

marked numerically preceded by the letter "P." Defendant's exhibits shall be marked numerically preceded by the letter "D." For example, Plaintiff's exhibit shall be marked P-1, P-2, P-3 etc. Likewise, Defendant's exhibit shall be marked D-1, D-2, D-3 etc. A typewritten exhibit list setting forth the number and letter, and description of each exhibit must be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available from the Clerk's office.

5. **Motion for Continuance.** A Motion for Continuance shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, a motion for continuance will not be considered unless it is filed at least fourteen (14) days prior to the date on which the trial calendar is scheduled to commence. A continuance of the trial date will be granted only on a showing of compelling circumstances.

6. **Referral to Magistrate.** The above-styled action is referred to the Honorable William C. Turnoff, United States Magistrate Judge for the Southern District of Florida, for appropriate resolution of all non-dispositive pretrial matters, in accordance with 28 U.S.C. §§ 636(b)(1)(A) and (B). Motions in Limine and any motion affecting deadlines set by the Court's Scheduling Order are excluded from this referral, unless specifically referred by separate order. It shall be the responsibility of the respective parties in this case to note on all materials necessary to the resolution of the referred matters the name of Magistrate Judge Turnoff on the case number caption (i.e., Case No. 99-1234-CIV-COOKE/TURNOFF) and that courtesy copies of such materials shall be directed to his Chambers.

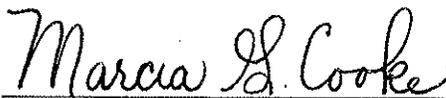
7. **Non-Compliance.** Non-compliance with any provision of this Order may subject the offending party to sanctions, including denial of the motion, dismissal of claims or striking of defenses. It is the duty of all counsel to enforce the timetable set forth herein in order to insure an

and conclusions of law in lieu of proposed jury instructions.

expeditious resolution of this cause.

8. **Settlement.** If this case is settled, counsel are directed to inform the Court promptly by calling Chambers and submitting an appropriate order for dismissal within ten (10) days of notification of settlement to the Court, pursuant to Fed. R. Civ. P. 41(a)(1). The case will remain on the trial calendar until an order dismissing the action is entered by the Court.

DONE AND ORDERED in Miami, Florida, this 16th day of February 2012.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,
Plaintiff,

vs.

RODERICK PASSMORE, et. al,
Defendants,

JOINT PRE-TRIAL STIPULATION

It is stipulated by and between the parties that:

1. Nature of Proceedings:

This is an action for alleged violation of Plaintiff's Fourth Amendment rights

Estimated length of trial is 4 to 5 days.

1. Jurisdiction: 42 U.S. C. § 1983
2. Plaintiff's narrative statement of the case:

While inside his home with Kerri Smith (Smith) on September 29, 2005, a police officer came through the window of Plaintiff, Eldrick Brown's, (Brown) residence at 5918 NW 13 Avenue, Miami, Florida, without a warrant and without consent. Smith and Brown who were in the bed room were ordered into the living room. Other police officers broke through the front door. Smith was taken outside and instructed to leave. While detained in the living room, Brown observed his personal items, including stereo speakers, clothing, and furniture damaged by officers searching for drugs. No drugs were found. Brown was taken into custody and transported to the North District Substation and subsequently charged with possession of marijuana with intent to sell and possession of cocaine with intent to sell. Then Brown was transferred to Miami-Dade County jail. The charges of possession of marijuana with intent to sell and possession of cocaine with intent to sell were "No-Actioned" 21 days later on October 20, 2005. Brown remained in custody for nine months until July 2006.

Defendants' narrative statement of the case:

The Defendants were a part of a narcotics surveillance team and observed Mr. Brown and a Co-Defendant selling narcotics in front of 5918 NW 13th Ave on or about September 29, 2005. At the time the Officers attempted to apprehend Mr. Brown, he ran into his house to avoid capture. The Officers gave chase without losing sight of him, and arrested him inside his house where the narcotics were discovered and impounded. The Defendants allege that the search of Mr. Brown's house was consistent with the Fourth Amendment.

3. A list of undisposed motions or other matters requiring action by the court.
 - a. Plaintiff's motion to withdraw
 - b. Defendants' motion for sanctions and to strike plaintiff's pleading will be filed by Friday, May 11, 2012.
4. A concise statement of uncontested facts which require no proof at trial, with reservations:
 - a. Date of search and arrest was September 29, 2005.
 - b. Place of arrest and search was 5918 NW 13th Avenue, Miami, FL 33142.
 - c. Police had no warrant on September 29, 2005.
 - d. Brown was arrested inside the house on September 29, 2005.
 - e. On September 29, 2005, Brown was charged with (1) possession of marijuana with intent to sell, and (2) possession of cocaine with intent to sell. (Defendants reserve an objection to relevance-this is an Unconstitutional search claim not a false arrest claim).
 - f. Brown was incarcerated from September 29, 2005 through July 2006 because he was held no bond status as a result of a prior arrest in August of 2005, under Case Number F056197. (Defendants reserve an objection to relevance---this is a false search claim not a false arrest claim and defendant did not file a false arrest claim)
 - g. Smith was not arrested on September 29, 2005. (Defendants reserve an objection to relevance-Ms. Smith is not a party to this claim)
5. A concise statement of issues of law on which there is agreement
 - A. None
6. A concise statement of issues of law which remain for determination by the Court.
 - A. Whether the Fourth Amendment was violated.
7. The exhibits to be offered at trial:

A. List all documents and things intended to be offered at trial by each party, in the sequence proposed to be offered, with a description of each sufficient for identification.

Plaintiff's Exhibits

1. P1. Picture of broken window
2. P-2- Arrest Affidavit (9/29/05 Arrest of Eldrich Brown)
3. P-3 Drug Property Receipt (Ali, Michael OFC.)
4. P-4 Drug Property Receipt (CIV,ALI,MICHAEL) as
- 5 P-5 Currency Property Receipt
- 6 P-6Moneysheet, Property Unit (3 pages dated 9/29/05)
- 7 P 7. Arraignment Bench Docket/State Attorney Charging Document. (5 pages) (Defendant objection to A, R, H, improper predicate)
- 8 P 8. Disposition (No-action) of Sep. 29, 2005 charges (Defendants object R)
- 9 P 9 Disposition of charges against Giordono Rolle on 3/29/05(Defendants object R, H)
- 10 P 10. Disposition of charges against Brown. (Defendants Object R, H)
- 11 P 11. Deposition of Kerri Smith
- 12 P 12 Deposition of Fredericka Brown
- 13 P-13 Deposition of Det. Passmore (impeachment)
- 14 P-14 Deposition of Officer Williams(impeachment)
- 15 P-15 Deposition of Officer Goins(impeachment)
- 16 P-16 Deposition of Officer Braddy(impeachment)
- 17 P-17 Deposition of Sergeant Cook (impeachment)

Defendants' Exhibits

- 18 D-A- Arrest Affidavit (9/29/05 Arrest of Eldrick Brown)
- 19 D-B All Drug Property Receipts (Ali, Michael OFC.) (P Objects To documents (Ali, Michael OFC.) and (CIV,ALI,MICHAEL) as unreliable for business record and therefore inadmissible)
- 20 D-C Currency Property Receipt (CIV.ALI,MICHAEL) (P Objects as unreliable for business record and therefore inadmissible)
- 21 D-D Moneysheet, Property Unit (3 pages dated 9/29/05) (P Objects as unreliable for business record and therefore inadmissible)
- 22 D-E Lab Analysis Report dated October 12, 2005. (P Objects, that as a consequence of the unreliability of exhibits B and C, Drug Receipts, the underlying documents for the Lab Report, which should be inadmissible as business records, and as such makes it inadmissible).

- 23 D-F Incident Report (incident No. 050929-023606) (P Objects as unreliable for business record and therefore inadmissible)
- 24 D-G Incident Report (4 pages including Incident summary, Persons involved, and Narratives) (P Objects as unreliable for business record and therefore inadmissible)
- 25 D-H ACE Data Entry Report of Brian Muller (F1-F25) (P Objects, that as a consequence of the unreliability of exhibits B and C, (Drug Receipts), the underlying documents upon which Brian Muller's report is based, his report should be inadmissible as business record).
- 26 D-I Photos of 5918, the address of the arrest, with Bars (P objects that the pictures are not a true and accurate depiction of the location on the date of arrest and were not taken within a timely manner.)
- 27 D-J State of Florida Score sheet in 2006 (impeachment)
- 28 D-K Criminal Priors.
- 29 D-L Plaintiff's prior deposition in Case number 09-20945.
- 30 D-M Defendants video deposition of Mr. Brian Muller with exhibits. (Plaintiff Objects, that as a consequence of the unreliability of exhibits B and C, (Drug Receipts), the underlying documents upon which Brian Muller's report is based, his report should be inadmissible as business record).
- 31 D-N Defendants video deposition of Caroline Milanes with exhibits. (Plaintiff Objects, that as a consequence of the unreliability of exhibits B and C, (Drug Receipts), the underlying documents upon which Brian Muller's report is based, his report should be inadmissible as business record).
- 32 D-O The actual narcotics being held in the Miami Property unit. (Plaintiff objects as Inadmissible based upon unreliability of evidence).

