial they had no cause to pursue.

116. Sell attempted to create the impression that he and Defendants acted honorably in volunteering to dismiss the case once it became clear that there was no case to be won. In fact, he dismissed the case, the day before trial, only because the trial judge had ordered that all videotapes and other exculpatory evidence be turned over. The case was dismissed to avoid the blowback of having to produce evidence that would demonstrate the bad-faith character of Defendants' and the prosecution's efforts to bring a frivolous case to trial.

CLAIM ONE
Malicious Prosecution: Violation of 42 U.S.C. § 1983 and of Ohio Law

117. Plaintiff Cotterman incorporates all previous allegations.

118. Within those constitutional rights accorded to Plaintiff Cotterman are, *inter alia*, the right to be free from a deprivation of liberty without due process and the right to due process in general. These rights are guaranteed to him under the Fourth and Fourteenth Amendments to the United States Constitution.

119. At no time did probable cause exist to believe that Mr. Cotterman raped Ms. McElfresh or otherwise to support the indictment, arrest, and prosecution of Plaintiff Cotterman, or to sustain such prosecution once initiated.

120. The constitutional right to be free from prosecutions initiated or continued without probable cause is clearly established.

121. Defendants, acting under color of state law and pursuant to a custom, practice, and/or policy of Defendant Shelby County and its officials, intentionally, willfully, wantonly, grossly, and/or recklessly violated Plaintiff Cotterman's constitutional rights, including the right to due process enumerated under 42 U.S.C. § 1983, by maliciously instituting and/or actively encouraging, promoting, testifying in support of, and/or participating in, the decision to prosecute Mr. Cotterman and/or the decision to continue to prosecute Mr. Cotterman, knowing that there was no probable cause to believe that he committed the offense alleged by Ms. McElfresh.

122. As a consequence of the legal proceedings and/or prosecution brought against him through Defendants' participating, Plaintiff Cotterman suffered deprivations of liberty, including but not limited to his initial seizure, his confinement in the County jail, his being required to post a $50,000 bond to secure his pre-trial release, and his being prohibited from leaving the State of Ohio without prior court authorization, from September 1, 2016 through May 22, 2017.

123. After Mr. Cotterman was indicted on September 1, 2016, Defendants continued to learn of exculpatory information that supported Mr. Cotterman's claims of innocence and that rendered Ms. McElfresh's allegations even more implausible, illogical, highly unlikely, and lacking in probable cause, including but not limited to the videotaped interview of Krista Bundy wherein she describes the multiple, mutually inconsistent accounts of an alleged rape that McElfresh recounted to her, none of which bore any resemblance to the account McElfresh recounted to Defendant Brown, and all of which post-dated the incident described to Defendant Brown by at least two years. In particular, Ms. Bundy recounted that Ms. McElfresh had told her

at different times that the rape occurred in Mr. Cotterman's car, or in his bedroom, or on his couch, and that it involved his fingers, or his penis, or handcuffs, or ropes, or chokeholds. The mind boggles. Bundy knew McElfresh was lying and stopped believing anything she said.

124. Defendants continued to support, promote, encourage, and participate and/or acquiesce in, Mr. Cotterman's continued prosecution despite having acquired knowledge, which they withheld from both the prosecution and the defense, of facts that would have led any reasonable law-enforcement officer to conclude that probable cause either never existed or had ceased to exist and that continuing the prosecution would be a violation of Mr. Cotterman's clearly established constitutional rights and rights under Ohio law.

125. Despite knowing that there was no probable cause to believe that Mr. Cotterman committed the offense contained in the Indictment, Defendants continued to promote, encourage, and/or participate or acquiesce in Mr. Cotterman's prosecution, and, acting under color of state law, intentionally, and/or with deliberate indifference to, and/or with reckless disregard for, Mr. Cotterman's clearly established constitutional rights to due process of law and a fair trial and/or for the truth, concealed, suppressed, and/or destroyed evidence, including McElfresh's Explorer Club file, which would have established McElfresh's multiple lies, videotape evidence reflecting inaccurate, inconsistent, and/or implausible accounts of the events alleged, from the prosecuting attorney and the defense, in an attempt to extract a guilty plea from Mr. Cotterman's or to secure his unlawful and unconstitutional conviction.

