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POLYGRAPH EXAM

In an effort to show that I had nothing to hide, I underwent a post-conviction polygraph examination on July 25, 2011, administered by Ed Torian, which concluded that my responses denying any involvement in the crimes were truthful.

REPORT OF POLYGRAPH EXAMINATION

OF

ROBERT M. D'LUCCA

FOR

MICHAEL JOHN RYAN, ESQ. P.C.

CONDUCTED BY ED TORIAN

POLYGRAPH EXAMINATION DATE:

JULY 25, 2011

POLYGRAPH TESTING CONDUCTED BY ED TORIAN:

- CERTIFIED POLYGRAPH EXAMINER
- EXTENSIVE SPECIFIC POLYGRAPH EXAMINATIONS CONDUCTED FOR VARIOUS LAW ENFORCEMENT AGENCIES.
- LAW FIRMS (CRIMINAL AND CIVIL)
- SECURITY AGENCIES
- COMMERCIAL AND PRIVATE COMPANIES INVOLVING EMPLOYEE THEFT AND VARIOUS OTHER CRIMINAL ACTIVITIES.
- MEMBER AMERICAN POLYGRAPH ASSOCIATION
- NEW YORK STATE PRIVATE INVESTIGATOR'S LICENSE #11000055618
- N.Y.P.D. (RET.)
- 26+ YEARS POLYGRAPH EXPERIENCE

POLYGRAPH EXAMINATION

CONFIDENTIAL INFORMATION

NAME: ROBERT M. D'LUCCA

DOB: 10/4/74

DATE: 7/25/11

The following person was given a specific polygraph examination.
Opinions and results elicited from examination will only be released to those in authority:

A Four-Pen Lafayette fact-finder was utilized.

PERTINENT INFORMATION:

NO DECEPTION NOTED DURING SPECIFIC POLYGRAPH EXAMINATION
CONDUCTED ON 7/25/11.

IT IS THE OPINION OF THE EXAMINER THAT ROBERT M. D'LUCCA
SHOWED NO SIGNS OF DECEPTION DURING SPECIFIC POLYGRAPH EXAMINATION,
AND DID ANSWER ALL SPECIFIC QUESTIONS IN A TRUTHFUL MANNER ON JULY
25, 2011, REGARDING THE CRIMINAL CHARGES BROUGHT AGAINST ROBERT M.
D'LUCCA BY THE STATE OF NEW YORK.

ED TORIAN

POLYGRAPH EXAMINER

e-mail address: pated16@aol.com

THE FOLLOWING ROBERT M. D'LUCCA, WAS GIVEN A SPECIFIC POLYGRAPH EXAMINATION ON JULY 25, 2011.

THE FOLLOWING QUESTIONS WERE ASKED:

- #1. IS YOUR FIRST NAME ROBERT? ANS. YES
- #2. IS TODAY MONDAY? ANS. YES
- #3. WERE YOU BORN IN THE STATE OF NEW YORK? ANS. YES
- #4. DO YOU INTEND TO ANSWER THE TRUTH TO THE FOLLOWING QUESTIONS? ANS. YES
- #5. ON MARCH 12TH OF 1994, WERE YOU AT MILLER AVENUE AND HEGEMAN AVENUE, BROOKLYN, NEW YORK AROUND 3:00 A.M.? ANS. NO
- #6. ON MARCH 12TH OF 1994, DID YOU HAVE POSSESSION OF A GUN WITH YOU AT ANY TIME IN THE VICINITY OF MILLER AVENUE AND HEGEMAN AVENUE AROUND 3:00 A.M.? ANS. NO
- #7. DO YOU ACTUALLY KNOW WHO SHOT THE OCCUPANTS OF A RED VOLKSWAGON ON MARCH 12, 1994? ANS. NO
- #8. DID YOU SHOOT THE OCCUPANTS OF A RED VOLKSWAGON ON MARCH 12TH OF 1994? ANS. NO
- #9. IS TOMORROW TUESDAY? ANS. YES
- #10. IS THIS THE MONTH OF JULY? ANS. YES
- #11. HAVE YOU TOLD YOUR ATTORNEY THE TRUTH REGARDING THE CRIMINAL CHARGES BROUGHT AGAINST YOU BY THE STATE OF NEW YORK? ANS. YES.
- #12. HAVE YOU ANSWERED ALL SPECIFIC QUESTIONS TRUTHFULLY? ANS. YES

THE 2001 AFFIDAVIT OF TAIWAN JAMISON

I always knew there had to be a reason why the two witnesses in my case blamed me. I was innocent and I never believed it was a matter of plain "mistaken identity." In the late 1990's (several years after being convicted) my suspicions were confirmed.