8. Statement of all admissions by and all issues between the parties with respect thereto are:

- a. Plaintiff's objections to Defendants' Exhibit D-I, Photos which do not accurately depict the location and were untimely taken should not be allowed to admit that the property had bars on the date of the arrest.

9. A statement in reasonable detail of issues of fact which remain to be litigated at trial.
- a. Whether City of Miami Police's search of 5918 NW 13th Ave on September 29, 2005 was constitutional.
 - b. Whether Mr. Brown has suffered any damages.
 - c. Whether or not Mr. Brown is entitled to compensatory and/or punitive damages.

10. Each parties numbered witness list of trial witnesses:

List of Plaintiff witnesses.

- a. Ms. Kerri Smith, 15071 South River Drive, Miami Florida
- b. Fredrerika Brown, 3645 Franklin Avenue, Miami, Florida
- c. Sargent William Cook, 400 NW 2nd Ave, Miami, FL 33131
- d. Officer William Goins, 400 NW 2nd Ave, Miami, FL 33131
- e. Officer Dairon Williams, 400 NW 2nd Ave, Miami, FL 33131
- f. Det. Rodrick Passmore, 400 NW 2nd Ave, Miami, FL 33131
- g. Officer Michael Braddy, 400 NW 2nd Ave, Miami, FL 33131
- h. Officer Stanley Jean-Poix, 400 NW 2nd Ave, Miami, FL 33131

List of Defense witnesses.

- i. Sgt. Cook, 400 NW 2nd Ave, Miami, FL 33131
- j. Officer Goins, 400 NW 2nd Ave, Miami, FL 33131
- k. Officer Williams, 400 NW 2nd Ave, Miami, FL 33131
- l. Det. Passmore, 400 NW 2nd Ave, Miami, FL 33131
- m. Officer Braddy, 400 NW 2nd Ave, Miami, FL 33131
- n. Officer Jean-Poix, 400 NW 2nd Ave, Miami, FL 33131
- o. Mr. Brian Muller (expert) video deposition, 3155 Main Street, Salem, VA 24153

- p. Ms. Caroline Milanes video deposition, Miami-Dade County Crime lab, 9000 NW 25th St.
- q. Ms. Fedricka Brown, 3645 Franklin Avenue, Miami, Florida
- r. Ms. Kerry Smith, 15071 South River Drive, Miami Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was delivered to Kevin Jones, Esq., 444 S.W. 2nd Ave, Suite 945, Miami, FL 33131, and to Brent Chudachek, Esq, Ronald J. Cohen, P.A. 8100 Oak Lane, suite 403, Miami Lakes, FL 33016, fax 305-823-7778 on this 7th day of May 2012.

ROBERT A. YOUNG
Attorney for Plaintiff
3576 Charles Avenue
Coconut Grove, Florida 33133

By: **Robert A. Young//s**
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: **s/Kevin R. Jones**
Kevin R. Jones, Assistant City Attorney
Florida Bar No. 0119067

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

Kevin R. Jones, Esq.
Assistant City Attorney
Counsel for Defendants
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
KRJones@miamigov.com
(305) 416-1800 Telephone
(305) 416-1801 Fax
Via Notice of Electronic Filing

Brent J. Chudachek, Esq.
Ronald J. Cohen, P.A.
Additional Counsel for Defendants
Losa, Maloney, Merced and Seigle
8100 Oak Lane, Suite 403
Miami Lakes, Fl 33016
bchudachek@roncohenlaw.com
(305) 823-1212 Telephone
(305) 823-7778 Facsimile
Via Notice of Electronic Filing

Robert A. Young, Esq.
Viera Gilford, Esq.
3576 Charles Avenue
Miami, Florida 33133
Email: robtyoungatty@yahoo.com
(305) 877-9470 Telephone
Attorney for: Plaintiff-Eldrick Brown
Via Notice of Electronic Filing

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,
Plaintiff,

vs.

RODERICK PASSMORE, et. al,
Defendants,

JOINT MOTIONS IN LIMINE

I. MOTIONS IN LIMINE INDEX

A. DEFENDANT'S MOTIONS

1. THE DEFENDANTS' MOTION TO PRECLUDE THE PLAINTIFF FROM TESTIFYING REGARDING HIS ALLEGED DAMAGES

2. DEFENDANTS MOTION IN LIMINE TO PRECLUDE THE DEFENDANT FROM TESTIFYING ABOUT THE DISPOSITION OF THE UNDERLYING CRIMINAL CHARGE SUBSEQUENT TO HIS ARREST

B. PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTIONS

1. PLAINTIFF SHOULD NOT BE PRELUDED FROM TESTIFYING ABOUT HIS DAMAGES.

2. PLAINTIFF SHOULD NOT BE PRECLUDED FROM TESTIFYING ABOUT THE DISPOSITION OF HIS CASE SUBSEQUENT TO HIS ARREST.

C. PLAINTIFF'S MOTION IN LIMINIE TO EXCLUDE CERTAIN TESTIMONY AND DOCUMENTS.

D. DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION IN LIMINE

E. DEFENDANT'S MOTIONS

THE DEFENDANTS' MOTION TO PRECLUDE THE PLAINTIFF FROM TESTIFYING REGARDING HIS ALLEGED DAMAGES

Facts

1. The Plaintiff has filed a claim alleging that City of Miami Police officers improperly searched his home on September 29, 2005. There is no claim for false arrest.

2. As a result of the search, the Plaintiff claimed that the Police Officers caused both structural damage to his house and damage to his personal property. In addition, the Plaintiff claims that he suffered some type of anxiety watching his property being destroyed. The Plaintiff has never seen a doctor for this condition. (Deposition of Eldrick Brown pp 114-117)

3. The Defendant testified, during his deposition, that he never paid to repair any of the structural damage to the house. (Deposition of Eldrick Brown pp 56-57, 85-88, 88-89)

4. He further testified that he never replaced any of the personal property he alleged was destroyed by the Officers (56- 100)

5. Finally, Ms. Fredericka Brown, Eldrick's mother, paid to have a handy man remove and dispose of all of Eldrick's personal property shortly after his arrest. (deposition of Ms. Brown pending)

6. At best, Mr Brown is entitled to nominal damages.

MEMORANDUM OF LAW

Any alleged constitutional deprivation must be accompanied by actual injury. *Carey v. Phipus*, 435 U.S. 247 (1978) If actual injury cannot be proven, then the Plaintiff may be entitled to nominal damages. *Id.* Fed Rule of Evidence. 401 (relevant evidence tends to make the existence of a fact)

Mr. Brown suffered no actual injury because the personal property Mr. Brown alleges was destroyed as a result of the search was never replaced. Many of the items were not destroyed but discarded by his mother after his arrest. Mr. Brown should be precluded from testifying about items that were not destroyed but discarded

2. DEFENDANTS MOTION IN LIMINE TO PRECLUDE THE DEFENDANT FROM TESTIFYING ABOUT THE DISPOSITION OF THE UNDERLYING CRIMINAL CHARGE SUBSEQUENT TO HIS ARREST

1. The Plaintiff has filed a claim alleging that City of Miami Police officers improperly searched his home on September 29, 2005. There is no claim for false arrest.

2. It is presumed that the Plaintiff will seek to introduce evidence regarding the disposition of his underlying criminal charge in this trial.

3. This is a claim alleging an unconstitutional search of his house. The plaintiff has not challenged his arrest. Conversely, there is a valid arrest in this case.

4. Evidence regarding the disposition of his underlying charge is not relevant.

MEMORANDUM OF LAW

FEDERAL RULE OF EVIDENCE 401

“Relevant evidence “ means evidence having a any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

B. PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTIONS

1. PLAINTIFF SHOULD NOT BE PRELUDED FROM TESTIFYING ABOUT HIS DAMAGES.

2. PLAINTIFF SHOULD NOT BE PRECLUDED FROM TESTIFYING ABOUT THE DISPOSITION OF HIS CASE SUBSEQUENT TO HIS ARREST.

C. PLAINTIFF’S MOTION IN LIMINIE TO EXCLUDE CERTAIN TESTIMONY AND DOCUMENTS.

1. The testimony of Brian Muller’ and his Report (ACE Data Entry Report (F1-F25), were prepared in anticipation of trial to address the date on the drug and currency receipts showing the property was received in the property room the day before Brown’s arrest.

2. In addition to being unreliable and untrustworthy, they are inconsistent with the deposition testimony of Kerri Smith, Eldrick Brown and Officer Braddy who stated that they saw no drugs in the living room on September 29, 2005. Ironically, Officer Braddy assisted Officer Jean-Poix in the arrest and standing in the same room, yet when asked if he saw the drugs, Officer Braddy stated that, “He saw nothing”.

3. However, Officer Jean-Poix, who turned the drugs into the property room, stated that the drugs were in plain view on a table in the living room of Brown’s home. In addition to this inconsistency of three witnesses not seeing he drugs, the property receipts for the drugs and currency show they were received in the property room the day before Brown’s arrest.