126. Mr. Cotterman continued to suffer a deprivation of his liberty, as he remained on bond and subject to various bond conditions for several months, while Defendants were in possession of the Bundy videotape and ample additional exculpatory evidence.

127. The criminal prosecution was terminated in Mr. Cotterman's favor when, on May 22, 2017, the court dismissed the case against Mr. Cotterman, or at such later time as the Prosecutor was prevented—by operation of the Speedy Trial Act or otherwise—from re-trying Mr. Cotterman.

128. As a direct and proximate result of Defendants' conduct as set forth above, Mr. Cotterman was deprived of his constitutional right to due process and his rights under Ohio law, and suffered other damages, including but not limited to deprivations of his liberty apart from his initial seizure, extreme emotional and psychological distress, pain and suffering, and the loss of income and employment.

CLAIM TWO
Failure to Investigate: Violation of 42 U.S.C. § 1983

129. Plaintiff Cotterman incorporates all previous allegations.

130. Defendants possessed exculpatory evidence that they did not consider, or produce to Mr. Cotterman's defense, before presenting the results of their investigation to Shelby County Prosecutor Tim Sell and/or the Shelby County Prosecutor's Office.

131. Defendants knew that the inconsistencies, inaccuracies, and contradictions in Ms. McElfresh's statements, considered together with the statements of Ms. Bundy and the evidence furnished by Mr. Cotterman, prevented them from forming a belief, and/or from continuing to believe, that there was probable cause that Mr. Cotterman had raped Ms. McElfresh.

132. Despite possessing such exculpatory evidence and such indications of the accuser's unreliability and untrustworthiness, Defendants intentionally failed to further investigate Ms. MsElfresh's allegations and/or make any effort to learn any information about Ms. McElfresh that may be harmful to the State's case against Mr. Cotterman before encouraging and pursuing the presentation of the case to Shelby County Prosecutor Tim Sell

and/or the Shelby County Prosecutor's Office, and otherwise initiating or continuing the unconstitutionally biased prosecution of Mr. Cotterman, knowing that there was no probable cause to believe that Mr. Cotterman had raped McElfresh.

133. As a direct and proximate result of Defendants' conduct, Plaintiff Cotterman suffered deprivations of liberty, including but not limited to his initial, unconstituional seizure, his being required to post a $50,000 bond to secure his pre-trial release, and his being prohibited from leaving the State of Ohio without prior court authorization, from September 1, 2016 through May 22, 2017, all of which caused Mr. Cotterman to suffer damages, including but not limited to substantial pecuniary harm, extreme emotional and psychological damage, pain and suffering, lost income and employment, all of which, absent relief from this Court, will continue into the indefinite future.

CLAIM THREE
Abuse of Process

134. Plaintiff Cotterman incorporates all previous allegations, and pleads this Count—for Abuse of Process—in the alternative to Claim One, for Malicious Prosecution.

135. Defendants, in the face of exculpatory evidence, of which they were aware, that precluded the existence of probable cause to believe that Mr. Cotterman had raped McElfresh, initiated, recommended, set in motion, assisted, conspired in, and/or participated in, the prosecution of Mr. Cotterman, and continued to assist and/or participate in such prosecution after additional exculpatory evidence, of which they were aware, came to light.

136. The Shelby County Court of Common Pleas was the proper forum for the criminal case against Mr. Cotterman.

137. Notwithstanding the truncated, biased, and incomplete testimony presented to it, the Shelby County grand jury found probable cause to issue a criminal indictment against Mr. Cotterman.