Taiwan Jamison, one of the two surviving victims in the case (and the main witness against me at my trial), confessed to an acquaintance that he lied at my trial when he accused me of the shooting.

After being informed about his willingness to come forward, I hired an investigator by the name of Leslie Wolff to interview Jamison. Wolff eventually brought Jamison to talk to my lawyer and as a result Jamison made the following sworn statement.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.

State of New York)
County of Kings)ss:

TAIWAN JAMISON, being duly sworn does hereby state under penalties of perjury:

I was a prosecution witness against Robert D'Lucca during his murder trial in the Supreme Court, County of Kings. During that trial I testified that I was present at the time of the incident and that I observed Robert D'Lucca fire the weapon that resulted in my being injured and others being killed. At this time I am coming forward to correct my testimony, and truthfully state that, to my knowledge, Robert D'Lucca was not the individual who fired the weapon on the day in question.

Since the trial concluded I have had a lot of time to think about what I did and why I testified the way I did and realized that I may have helped convict an innocent person. My testimony was not based upon my observations, but rather because of what others had told me, leading me to conclude that it was Robert D'Lucca who committed the crime. I have not come forward earlier because of my fear of what could happen to me if I disclosed this information.

One day I was playing dice on the street, when I ran into a friend of Robert D'Luccas, and

after discussing the situation, and my desire to straighten this matter out, I gave him my telephone number and asked him to contact Robert D'Luccas mother. Thereafter, I was incarcerated and was contacted by an investigator who was assisting Mrs. D'Lucca in helping her son. At that time I told him the truth about what happened that evening and why I had not come forward previously. I am now signing this affidavit of my own free will and have not been threatened or coerced by anyone nor has anyone promised me anything in return for this statement.

Sworn before me this 25 day of Jan, 2001.

1/25/01
Notary State of N.Y.
Qualified Chemist Co.
011104756066
Exp - 31-03

TAIWAN JAMISON

THE 2001 AFFIDAVIT OF BRUCE KING

After obtaining Taiwan Jamison's 2001 affidavit, my lawyer advised my investigator, Mr. Wolff to find and interview Bruce King, the only other witness/victim in this case. Thereafter King also confessed to having perjured himself at my trial.

King was a professional informant/criminal who understood the value of testifying against others in court in order to deflect any prosecution against himself.

From the start, King could not identify the shooter. On the day of the incident he was shown photographs of me but stated that he did not recognize me from anywhere. That changed though, on the day of his grand jury testimony and at trial.

The following sworn statement is the result of Mr. Wolff's interview with Bruce King about his testimony at my trial.

STATE OF NEW YORK)

COUNTY OF CLINTON)

BRUCE M. KING, being duly sworn hereby state under penalties of perjury:

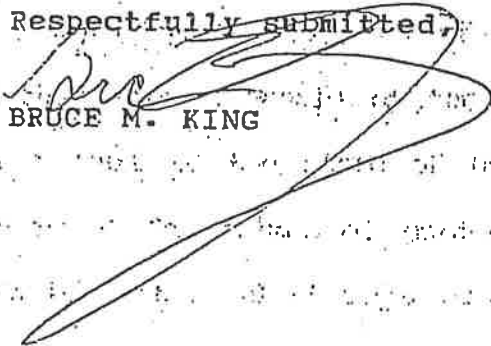
1. I was the prosecutor's witness in the matter of People of the State of New York v. Robert D'Lucca, in the Supreme Court of the State of New York, County of Kings, in 1994 regarding his indictment for crimes of Murder, etc..
2. The indictment that I was called to testify about occurred on March 12, 1994 while I was a passenger in the rear seat of an automobile.
3. When I testified, I stated that I observed the shooter, and then identified Mr. D'Lucca, in the courtroom, as the individual I observed shoot the weapon which caused the death of two others, injuries to myself and another. This testimony was inaccurate and was based upon facts other than my personal knowledge.
4. After the incident I was interviewed by a Detective Falcone and shown photographs of individuals, none of which I could identify as the shooter.
5. Thereafter Detective Falcone showed me a photograph of an individual, that I did not recognize, and was advised that this was the individual who shot me and the others I was with that evening. I was informed that this individual's name was Robert D'Lucca a/k/a Lite. I asked the detective how he knew that Mr. D'Lucca was the shooter and he explained to me the basis for his case and convinced me that he was correct.
6. At that time I was angry, because I had been wounded, two others were killed, and had no reason to disbelieve what I had been told and therefore adopted these facts as true. When I testified in the courtroom I identified Mr. D'Lucca because he was the individual I had seen in the photograph presented to me by Detective Falcone, and by that time believed that Detective Falcone was telling me the truth.