4. Further inconsistencies indicate lack of trustworiness are differences in amounts and quantities shown on the Arrest Affidavit, the Property Receipts (Ali, Michael OFC.) and (CIV.ALI,MICHAEL), and the Forensic Lab Report. The nature of these inconsistencies in the documents indicate that they are not reliable or trustworthy enough to be admitted under the business records exception to the hearsay rule. These were not reliable documents or testimony prepared in the ordinary course of business, but were prepared in anticipation of trial.

5. Defendant have taken pictures of the residence years after the arrest, in anticipation of litigation and are attempting to introduce them into evidence to prove that the property had bars at the time of the arrest 2005. These pictures are unreliable, untrustworthy and do not meet the hearsay business records exception.

MEMORANDUM OF LAW

6. Pursuant to the Federal Rules of Evidence ("F.R.E.") 803 (6) (E) 702 and 703, Plaintiff's counsel moves for an order to exclude testimony or video deposition of Brian Muller and his 25 page report and the testimony or video tapped testimony of Caroline Milanes and forensic documents ,as being prepared in anticipation of trial, unreliable and evidencing a lack of trustworthiness or based on documents which are unreliable and untrustworthy.

7. Pursuant to 803 (6)(E) neither the source of information nor the method or circumstances of preparation of business records can indicate a lack of trustworthiness. Where the source of information or circumstances or preparation indicate a lack of trust worthiness it fails to meet the requirements of the exception to the hearsay rule.

8. In the case of Palmer v. Hoffman, 318 U.S. 109, the U. S. Supreme Court ruled that an accident report created by a railroad company which was prepared in anticipation of a lawsuit by the victim was inadmissible, because it was not prepared in the regular course of business. Railroad travel, and not litigation, was the primary business of the railroad, and therefore the report was not considered sufficiently reliable to be admitted into evidence.

D. DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION IN LIMINE SEEKING TO EXCLUDE THE TESTIMONY OF CAROLINA MILANES AND BRIAN MULLER

1. As a result of that search the Plaintiff was arrested and the Defendant's recovered narcotics and impounded same in the Miami Police property unit. The City's property receipt has the wrong date (September 28, 2005). In and around June of 2005, the City of Miami implemented new computer tracking software for its property unit.

2. It is expected that the Plaintiff's will argue that the he never possessed any drugs and that any narcotics recovered that night were planted.

3. The Plaintiff's motion in limine seeks to exclude the testimony of Brian Muller and Carolina Milanes.

4. Ms. Milanes is a criminalist employed with the Miami-Dade County Crime lab and she was responsible for testing the narcotics impounded in this

case. The report the plaintiff seeks to exclude is the Miami-Dade County lab report.

5. Mr. Muller is the vice president of the Ace Computer Company, the company responsible for implementing, training, and auditing the City's computer tracking software. Mr Muller participated in designing the software and trained City property clerks on it use.

6. Mr. Muller has been deposed and he will testify that he performed a forensic check of the property room computer and determined that the property receipt was electronically created by the clerk on September 28, 2005, in error, because the records indicated that she created over (88) computer generated property receipts but did not use them all. The blank property receipt, relevant to Mr. Brown's case, was created on September 28, 2005 but populated with information on September 29, 2005 by the clerk on duty. The receiving clerk on September 29, 2005, never changed the date in the computer generated property receipt from the prior day.

MEMORANDUM OF LAW

The decision to qualify an expert rests within the sound discretion of the trial judge. *United States v. Johnson*, 575 F.2d 1347 (5th Cir 1978) In order to determine whether a witness is qualified to testify as an expert regarding the matters he intends to address, the Eleventh Circuit and other courts of appeal agree that a witness who possesses general knowledge of a subject may qualify as an expert despite lacking specialized training or experience, so long as his testimony would likely assist a trier of fact. See *United States v. Hensel*, 711 F.2d 1000, 1006 (11th Cir. 1983)

The Plaintiff's reliance on *Palmer v. Hoffman*, 318 U.S. 109 is misplaced. In *Palmer*, the primary issue concerned whether an oral statement given by a deceased witness qualified as a business record of the railway. Both witnesses testified in their depositions that the documents they generated were business records within the requirements of Fed.R.Evid. 803(6).

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,
Plaintiff,

vs.

RODERICK PASSMORE, et. al,
Defendants,

SECOND CORRECTED JOINT PRE-TRIAL STIPULATION

It is stipulated by and between the parties that:

1. Nature of Proceedings:

This is an action for alleged violation of Plaintiff's Fourth Amendment rights

Estimated length of trial is 4 to 5 days.

2. Jurisdiction: 42 U.S. C. § 1983

3 The pleading raising the issues is Plaintiff Amended Complaint (D.E. 28).

4 Narrative Statements

a. Plaintiff's narrative statement of the case:

While inside his home with Kerri Smith (Smith) on September 29, 2005, a police officer came through the window of Plaintiff, Eldrick Brown's, (Brown) residence at 5918 NW 13 Avenue, Miami, Florida, without a warrant and without consent. Smith and Brown who were in the bed room were ordered into the living room. Other police officers broke through the front door. Smith was taken outside and instructed to leave. While detained in the living room, Brown observed his personal items, including stereo speakers, clothing, and furniture damaged by officers searching for drugs. No drugs were found. Brown was taken into custody and transported to the North District Substation and subsequently charged with possession of marijuana with intent to sell and possession of cocaine with intent to sell. Then Brown was transferred to Miami-Dade County jail. The charges of possession of marijuana with intent to sell and possession of cocaine with intent to sell were "No-Actioned" 21 days later on October 20, 2005. The

Plaintiff contends that the search was unlawful and unauthorized in violation of Brown's Fourth Amendment Rights.

b. Defendants' narrative statement of the case:

The Defendants were a part of a narcotics surveillance team and observed Mr. Brown and a Co-Defendant selling narcotics in front of 5918 NW 13th Ave on or about September 29, 2005. At the time the Officers attempted to apprehend Mr. Brown, he ran into his house to avoid capture. The Officers gave chase without losing sight of him, and arrested him inside his house where the narcotics were discovered and impounded. The Defendants allege that the search of Mr. Brown's house was consistent with the Fourth Amendment.

5.. A list of undisposed motions or other matters requiring action by the court.

a Plaintiff's motion to withdraw

b Defendants' motion for sanctions and to strike plaintiff's pleading will be filed by Friday, May 11, 2012.

6.. A concise statement of uncontested facts which require no proof at trial, with reservations:

- a. Date of search and arrest was September 29, 2005.
- b. Place of arrest and search was 5918 NW 13th Avenue, Miami, FL 33142.
- c. Police had no warrant on September 29, 2005.
- d. Brown was arrested inside the house on September 29, 2005.
- e. On September 29, 2005, Brown was charged with (1) possession of marijuana with intent to sell, and (2) possession of cocaine with intent to sell. (Defendants reserve an objection to relevance-this is an Unconstitutional search claim not a false arrest claim).
- f. Brown was incarcerated from September 29, 2005 through July 2006 because he was held no bond status as a result of a prior arrest in August of 2005, under Case Number F056197. (Defendants reserve an objection to relevance—this is a false search claim not a false arrest claim and defendant did not file a false arrest claim)
- g.. Smith was not arrested on September 29, 2005. (Defendants reserve an objection to relevance-Ms. Smith is not a party to this claim)

7.. A concise statement of issues of law on which there is agreement

a. None

8. A concise statement of issues of law which remain for determination by the Court.

- a. Whether Plaintiff's Fourth Amendment U.S. Constitutional right to be free from unlawful search was violated.

9.. The exhibits to be offered at trial:

a.. Plaintiff's Exhibits

1. P1. Picture of broken window
2. P-2- Arrest Affidavit (9/29/05 Arrest of Eldrich Brown)
3. P-3 Drug Property Receipt (Ali, Michael OFC.)
4. P-4 Drug Property Receipt (CIV,ALI,MICHAEL)
5. P-5 Currency Property Receipt
6. P-6 Moneysheet, Property Unit (3 pages dated 9/29/05)
7. P-7 Arraignment Bench Docket/State Attorney Charging Document. (5 pages) (Defendant objection to A, R, H, improper predicate)
8. P-8 Disposition (No-action) of Sep. 29, 2005 charges (Defendants object R)
9. P-9 Disposition of charges against Giordono Rolle on 3/29/05(Defendants object R, H)
10. P-10 Disposition of charges against Brown. (Defendants Object R, H)
11. P-11 Deposition of Kerri Smith
12. P-12 Deposition of Fredericka Brown
13. P-13 Deposition of Det. Passmore (impeachment)
14. P-14 Deposition of Officer Williams(impeachment)
15. P-15 Deposition of Officer Goins(impeachment)
16. P-16 Deposition of Officer Braddy(impeachment)
17. P-17 Deposition of Sergeant Cook (impeachment)
18. Impeachment evidence

b. Defendants' Exhibits

18. D-A- Arrest Affidavit (9/29/05 Arrest of Eldrick Brown)
19. D-B All Drug Property Receipts (Ali, Michael OFC.)
20. D-C Curreney Property Receipt (CIV.ALI,MICHAEL)
21. D-D Moneysheet, Property Unit (3 pages dated 9/29/05) (P Objects I, H)
22. D-E Lab Analysis Report dated October 12, 2005. (P Objects, I, H)
23. D-F Incident Report (incident No. 050929-023606)
24. D-G Incident Report (4 pages including Incident summary, Persons involved, and Narratives)

25. D-H ACE Data Entry Report of Brian Muller (F1-F25) (Plaintiff objects I,H)
26. D-I Photos of 5918, the address of the arrest, with Bars (P objects I, A, UP)
27. D-J State of Florida Score sheet in 2006 (impeachment) (P Objects R)
28. D-K Criminal Priors. (P objects R).
29. D-L Plaintiff's prior deposition in Case number 09-20945. (P reserves right to object R).
30. D-M Defendants video deposition of Mr. Brian Muller with exhibits. (Plaintiff Objects, I, H, UP)
31. D-N Defendants video deposition of Caroline Milanes with exhibits. (Plaintiff Objects, I, H, UP)
32. D-O The actual narcotics being held in the Miami Property unit. (Plaintiff objects I, UP).