138. Despite the facial regularity of the criminal proceedings against Mr. Cotterman, Defendants perverted the process to accomplish ulterior purposes for which the proceeding was not designed, namely to induce and/or pressure Mr. Cotterman to plead guilty in the Meranda Suttles case, which was scheduled to be tried shortly thereafter, to "dirty up" Mr. Cotterman in the eyes of the jury that would hear the Meranda Suttles case and thereby increase the likelihood of a wrongful conviction in that case, and/or to "settle scores" arising out of the disputes and controversies, recounted above in this Complaint, between Defendants and Mr. Cotterman.

139. As a direct and proximate result of Defendants' conduct, Plaintiff Cotterman suffered deprivations of liberty, including but not limited to his initial, unconstituional seizure, his confinement in jail, his being required to post a $50,000 bond to secure his pre-trial release, and his being prohibited from leaving the State of Ohio without prior court authorization, from September 1, 2016 through May 22, 2017, all of which caused Mr. Cotterman to suffer damages, including but not limited to substantial pecuniary harm, extreme emotional and psychological damage, pain and suffering, lost income and employment, all of which, absent relief from this Court, will continue into the indefinite future.

CLAIM FOUR
CIVIL CONSPIRACY

140. Plaintiff Cotterman incorporates all previous allegations.

141. Defendants maliciously combined together to have Plaintiff Cotterman charged and prosecuted on false allegations that he raped McElfresh.

142. Defendants' presentment of false and unsubstantiated allegations to the Shelby County Prosecutor, their institution and/or promotion of criminal charges, and their omission to present, or advise of existence and/or development of, exculpatory evidence were all unlawful, and constituted acts performed in furtherance of their conspiracy.

143. As a direct and proximate result of Defendants' conspiracy and acts taken in furtherance thereof, Plaintiff Cotterman suffered damages, including but not limited to substantial pecuniary harm, extreme emotional and psychological damage, pain and suffering, and lost income and employment.

CLAIM FIVE
Failure to Train and/or Supervise Employees: Violation of 42 U.S.C. § 1983

144. Plaintiff Cotterman incorporates all previous allegations.

145. Defendant Lenhart is the elected Sheriff, and Defendants Frye and Brown are employees, of Defendant Shelby County. Defendant Lenhart is responsible for the training and supervision of Defendants Frye and Brown, and Defendant Frye in turn is responsible for the training and supervision of Defendant Brown.

146. The training and/or supervision provided by these Defendants was inadequate for the duties discharged by Defendant Frye in his capacity as Chief Deputy Sheriff and by Defendant Brown in his capacity as Detective.

147. The inadequacy of the training and/or supervision of Defendants Frye and Brown as it relates to (a) investigations of sexual assault when a complaining witness makes inaccurate, inconsistent, suspect, and/or highly implausible statements, (b) collecting, maintaining, and preserving all evidence during, criminal investigations, (c) preparing reports for review and reliance by prosecutors in making probable-cause determinations to justify the presentment of charges to the grand jury, (d) ensuring that the prosecution receives all material evidence,

including all exculpatory evidence, before making prosecution decisions, (e) ensuring that any subsequently discovered material evidence, including exculpatory evidence, is transmitted to the prosecution, (f) continuing to support, encourage, and/or participate in the criminal prosecution of individuals without probable cause and in the face of substantial exculpatory evidence, and (e) the constitutional violations resulting from the withholding of material, exculpatory evidence from both the prosecution and defense, was the result of the Defendants' policy, practice, and/or custom of deliberate indifference to the constitutional rights, privileges, and/or immunities of United States citizens and to the community, specifically including but not limited to any statutory and/or constitutional rights of Plaintiff Cotterman, which Defendants violated.

148. Defendants are liable for their inadequate training and/or supervision not just vicariously but by virtue of their active direction, authorization, and/or encouragement of, and/or their participation or acquiescence in, the conduct giving rise to the constitutional deprivations and other injuries Mr. Cotterman suffered.