7. In truth and in fact I was not able to identify the shooter from the viewing that I had, at the time of the incident, and erred in positively testifying that Mr. D'Lucca was the shooter. I realized that my testimony may have assisted the prosecution in convicting Mr. D'Lucca, and want to take this opportunity to correct an error that may have occurred.

8. I am reaching out and making this statement of my own free will and have not been coerced or promised anything in return for doing this. I am simply stating facts which have been on my mind since the trial, but because of my own legal problems, amongst other problems, never came forward with this information before.

9. The prosecution never advised me the extent of any other evidence they had regarding Mr. D'Lucca, and therefore I do not know whether or not my coming forward will change the fate of Mr. D'Lucca, but believe the court should know and understand what actually transpired.

Respectfully submitted,


BRUCE M. KING

Sworn to before me this
9 day of March 2001


NOTARY PUBLIC

Harry D. Durgan
Notary Public, State of New York
No. 01DU6008379
Qualified in Clinton County
Commission Expires

6/2/02

THE JUDGES DECISION

The testimony of these two witnesses (Jamison and King) was the only evidence against me. There was no other independent evidence. No gun, DNA, fingerprints or surveillance video.

I submitted this new evidence, which exonerated me of any wrong doing, to the judge who held my trial. She read the motion together with the statements and just ignored what these witnesses had to say. She never even held a hearing so that she could listen to why they were now admitting that they lied against me at my trial.

The following is the judge's decision and reasoning.

DECISION AND ORDER

SUPREME COURT CRIMINAL TERM PART 5 COUNTY KINGS

People of the State of New York) By: Feldman, J
v) Dated: September 26, 2001

Robert D'Lucca

Indictment No. 3723/94

Defendant was convicted upon a jury verdict of two counts of murder in the second degree and two counts of attempted murder in the second degree. On December 19, 1994, defendant was sentenced to consecutive terms of imprisonment of 25 years to life for the murder conviction and consecutive terms of imprisonment of 12 1/2 to 25 years for the attempted murder convictions . The judgment of convictions was affirmed but the minimum sentence for the attempted murder counts was modified to eight and one-third years (People v. D'Lucca, 243 AD2d487). The defendant's application for leave to appeal to the Court of Appeals was denied (People v. D'Lucca, 91 NY2d 872).

Defendant now moves pursuant to CPL 440.10 (1)(g) to set aside the judgment of conviction on the grounds of newly discovered evidence. Defendant claims that the recantations by two eyewitnesses who were also the objects of the attempted murder convictions warrant a new trial. Specifically, one eyewitness explained in his affidavit that his identification of defendant was based on what "others" had told him while the second eyewitness stated the detective who presented a photographic array to him convinced him that defendant must have been the shooter.

In response the People argue that the first recantation affidavit was vague and unreliable while the second was incredible and therefore do not constitute newly discovered evidence.

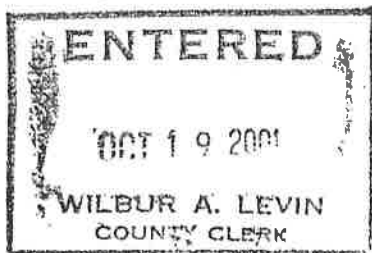
The court agrees with the People's position and rejects defendant's claim of newly discovered evidence.