10. Statement of all admissions by and all issues between the parties with respect thereto are:

- a. Plaintiff's objections to Defendants' Exhibit D-I, (A, UP) Photos which do not accurately depict the location and were untimely taken should not be allowed to admit that the property had bars on the date of the arrest. No responses to admissions were filed in part due to Brown's incarceration.

11. A statement in reasonable detail of issues of fact which remain to be litigated at trial.

- a. Whether City of Miami Police's search of 5918 NW 13th Ave on September 29, 2005 was constitutional.
- b. Whether Mr. Brown has suffered any damages.
- c. Whether or not Mr. Brown is entitled to compensatory/liquidated damages in the amount of \$8,989 and/or punitive in the amount of \$200,000, and/or treble damages and/or damages due to anxiety amounting to emotional distress in the amount of \$50,000.

12. Each parties' numbered witness list of trial witnesses:

a.. List of Plaintiff witnesses.

1. Ms. Kerri Smith, 15071 South River Drive, Miami Florida

2. Fredrerika Brown, 3645 Franklin Avenue, Miami, Florida
3. Sargent William Cook, 400 NW 2nd Ave, Miami, FL 33131
4. Officer William Goins, 400 NW 2nd Ave, Miami, FL 33131
5. Officer Dairon Williams, 400 NW 2nd Ave, Miami, FL 33131
6. Det. Rodrick Passmore, 400 NW 2nd Ave, Miami, FL 33131
7. Officer Michael Braddy, 400 NW 2nd Ave, Miami, FL 33131
8. Officer Stanley Jean-Poix, 400 NW 2nd Ave, Miami, FL 33131
9. Geo. Rolle, 4225 N.W. 24th Ave, Miami, FL 33142

b. List of Defense witnesses.

10. Sgt. Cook, 400 NW 2nd Ave, Miami, FL 33131
11. Officer Goins, 400 NW 2nd Ave, Miami, FL 33131
12. Officer Williams, 400 NW 2nd Ave, Miami, FL 33131
13. Det. Passmore, 400 NW 2nd Ave, Miami, FL 33131
14. Officer Braddy, 400 NW 2nd Ave, Miami, FL 33131
15. Officer Jean-Poix, 400 NW 2nd Ave, Miami, FL 33131
16. Mr. Brian Muller (expert) video deposition, 3155 Main Street, Salem, VA 24153
17. Ms. Caroline Milanes video deposition, Miami-Dade County Crime lab, 9000 NW 25th St.
18. Ms. Fedricka Brown, 3645 Franklin Avenue, Miami, Florida
19. Ms. Kerry Smith, 15071 South River Drive, Miami Florida

13. Plaintiff's attorneys fees are anticipated to be \$35,500.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was delivered to Kevin Jones, Esq., 444 S.W. 2nd Ave, Suite 945, Miami, FL 33131, and to Brent Chudachek, Esq, Ronald J. Cohen, P.A. 8100 Oak Lane, suite 403, Miami Lakes, FL 33016, fax 305-823-7778 on this 10th day of May 2012.

ROBERT A. YOUNG
Attorney for Plaintiff
3576 Charles Avenue
Coconut Grove, Florida 33133

By: **Robert A. Young//s**
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Kevin R. Jones
Kevin R. Jones, Assistant City Attorney
Florida Bar No. 0119067

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

Kevin R. Jones, Esq.
Assistant City Attorney
Counsel for Defendants
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
KRJones@miamigov.com
(305) 416-1800 Telephone
(305) 416-1801 Fax
Via Notice of Electronic Filing

Brent J. Chudachek, Esq.
Ronald J. Cohen, P.A.
Additional Counsel for Defendants
Losa, Maloney, Merced and Seigle
8100 Oak Lane, Suite 403
Miami Lakes, Fl 33016
bchudachek@roncohenlaw.com
(305) 823-1212 Telephone
(305) 823-7778 Facsimile
Via Notice of Electronic Filing

Robert A. Young, Esq.
Viera Gilford, Esq.
3576 Charles Avenue
Miami, Florida 33133
Email: robtyoungatty@yahoo.com
(305) 877-9470 Telephone
Attorney for: Plaintiff-Eldrick Brown
Via Notice of Electronic Filing

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,
Plaintiff,

vs.

RODERICK PASSMORE, et. al,
Defendants,

JOINT MOTIONS IN LIMINE

I. MOTIONS IN LIMINE INDEX

A. DEFENDANT'S MOTIONS

1. THE DEFENDANTS' MOTION TO PRECLUDE THE PLAINTIFF FROM TESTIFYING REGARDING HIS ALLEGED DAMAGES

2. DEFENDANTS MOTION IN LIMINE TO PRECLUDE THE PLAINTIFF FROM TESTIFYING ABOUT THE DISPOSITION OF THE UNDERLYING CRIMINAL CHARGE SUBSEQUENT TO HIS ARREST

B. PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTIONS

1. PLAINTIFF SHOULD NOT BE PRELUDED FROM TESTIFYING ABOUT HIS DAMAGES.

2. PLAINTIFF SHOULD NOT BE PRELUDED FROM TESTIFYING ABOUT THE DISPOSITION OF HIS CASE SUBSEQUENT TO HIS ARREST.

C. PLAINTIFF'S MOTION IN LIMINIE TO EXCLUDE CERTAIN TESTIMONY AND DOCUMENTS.

D. DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION IN LIMINE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,
Plaintiff,

vs.

RODERICK PASSMORE, et. al,
Defendants,

JOINT MOTIONS IN LIMINE

A. DEFENDANT'S MOTIONS

**1. THE DEFENDANTS' MOTION TO PRECLUDE THE PLAINTIFF
FROM TESTIFYING REGARDING HIS ALLEGED DAMAGES**

Facts

1. The Plaintiff has filed a claim alleging that City of Miami Police officers improperly searched his home on September 29, 2005. There is no claim for false arrest.

2. As a result of the search, the Plaintiff claimed that the Police Officers caused both structural damage to his house and damage to his personal property. In addition, the Plaintiff claims that he suffered some type of anxiety watching his property being destroyed. The Plaintiff has never seen a doctor for this condition. (Deposition of Eldrick Brown pp 114-117)

3. The Defendant testified, during his deposition, that he never paid to repair any of the structural damage to the house. (Deposition of Eldrick Brown pp 56-57, 85-88, 88-89)

4. He further testified that he never replaced any of the personal property he alleged was destroyed by the Officers (56- 100)

5. Finally, Ms. Fredericka Brown, Eldrick's mother, paid to have a handy man remove and dispose of all of Eldrick's personal property shortly after his arrest. (deposition of Ms. Brown pending)

6. At best, Mr Brown is entitled to nominal damages.

MEMORANDUM OF LAW

Any alleged constitutional deprivation must be accompanied by actual injury. *Carey v. Phipus*, 435 U.S. 247 (1978) If actual injury cannot be proven, then the Plaintiff may be entitled to nominal damages. *Id.* Fed Rule of Evidence. 401 (relevant evidence tends to make the existence of a fact . . .)

Mr. Brown suffered no actual injury because the personal property Mr. Brown alleges was destroyed as a result of the search was never replaced. Many of the items were not destroyed but discarded by his mother after his arrest. Mr. Brown should be precluded from testifying about items that were not destroyed but discarded

2. DEFENDANTS MOTION IN LIMINE TO PRECLUDE THE PLAINTIFF FROM TESTIFYING ABOUT THE DISPOSITION OF THE UNDERLYING CRIMINAL CHARGE SUBSEQUENT TO HIS ARREST

1. The Plaintiff has filed a claim alleging that City of Miami Police officers improperly searched his home on September 29, 2005. There is no claim for false arrest.

2. It is presumed that the Plaintiff will seek to introduce evidence regarding the disposition of his underlying criminal charge in this trial.

3. This is a claim alleging an unconstitutional search of his house. The plaintiff has not challenged his arrest. Conversely, there is a valid arrest in this case.