149. The inadequacy of the training and/or supervision of Defendants was closely related to, and/or actually caused, Mr. Cotterman's damages.

150. As a result of the deliberate indifference to Mr. Cotterman's rights, Mr. Cotterman suffered general and special damages and is entitled to relief under 42 U.S.C. § 1983.

CLAIM SIX
Intentional Infliction of Emotional Distress

151. Plaintiff Cotterman incorporates all previous allegations.

152. Defendants' biased, bad-faith investigation of Mr. Cotterman; their active and uncritical promotion of the suspect, highly improbable, and readily falsifiable account of an alleged rape; their intentional, bad-faith, malicious, and unconstitutional concealment, suppression, and/or failure to disclose exculpatory evidence, including but not limited to the

McElfresh and Bundy tape-recorded interviews, to either the prosecution or the defense; and their encouragement of, assistance in, and/or participation in the initiation and continuation of criminal proceedings against Mr. Cotterman, constitute extreme and outrageous conduct.

153. Defendants' extreme and outrageous conduct, which was intentional and/or reckless, proximately caused Mr. Cotterman to suffer severe emotional distress.

CLAIM SEVEN
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND 2921.45 (VIOLATION OF CIVIL RIGHTS)

154. Plaintiff incorporates all previous allegations.

155. Under Ohio Rev. Code § 2307.60 (A)(1), "Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action," including attorneys' fees and punitive damages.

156. Criminal statute Ohio Rev. Code § 2921.45 forbids public servants from depriving any person of a constitutional or statutory right.

157. Defendants acted under color of office, employment, and authority to knowingly deprive Mr. Cotterman of his civil rights, including his constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

158. In so doing, Defendants acted in violation of Ohio's criminal law.

159. As a direct and proximate result of Defendants' unlawful activity, Mr. Cotterman has suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

160. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

CLAIM EIGHT
CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE §§ 2307.60 (A)(1) AND 2921.44(E)—DERELICTION OF DUTY

161. Plaintiff incorporates all previous allegations.

162. Ohio Rev. Code § 2921.44(E) provides that "[n]o public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office."

163. Defendants recklessly failed to perform duties expressly imposed on them by law, including providing full and complete information in, or for others to use in, grand jury testimony, adequately establishing probable cause before arresting and prosecuting Mr. Cotterman, providing full and accurate information to the County Prosecutor, and abstaining from violating constitutional rights.

164. In so doing, Defendants acted in violation of Ohio's criminal law.

165. As a direct and proximate result of Defendants' unlawful activity, Plaintiff Cotterman suffered and continues to suffer economic and non-economic damages for which Defendants are liable.

166. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joseph Cotterman demands judgment in his favor as follows:

A. Declare that Defendants' acts and/or omissions constitute violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Unites States Constitution, as well as

42 U.S.C. § 1983, the Ohio Consitution, and the applicable statutory and common law of the State of Ohio;

B. Declare that Defendants Shelby County, John Lenhart, and James Frye are vicariously liable for Defendants' acts, as described above, based on their custom, policy, and/or practice of deliberate indifference to the constitutional rights of Plaintiff Cotterman, other criminal defendants, and the community at large;

C. Enter judgment in Plaintiff Cotterman's favor on all claims for relief;

D. Award Plaintiff Cotterman full compensatory damages against all Defendants in an amount in excess of $25,000, including without limitation for the attorneys' fees he has incurred in defending himself against Defendant's ill-begotten and unconstitutional prosecution;

E. Award punitive damages for Defendants' egregious, willful, and malicious conduct, in an amount sufficient to deter Defendants and other persons from engaging in such conduct in the future;

F. Award Plaintiff Cotterman the costs incurred in this action and reasonable attorneys' fees under 42 U.S.C. § 1988;

G. Award pre-judgment interest; and

H. Award any and all further relief to which Plaintiff Cotterman may be entitled.

Respectfully submitted,

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Plaintiff demands a trial by jury on all claims so triable.

/s/ Donald P. Screen
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