4. Evidence regarding the disposition of his underlying charge is not relevant.

MEMORANDUM OF LAW

FEDERAL RULE OF EVIDENCE 401

“Relevant evidence “ means evidence having a any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

B. PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTIONS

1. PLAINTIFF SHOULD NOT BE PRELUDED FROM TESTIFYING ABOUT HIS DAMAGES.

Plaintiff’s reliance on *Carey v. Phipus*, 435 U.S. 247 (1978) is misplaced. In that case students were simply suspended from school. However, here Plaintiff stood and anxiously watched as his property was destroyed by police officers who came in without a warrant. Plaintiff was then taken to into custody by police officers without being able to secure his property. Plaintiff stayed in jail for the next nine months. Defendants are not absolved from their duty to compensate Plaintiff for damages caused by them whether or not Plaintiff has replaced the damaged items. Plaintiff should not be excluded from

testifying about property damage he actually saw being damaged and about the emotional distress that resulted as a consequence of the officers' activities.

2 PLAINTIFF SHOULD NOT BE PRECLUDED FROM
TESTIFYING ABOUT THE DISPOSITION OF HIS CASE
SUBSEQUENT TO HIS ARREST.

Plaintiff's testimony and evidence should not be excluded or limited to prove Plaintiff's claim for punitive, or treble damages or to show the emotional distress that resulted to Plaintiff as a consequence of Defendants' unjustifiably depriving Plaintiff of life, liberty, or property. Plaintiff should not be precluded from testifying about the disposition of his case subsequent to his arrest where he was unjustifiably deprived of more than a right. He was deprived of property and liberty. Carey v. Phipus, 98 Sup. Ct. 1042 (1978).

The Supreme Court in State Farm v. Campbell, 538 U.S. 408 allowed evidence, which addressed the business practices where compensatory and punitive damages were sought and allowed, so long as punitive damages were not excessive.

C. PLAINTIFF'S MOTION IN LIMINIE TO EXCLUDE CERTAIN TESTIMONY
AND DOCUMENTS.

1. The testimony of Brian Muller' and his Report (ACE Data Entry Report (Defendant's Exhibit H), were prepared in anticipation of trial in 2012 to address the date on the drug and currency receipts showing the property was received in the property room the day before Brown's arrest, which happened seven years ago.

2. In addition to being unreliable and untrustworthy, they are inconsistent with the deposition testimony of Kerri Smith, Eldrick Brown and Officer Braddy who stated that they saw no drugs in the living room on September 29, 2005. Ironically, Officer Braddy assisted Officer Jean-Poix in the arrest and standing in the same room, yet when asked if he saw the drugs, Officer Braddy stated that, "He saw nothing".

3. However, Officer Jean-Poix, who turned the drugs into the property room, stated that the drugs were in plain view on a table in the living room of Brown's home. In addition to this inconsistency of three witnesses not seeing he drugs, the property receipts for the drugs and currency show they were received in the property room the day before Brown's arrest.

4. Further inconsistencies indicate lack of trustworiness are the differences in amounts and quantities shown on the Arrest Affidavit (Defendant's exhibit A, the Property Receipts (Ali, Michael OFC.) (Plaintif's Exhibit 3) and (CIV.ALI,MICHAEL) (Plaintiff's Exhibit 4), and the Forensic Lab Analysis Report (Defendant's Exhibit E). The testimony or video tapped testimony of Caroline Milanes and Forensic Lab Analysis Report (Defendant's Exhibit E), are, unreliable, highly prejudicial and the documents evidencing the drugs (all created

by Defendant) in addition to inconsistent testimony indicate a lack of trustworthiness and therefore testimony of Milanes and Forensic Lab Report should be excluded as unreliable and untrustworthy.

5. Defendant have taken unauthenticated photos (Defendant's Exhibit I) of the residence years after the arrest, in anticipation of litigation and are attempting to introduce them into evidence to prove that the property had bars at the time of the arrest 2005.

6. The nature of these inconsistencies in the photos, testimony of Brian Muller and Caroline Milanes, and Defendants Exhibits E and H indicate that they are not reliable or trustworthy enough to be admitted under the business records exception to the hearsay rule or not authenticated and highly prejudicial. These were not reliable documents or testimony prepared in the ordinary course of business, but were prepared in anticipation of trial.

7. Plaintiff's counsel moves to exclude testimony or video deposition of Brian Muller and his 25 page report and photos, testimony of Brian Muller and Caroline Milanes, and Defendants Exhibits E and H

MEMORANDUM OF LAW

8. Pursuant to the Federal Rules of Evidence ("F.R.E.") 803 (6),.

9. Pursuant to 803 (6) neither the source of information nor the method or circumstances of preparation of business records can indicate a lack of trustworthiness. Where the source of information or circumstances or preparation indicate a lack of trust worthiness it fails to meet the requirements of the exception to the hearsay rule.

10. The Fourth Amendment requires detail when the violation of Constitutional rights are concerned. U.S. Const, 4th Amend.

11. In the case of Palmer v. Hoffman, 318 U.S. 109, the U. S. Supreme Court ruled that an accident report created by a railroad company which was prepared in anticipation of a lawsuit by the victim was inadmissible, because it was not prepared in the regular course of business. Railroad travel, and not litigation, was the primary business of the railroad, and therefore the report was not considered sufficiently reliable to be admitted into evidence.

D. DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION IN LIMINE SEEKING TO EXCLUDE THE TESTIMONY OF CAROLINA MILANES AND BRIAN MULLER

1. As a result of that search the Plaintiff was arrested and the Defendant's recovered narcotics and impounded same in the Miami Police property unit. The City's property receipt has the wrong date (September 28, 2005). In and around

June of 2005, the City of Miami implemented new computer tracking software for its property unit.

2. It is expected that the Plaintiff's will argue that the he never possessed any drugs and that any narcotics recovered that night were planted.

3. The Plaintiff's motion in limine seeks to exclude the testimony of Brian Muller and Carolina Milanes.

4. Ms. Milanes is a criminalist employed with the Miami-Dade County Crime lab and she was responsible for testing the narcotics impounded in this case. The report the plaintiff seeks to exclude is the Miami-Dade County lab report.

5. Mr. Muller is the vice president of the Ace Computer Company, the company responsible for implementing, training, and auditing the City's computer tracking software. Mr Muller participated in designing the software and trained City property clerks on it use.

6. Mr. Muller has been deposed and he will testify that he performed a forensic check of the property room computer and determined that the property receipt was electronically created by the clerk on September 28, 2005, in error, because the records indicated that she created over (88) computer generated property receipts but did not use them all. The blank property receipt, relevant to Mr. Brown's case, was created on September 28, 2005 but populated with information on September 29, 2005 by the clerk on duty. The receiving clerk on September 29, 2005, never changed the date in the computer generated property receipt from the prior day.

MEMORANDUM OF LAW

7. The decision to qualify an expert rests within the sound discretion of the trial judge. *United States v. Johnson*, 575 F.2d 1347 (5th Cir 1978) In order to determine whether a witness is qualified to testify as an expert regarding the matters he intends to address, the Eleventh Circuit and other courts of appeal agree that a witness who possesses general knowledge of a subject may qualify as an expert despite lacking specialized training or experience, so long as his testimony would likely assist a trier of fact. See *United States v. Hensel*, 711 F.2d 1000, 1006 (11th Cir. 1983)

8. The Plaintiff's reliance on *Palmer v. Hoffman*, 318 U.S. 109 is misplaced. In *Palmer*, the primary issue concerned whether an oral statement given by a deceased witness qualified as a business record of the railway. Both witnesses testified in their depositions that the documents they generated were business records within the requirements of Fed.R.Evid. 803(6).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was delivered to Kevin Jones, Esq., 444 S.W. 2nd Ave, Suite 945, Miami, FL 33131, and to Brent Chudachek, Esq, Ronald J. Cohen, P.A. 8100 Oak Lane, suite 403, Miami Lakes, FL 33016, fax 305-823-7778 on this 10th day of May 2012.

ROBERT A. YOUNG
Attorney for Plaintiff
3576 Charles Avenue
Coconut Grove, Florida 33133

By: Robert A. Young//s
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

ROBERT A. YOUNG
Attorney for Plaintiff
3576 Charles Avenue
Coconut Grove, Florida 33133

By: Robert A. Young//s
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

Kevin R. Jones, Esq.
Assistant City Attorney
Counsel for Defendants
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
KRJones@miamigov.com
(305) 416-1800 Telephone
(305) 416-1801 Fax
Via Notice of Electronic Filing

Brent J. Chudachek, Esq.
Ronald J. Cohen, P.A.
Additional Counsel for Defendants
Losa, Maloney, Merced and Seigle
8100 Oak Lane, Suite 403
Miami Lakes, Fl 33016
bchudachek@roncohenlaw.com
(305) 823-1212 Telephone
(305) 823-7778 Facsimile
Via Notice of Electronic Filing

Robert A. Young, Esq.
Viera Gilford, Esq.
3576 Charles Avenue
Miami, Florida 33133
[Email: robtyoungatty@yahoo.com](mailto:robtyoungatty@yahoo.com)
(305) 877-9470 Telephone
Attorney for: Plaintiff-Eldrick Brown
Via Notice of Electronic Filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDERICK BROWN,

Plaintiff(s),

vs.

RODERICK PASSMORE, ET AL.,

Defendant(s).

_____ /

DEFENDANTS' MOTION FOR SANCTIONS

COMES NOW THE DEFENDANTS, Officer Williams, Officer Goins, Officer Passmore and Officer Cook (hereinafter "Defendants"), and hereby invokes the inherent powers of the Court and seeks sanctions of striking the Plaintiff's pleadings and for attorney's fees and costs incurred during this action, and as ground therefore states:

PROCEDURAL HISTORY

1. The Plaintiff has filed a claim pursuant to 42 USC §1983 alleging that various City of Miami Police Officers violated the Fourth Amendment when they searched his home on September 29, 2005.

2. The Defendants filed a Summary Judgment raising Qualified Immunity and this Court denied the Defendants' Motion. [D.E. 55, 68, 73] The Eleventh Circuit Court Appeal affirmed this Court's ruling, raising two concerns.^{1 2} [D.E 86]

¹ The deposition of Mr. Brian Muller (Vice President Software Technique) has been taken and he will testify as to how the Property receipt in question was created in error by the attending clerk the day before Eldrick's arrest.

3. On remand, the Court permitted limited discovery to both the Plaintiff and the Defendants.

4. Through the course of discovery, it has become apparent to the Defendants that the Plaintiff has made numerous statements not supported and/or contradicted by the physical evidence, his own witnesses, and/or his previous sworn statements.

5. The Defendants now move this Court to enter an Order of Sanctions striking Mr. Brown's pleadings and any other relief this Court deems just and proper.

6. The Plaintiff's claims are specifically embodied in his Amended Complaint filed with this court. [D.E. 28]

7. However, the most relevant allegations are as follows:

On September 29, 2005 Officer Roderick Passmore broke the window in his guest bedroom where his roommate Keri Smith was sleeping. She ran from the room to alert and wake Mr. Brown, who was sleeping in his own room. They were confronted by Officer Passmore who at gun point directed them to the living room. Then two other officers kicked Mr. Brown's door off its hinges destroying the door's fascia board. The officers then searched his home illegally destroying his personal property.[D.E. 28] (See Exhibit B pgs. 52-54; 134-135)

FACTUAL HISTORY

1. Mr. Brown's Criminal History

8. The Defendants propounded interrogatories to the Plaintiff on or about January 29th, 2010, requesting his criminal history. (See exhibit A)

9. Questions 12 and 13 of the Defendants' interrogatories sought to discover all prior criminal arrests and convictions prior to the date of the incident in this case and the disposition of those cases.

² The Deposition of Ms. Milanes (Miami-Dade County Crime Lab) was taken and she will testify that the amount of narcotics listed in the arrest form and listed in the property receipt are consistent. She tested the items and they

10. The Plaintiff responded in the affirmative and listed two cases as follows: **A.** *“Plaintiff was arrested on Case No.: F-05-26197 in Miami-Dade County at 3645 Franklin Ave. charge with (1) count of trespass after warning; count (2) possession of cannabis (3) Battery on person 65 or older; B. October 2nd 2006, Plaintiff was arrested on charges of Manufacture, Delivery; and possession of Cocaine with intent to sell (F-06-34364(A))³.*

11. On March 23, 2012, the Defendants re-deposed the Plaintiff regarding his alleged damages and confronted him with his state court Criminal Score Sheet. (See Exhibit B, Defendants’ exhibit 3).

12. At that time the Plaintiff admitted he had (9) prior criminal convictions, (6) of which appear to be felonies and on at least one case, he was sentenced to prison. (See Exhibit B, pgs. 142, 144-150).

II. Allegations in the Complaint

a. Eldrick Brown

13. The Plaintiff testified that he was asleep alone in his room when his roommate, of six months, ran to his room to wake him up because she saw a City Police Officer climbing through her window. (See D.E. 28)(Exhibit C, pp 9-10).

14. The Plaintiff further testified that Keri Smith lived in the guest bedroom for three months prior to this event and that their relationship was strictly business. (See Exhibit C pp 6-7).

15. The Officer who entered through the window broke the window and the other officers who entered the house kicked in the door “breaking the hinges and the fascia board off the door.” (See Exhibit B pgs. 52-54; 134-135).

were positive for cocaine and marijuana.

³ The Case number was part of the Plaintiff’s answer to number (13) of the Defendant’s interrogatories but relates to the case being referenced by the Plaintiff.

16. Although he was incarcerated and did not make the repairs himself, he testified that his mother made the repairs and told him or his representative what she had done. (See Exhibit B pgs. 55-57, 88-89).

b. Keri Smith

17. Keri Smith testified that she moved in with the Plaintiff (3) days before the arrest on September 29, 2005. (See Exhibit D pp 24, 31).

18. Ms. Smith further testified that she slept exclusively in the Plaintiff's room and not in the guest bedroom. (See Exhibit D pp 31-34).

19. Ms. Smith further testified that she and the Plaintiff had more than just a business relationship. (See Exhibit D pp 31-34).

c. Ms. Fredericka Brown

20. Ms. Fredericka Brown is Eldrick's mother and the caretaker of the property. (see Exhibit E, pp 8-9, 24)

21. Ms. Fredericka Brown testified that she never replaced any windows at the location. (See Exhibit E pp 66).

22. She boarded-up one window in Eldrick's room, not the guest bedroom, because the top pane of glass was missing and the bottom pane was cracked. (See Exhibit E pp 34-35, 54-55, 66).

23. She further testified that she never replaced the entire door but that she only replaced the lock. (See Exhibit E pp 65-66).

24. Once Ms. Brown was able to board-up the window in Eldrick's room and change the lock on the door, the apartment was secured. (See Exhibit E pp 65-67).

III. DAMAGES

25. The Defendants propounded damage interrogatories to the Mr. Brown and he swore to the veracity of those responses. (See Exhibit B pgs. 9-15).

26. As it relates to the Plaintiff's alleged financial losses, the numbers were largely made up and he ultimately admitted that the information he provided was not accurate or based on any actual provable losses. (See Exhibit B pp 31-49).

27. As it relates to Plaintiff's personal property, Ms. Brown, Eldrick's mother, discarded all of his items. (See Exhibit E pp 51-58, 65-67).

28. As it relates to the structural damage to the house, the Plaintiff testified that his mother paid (\$500) to replace the door and (\$145) to fix the window. (See Exhibit B pp 13, 52, 88).

29. Ms. Brown testified that she never paid (\$145) to fix the window and never replaced the door. (see Exhibit E pp 62-67)

MEMORANDUM OF LAW

The United States Supreme Court has held that the federal courts possess the inherent power to sanction parties who conduct litigation in bad faith or who perpetrate a fraud on the court. Quantum Communications Corp. v. Star Broadcasting, Inc., 2007 WL 445307 (S.D. Fla. 2007), citing Chambers v. NASCO, Inc., 111 S.Ct. 2123 (1991); *and see* Zocaras v. Castro, 465 F.3d 479, 483 (11th Cir. 2006)(court also has the inherent ability to dismiss a claim in light of its authority to enforce its orders and provide for the efficient disposition of litigation). The inherent powers doctrine is most often invoked where a party commits perjury or destroys or doctors evidence. Quantum Communications Corp. v. Star Broadcasting, Inc., 2007 WL 445307 (S.D. Fla. 2007). Although the Eleventh Circuit has held that false statements alone do not indicate bad faith, a false statement may be evidence of bad faith if made for a harassing or frivolous purpose.

Id. quoting Byrne v. Nezhat, 261 F.3d 1075, 1125 (11th Cir. 2001). Moreover, several federal courts have held that the need for sanctions is heightened when the misconduct relates to the pivotal or linchpin issue in the case. Quantum Communications Corp. v. Star Broadcasting, Inc., 2007 WL 445307 (S.D. Fla. 2007).

At each pivotal stage in this case, the Plaintiff has offered testimony that has either been directly false or contradicted in every way by the physical evidence, his prior testimony, or the testimony of his witnesses.

The Defendants would ask the Court to ignore, for the moment, the false statement of his prior convictions. Undoubtedly many plaintiffs have lapses in memory when questioned about their prior criminal history. The Defendants would also ask the Court to ignore, for the moment, the false statements as they relate to, his witness, Keri Smith's presence in his home. This occurred some years ago and it is possible his memory differs from hers on the relevant facts.

However, if the Court were to focus solely on the testimony of Ms. Fredericka Brown, there is no possibility that the police entered his home in the manner in which he has testified. Ms. Brown, the caretaker for the property, never fixed a broken door or repaired the window in the guest bedroom.

If there is no possibility that the officers "kick the door off the hinges" or "broke a window in the guest bedroom", to gain entry, then the Plaintiff's false statement take on a more deliberate character. Given the actual repairs to the house, the Plaintiff's version has to be deliberately false-there is no other explanation.

When viewed in that light, the remaining factual discrepancies take on new meaning which the Court need no longer ignore. The Court need not presume, given the impossibility of the plaintiff's version, that the factual discrepancies among the plaintiff's witnesses are a result of

feeble memories or faint recollections. Rather, it would appear the Plaintiff is deliberately attempting to misuse this process in order to obtain an undeserved financial gain. That type of motivation would explain why the Plaintiff seeks money for financial losses that do not exist or money for repairs his mother never made.

WHEREFORE, THE DEFENDANTS requests this Court enter an Order granting their motion for sanctions, awarding costs incurred for the depositions and reserving ruling on an award of attorney's fees pending Defendants' supplemental motion for attorney's fees pursuant to Local Rule 7.3.

Respectfully submitted,

JULIE O. BRU, City Attorney
KEVIN R. JONES, Assistant City Attorney
Attorney for **CITY OF MIAMI**
444 S.W. 2nd Avenue, Suite 945
Miami, FL 33130-1910
Tel.: (305) 416-1800
Fax: (305) 416-1801
Email: KRJones@miamigov.com

By: s/Kevin R. Jones
Kevin R. Jones, Assistant City Attorney
Florida Bar No. 0119067

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Kevin R. Jones
Kevin R. Jones, Assistant City Attorney
Florida Bar No. 0119067

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

Robert A. Young, Esq.
Viera Gilford, Esq.
3576 Charles Avenue
Miami, Florida 33133
Email: robtyoungatty@yahoo.com
(305) 877-9470 Telephone
Attorney for: Plaintiff-Eldrick Brown
Via Notice of Electronic Filing

Kevin R. Jones, Esq.
Assistant City Attorney
Counsel for Defendants
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
KRJones@miamigov.com
(305) 416-1800 Telephone
(305) 416-1801 Fax
Via Notice of Electronic Filing

Brent J. Chudacheck, Esq.
Cohen & Rind, P.A.
Additional Counsel for Defendants
8100 Oak Lane, Suite 403
Miami Lakes, FL 33016
bchudachek@roncohenlaw.com
(305) 823-1212 Telephone
(305) 823-7778 Facsimile
Via Notice of Electronic Filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,

Plaintiff,

vs.

DETECTIVE RODERICK PASSMORE, et al.,

Defendant

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR
SANCTIONS AND CROSS MOTION FOR SANCTIONS**

The Plaintiff, Eldrick Brown, ("Brown") through the undersigned counsel, hereby files this response to Plaintiff's Motion for Sanctions, and states as follows:

1. This case is about an unauthorized search amounting to an unconstitutional violation of Plaintiff's Fourth Amendment right to be free from unreasonable searches of his dwelling or home (D.E. 28)
2. In a Motion for Sanctions, (D.E. 113), Defendant seeks sanctions against the Plaintiff for inconsistencies in the Plaintiff's testimony, including:
 - a. The correct number of Plaintiff's prior criminal arrest and convictions;
 - b. Allegations in the complaint as to whether Plaintiff was asleep alone at the time of the illegal search;
 - c. Allegations in the complaint as to how long, prior to the illegal search, Plaintiff's roommate Kerri Smith had lived with him; and
 - d. The nature of their relationship.
3. Sanctioning Plaintiff for inconsistent testimony regarding the above matters would fail to consider the following:
 - a. The above items are irrelevant and immaterial to the issue at hand as to whether the defendants conducted an illegal search of Plaintiff's dwelling on September 29, 2005.

b. At the time the Defendant propounded Interrogatories to Plaintiff, Brown was incarcerated. Some of his previous arrests were Nolle Pros, No Action, and/or Dismissed for Lack of Prosecution. The fact that Brown's responses were incomplete, should not be used as grounds to dismiss this case, especially in light of the inconsistencies in statements listed below by the Defendants, which relate to the pivotal or linchpin issue in this case and should entitle Plaintiff to Sanctions.

4. The length and nature of Brown's relationship with Kerri Smith should not be admitted into testimony in this case, since it is irrelevant to the issue at hand, as to whether the police officers acted illegally in violation of the Constitution by searching Plaintiffs home on September 29, 2005, without a warrant. In a deposition of Kerri Smith taken on April 13, 2012, (Attached as Exhibit 1) she stated that she was inside of the house (Pg. 3, Ln 24-25); Mr. Brown was inside of the house (Pg. 4, Ln 1). The police came into the house (Pg. 4, Ln 6), She did not open the door, Brown did not open the door (Pg. 4, Ln 9-11), The police came through the window in the bedroom, there was no door in that room from the outside (Pg. 4, Ln 14-15), the officer asked me to come into the living room (Pg. 5, Ln. 5), I remember him having a gun (Pg. 5, Ln 8-9), No, I did not see any drugs on the table in the living room (Pg. 5, Ln 12-14). Some cops came in and were searching around (Pg. 5, Ln 19-25), I was not arrested that day (Pg. 6, Ln 5-6). I was allowed to leave (Pg. 6, Ln 8).

5. In a deposition of Officer Stanley Jean-Poix taken on March 23, 2012, (Portions attached as Exhibit 2) when questioned about the September 29, 2005 search and arrest he stated as follows:

Q: Did any other officer pursue Mr. Brown? (Pg. 34, Ln 7-8)

A: I believe Officer Braddy was next to me.

A: We chased him he ran right into the house and we were right behind him. (Pg. 39, Ln 1-5)

Q: Was he in your sight at all times? (Pg. 40, Ln 9-20)

A: Yes, the room where we entered, that's where he was apprehended.

Q: What property did Mr. Brown have on his person when you apprehended him? Did he have drugs? (Pg. 43, Ln 13-25).

A: Drugs were recovered but that was inside the house.

Q: Who found the drugs inside the house?

A: I found it (Pg. 43, Ln 24-25)

Q: Where did you find it? (Pg. 44, Ln 1-15)

A: On a table, in the same room he ran into, they were out like plain view, basically looks like they were ready for distribution. Usually when people are selling drugs, they have it on a table aligned in a certain way so when sellers come they are able to sell it, pick and choose what they want.

Q: Exactly what were the drugs that you saw? (Pg. 44-45, Ln 24)

A: Cocaine, Marijuana.

Q: What was Officer Braddy doing in the room with you and Brown? (Pg. 45, Ln 2-4)

A: He was helping me secure Mr. Brown.

Q: What did you do with the drugs? (Pg. 45, Ln 7-10)

A: We had to impound the drugs, turn it in.

6. However, in a deposition of taken of Officer Michael Braddy, on February 29, 2012, (Attached as Exhibit 3), he stated when he got the acknowledgement to move in they converged on this location were the subject was at 5918 NW 13th Avenue. (Pg. 19, Ln 14-19), along with officer Braddy, was Officer Jean-Poix who moved in (Pg. 19, Ln 21-22). Further testimony was as follows:

Q: While you were there on the premises, did you observe anything? Did you observe narcotics? (Pg. 35, Ln 21-24)

A: I think Jean-Poix observed the narcotics.

Q. You were on the premises with Officer Jean-Poix? (Pg. 36, Ln 2-5)

A: Yes, we both took down Mr. Eldrick Brown.

Q: Did you observe any narcotics? (Pg. 37, ln 14-15)

A: I don't think I observed anything.

Q: Tell me what the A form says was found in this particular location? (Pg. 56, Ln 18-22)

A: Six clear baggies of marijuana, 15 green baggies of powder cocaine, 16 baggies of rock cocaine with clovers, and 15 green baggies of rock cocaine.

Q: Do you know whether Mr. Brown had any monies on him? (Pg. 65, Ln 8-10)

A: I have no knowledge of that.

7. Both the Property Receipt for the Drugs (Exhibit 4) and the Currency Receipt (Exhibit 5)

were dated September 28, 2005, the day before the illegal search and arrest, which took place on September 29, 2005. Furthermore, the quantity of drugs listed on the Arrest affidavit (D.E. 55-2) and the Drug Property Receipt (Exhibit 4) differ.

8. In a sworn affidavit dated March 11, 2010 (D.E. 55-4) Officer Roderick Passmore stated that he did not enter the residence located at 5918 NW 13th to search for drugs or arrest Mr. Brown. However, the State Attorney's Charging document (Exhibit 6 attached) states, Count I: Eldrick Brown, on or about September 29, 2005, in the County and State Aforesaid did unlawfully resist, obstruct or oppose Officer R. Passmore, a duly qualified and legally authorized law enforcement officer in the lawful execution of a legal duty or process then being performed by said officer in violation of Sec 843.02 Fla. Stat. Officer Passmore's deposition (Exhibit 8, ; along with Exhibits thereto 8-A, both attached hereto), which reflect the vagueness, inconsistencies and confusion surrounding the September 29, 2005 arrest of Brown (Pg. 40, Line 7-11; Pg 58, Ln 4-8; Pg. 73, Ln 10 through Pg 75, Ln 1); and of the co-defendant Giordano Rolle (Pg 40, Ln 12-16; Pg 66, Ln 20 through Pg 72, Ln 13 of Exhibit 8 and 8-A)

In a deposition of Ms. Fredericka Brown taken on April 12, 2012, (Portions attached as Exhibit 7) Ms. Brown stated: that she did pay for repairs, which included fixing the front door, the window, and the hole in the wall but could not give a correct figure but she estimated about two thousand dollars (Pg 46, Ln 4-18),

Whether Plaintiff slept alone at the time of the illegal search and the exact nature of Plaintiff's relationship with his roommate Kerri Smith is irrelevant and immaterial to the Fourth Amendment Constitutional issue before this court. The more important inconsistencies are the activities of Defendants outlined above.

Legal Memorandum

The sanction of striking pleadings is reserved for egregious actions that warrant such drastic actions. In this case, while the inconsistencies complained of by the Plaintiff are immaterial and irrelevant, considering the seriousness of violating constitutional rights, the inconsistencies of the Defendants' testimony, should be considered for imposing sanctions in this case.. 4th Amend. U.S. Constitution.

Unlike Quantum Communications Corp. v. Star Broadcasting, Inc., 2007 WV 445307 (S.D. Fla. 2007), the matters complained of by Defendants were not misconduct that related to the pivotal or linchpin issue in the case. On the other hand, the actions complained of above by

Defendants were pivotal and linchpin to the 4th Amendment Constitutional right violated in this case. The Defendant's actions warrant sanctions.

WHEREFORE, THE PLAINTIFF requests this Court enter an Order denying Defendants' Motion for Sanctions, granting this motion for sanctions, awarding Plaintiff costs incurred for pursuing this case, and reserving ruling on an award of attorney's fees pending Plaintiff's supplemental motion for attorney's fees pursuant to Local rule 7.3.

Dated: May 21, 2012

Respectfully submitted,

ROBERT A. YOUNG
Attorney for Plaintiff
3576 Charles Avenue
Coconut Grove, Florida 33133

By: Robert A. Young//s
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

Certificate of Service

I HEREBY CERTIFY that on May 21, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: Robert A. Young//s
ROBERT A. YOUNG
Ph. # 447-1604
FLORIDA BAR NO.0539597

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

Kevin R. Jones, Esq.
Assistant City Attorney
Counsel for Defendants
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
KRJones@miamigov.com
(305) 416-1800 Telephone
(305) 416-1801 Fax
Via Notice of Electronic Filing

Brent J. Chudachek, Esq.
Ronald J. Cohen, P.A.
Additional Counsel for Defendants
Losa, Maloney, Merced and Seigle
8100 Oak Lane, Suite 403
Miami Lakes, FL 33016
bchudachek@roncohenlaw.com
(305) 823-1212 Telephone
(305) 823-7778 Facsimile
Via Notice of Electronic Filing

Robert A. Young, Esq.
Vera Gilford, Esq.
3576 Charles Avenue
Miami, Florida 33133
Email: robtyoungatty@yahoo.com
(305) 877-9470 Telephone
Attorney for: Plaintiff-Eldrick Brown
Via Notice of Electronic Filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 09-20936-Civ-COOKE/TURNOFF

ELDRICK BROWN,

Plaintiff

vs.

ROBERT PASSMORE, *et al.*,

Defendants.

OMNIBUS ORDER ON MOTIONS IN LIMINE

THIS MATTER is before me on the parties' Joint Summary of Motions in *Limine* (ECF No. 109). Plaintiff Eldrick Brown has presented one motion in *limine* and Defendants Roderick Passmore, Darion Williams, William Cook, and William Goins, officers with the Miami Police Department, have presented two motions in *limine*. Plaintiff's Complaint alleges that Defendants violated 42 U.S.C. § 1983 when they allegedly entered and searched his house without a warrant in violation of the Fourth Amendment.¹ Plaintiff claims he did not have narcotics in his house and Defendants planted any narcotics they purportedly recovered from within his house. I will review each motion on *limine* in turn.

"The purpose of an in *limine* motion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *Highland Capital Mgmt., L.P. v. Schneider*, 551 F. Supp. 2d 173, 176 (S.D.N.Y. 2008) (citing *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996)). Any evidence, tending to make the existence of any fact of consequence more probable or less probable, is relevant and admissible, except as the Federal Rules of Evidence

¹ The facts of this case are more fully set forth in *Brown v. Passmore*, 445 F. App'x 187 (11th Cir. 2011), affirming this Court's Order denying Defendants' Motion for Summary Judgment.

otherwise provide. Fed. R. Evid. 401 & 402. Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury” Fed. R. Evid. 403.

I have reviewed the parties’ argument, the record, and the relevant legal authorities. For the reasons explained in this Order, it is **ORDERED and ADJUDGED** that the Plaintiff’s Motion in *Limine* is **DENIED without prejudice**, and the Defendant’s Motions in *Limine* are **GRANTED in part and DENIED in part**, as follows:

1. Plaintiff’s Motion in *Limine* No. 1 to exclude certain testimony and documents is **DENIED without prejudice**. Plaintiff seeks to exclude the testimonies of Brian Muller, Vice President of the Ace Computer Company, and Carolina Milanes, a criminalist with the Miami-Dade County Crime Lab. Plaintiff also seeks to exclude a Miami-Dade County Lab Report. The Ace Computer Company is responsible for implementing, training, and auditing the City of Miami’s (the “City”) computer tracking software that the City’s Property Unit uses when it receives property seized or recovered during an arrest. Ms. Milanes is responsible for testing the narcotics purportedly impounded in this case.

Plaintiff argues that Mr. Muller’s and Ms. Milanes’ respective testimonies and the report are unreliable and untrustworthy because they are inconsistent with the expected testimonies of other witnesses regarding whether officers recovered drugs from Plaintiff’s house. One factual issue to be resolved by the jury in this case is whether officers truly seized drugs from Plaintiff’s house. There is a factual dispute about the date in which the City’s Property Unit clerks received the purported drugs. Mr. Muller’s testimony about any electronic errors in the clerk’s property receipt are relevant to the City’s defense that the inconsistent date on the property receipt was the result of a clerical error. Ms. Milanes’ testimony is relevant to the issue that the impounded items consisted of narcotics. The probative value of these testimonies outweighs any prejudice to Plaintiff. That their testimonies might be inconsistent with other witnesses’ testimonies is not a

reason for exclusion. The existence of inconsistent accounts is precisely the reason there are factual disputes that a jury must resolve in this case.

As to the report, Plaintiff argues it was created in anticipation of litigation, and is not a business record. Defendants argue Mr. Muller is testifying as an expert and the report is a business record. I cannot determine, on the record or the arguments before me, who created the report, what the report consists of, and whether Mr. Muller may qualify as an expert. I will defer ruling on whether the report must be excluded and whether Mr. Muller may testify as an expert until I have an adequate record to make a ruling.

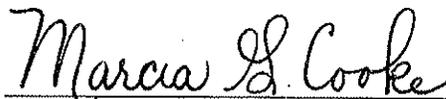
2. Defendants' Motion in *Limine* No. 1 to preclude the Plaintiff from testifying regarding his alleged damages is **DENIED**. Plaintiff claims that he suffered injury in the form of property damages and mental and emotional distress. Such damages are compensable in a § 1983 action. *See Slicker v. Jackson*, 215 F.3d 1225, 1231 (11th Cir. 2000). Defendants argue that Plaintiff did not suffer actual damages because he did not replace some of the allegedly destroyed property and his mother discarded some of his property. Defendants cite no case law to support the proposition that a plaintiff may not recover damages for destroyed property merely because he decides not to replace it. As to Defendants' contention that some of the property was not destroyed, but instead discarded by Plaintiff's mother, Defendants may bring out these facts on cross-examination. I will not preclude evidence that may be relevant based solely on Defendants' representation that it may prove to be irrelevant.

3. Defendants' Motion in *Limine* No. 2 to preclude the Plaintiff from testifying about the disposition of the underlying criminal charge subsequent to his arrest is **GRANTED**. As a result of his September 29, 2005 arrest, which is the subject of this action, Plaintiff was charged with possession with intent to sell marijuana and cocaine and resisting arrest without violence. (Rep. of Magistrate Judge 4, ECF No. 68). The charge for possession with intent to sell marijuana and cocaine was "no actioned." (*Id.*) On November 29, 2005, Plaintiff pled no contest to

misdemeanor resisting arrest and was sentenced to time served. (*Id.*)

Defendants argue that evidence regarding the disposition of the underlying criminal charges brought as a result of the arrest is irrelevant. That is, the ultimate disposition of the criminal charges is irrelevant to whether or not the search was lawful. Plaintiff argues that “the actions or conduct of the Police Officers may be relevant to prove Plaintiff’s claim for punitive damages.” Defendants, however, do not seek to exclude evidence of the officers’ actions or conduct; they only seek to exclude evidence of the ultimate disposition of the charges, which is unrelated to the officers’ actions or conduct at the time of the search of his home. I find that such evidence is irrelevant and likely to confuse the jury. *See Best v. Wells*, No. 03-402, 2010 WL 3655864, at *4 (N.D. Ind. Sept. 13, 2010) (finding that evidence of dismissal of criminal charges arising from alleged unlawful search and arrest was irrelevant to whether officers had probable cause at time of arrest or searches); cf. *Dallas v. Golberg*, 143 F. Supp. 2d 312, 317 (S.D.N.Y. 2001) (evidence of post-arrest decision to charge plaintiffs was irrelevant to whether officers had probable cause to arrest).

DONE and ORDERED in chambers, at Miami, Florida, this 30th day of May 2012.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Counsel of record