In order to constitute newly discovered evidence pursuant to CPL 440.10 (1)(g), a defendant must establish that the evidence in question is of such character that it would probably change the results if a new trial were held; that it was discovered since the trial; that it would not have been produced at trial with the exercise of due diligence; that it is not cumulative; that it is material to the issues; and that it must not merely contradict the former evidence (People v. Salemi, 309 NY209, 215-216, cert denied 350 U.S. 950; People v. Gurley, 197 AD2d 534,535). Furthermore, all of the statutory requirements must be satisfied, the determination of which rests within the sound discretion of the court. (People v. Gurley, *supra*.)

The evidence presented by defendant does not satisfy the statutory criteria. "Recantation evidence is inherently unreliable and insufficient alone to require setting aside a conviction." (People v. Lagette, 153 AD2d 760). In this instance the affidavits presented as recantations are suspect under the circumstances and do little more than merely contradict former evidence. Evidence of this nature is not "of such character to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant" (CPL 440.10 (1)(g)).

Accordingly, defendant's motion is denied.

This decision shall constitute the order of the court.



097
J.S.C.

HENNE G. FELDMAN

THE 2007 AFFIDAVIT OF MAURICE HIGHLAND

In 2007, a man appeared at my mother's door-step. He was someone I knew from my youth but whom I had no contact with in more than fifteen years. His name was Maurice Highland and he told my mother that he knew I was innocent because he was present on the night of the incident and saw who the real killer was.

By this time, I no longer had a lawyer or a private investigator, so my mother asked Highland to talk to a lawyer and to make a sworn statement pertaining to what he witnessed the night of the incident. Highland had no lawyer so he made the statement himself and gave it to us.

The following is Highland's sworn statement about what he witnessed on the night of the incident.

He told me that Bobby was in prison for the shooting that occurred on the early morning of March 12, 1994, in Brooklyn. The same shooting I witnessed.

6. I knew that Bobby was in prison but was surprised to hear that it was for something I personally had knowledge he was innocent of because I was there and witnessed the incident myself.

7. I wanted to do something to help him but had no way of contacting him or his family. So I decided that as soon as I got home I would find someone who could contact him so that I could help him.

8. Soon after coming home, in 2007, I got in touch with Bobby's mother and told her what I new about Bobby's case. I asked her what to do and she advised me to talk to a lawyer and make a sworn affidavit about what I saw that night on March 12, 1994 in Brooklyn.

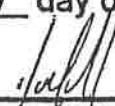
9. Sometime in April of 2007 I ran in to Shawn, a friend of the person who actually did the shooting, at a neighborhood store. I related to him what I new about the shooting and he told me that he already knew. That Jermaine had admitted to him that he committed the murders on the corner of Miller and Hegeman in Brooklyn, New York on March 12, 1994. And that Jermaine bragged about not having to worry about being caught because someone else was being blamed for it.

10. I related to him that it wasn't right that someone else was doing time for something his friend had done and he agreed but asked what could he do? I stated that I was going to make a sworn statement about what I knew and that he could do the same, if he wanted to, about what Jermaine told him.

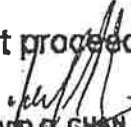
11. I am making and signing this affidavit of my own free will and have not been threatened or coerced by anyone, nor has anyone promised me anything in return for this statement.

12. I am willing to testify at any court proceeding to the facts of this affidavit.

Sworn to before me this
27 day of Sept 2007



Notary Public


DAVID G. CHAN
NOTARY PUBLIC, State of New York
No. 01CH6150877
Qualified in Kings County
Commission Expires 8-7-10



Maurice Highland

THE 2008 AFFIDAVIT OF TAIWAN JAMISON

Now that I had some new evidence I hired a new lawyer. It was tough because my family, particularly my mother, had spent their life savings on legal help who, for the most part, only cared about money and made their half-hearted attempts to prove my innocents. But everyone chipped in and my new lawyer helped me develop my new case.

We decided to obtain updated affidavits from the two witnesses who had confessed to lying/committing perjury at my trial.

The following is Jamison's updated affidavit in which he explains things in more detail.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.
-----X

AFFIDAVIT

INDICTMENT NO.:
3724/94

State of New York)
County of Kings) ss:

TAIWAN JAMISON, being duly sworn does hereby state under penalties of perjury:

I was a prosecution witness against Robert D'Lucca during his murder trial in the Supreme Court, County of Kings. During that trial I testified that I was present at the time of the incident and that I observed Robert D'Lucca fire the weapon that resulted in my being injured and others being killed. At this time I am coming forward to correct my testimony and truthfully state that, to my knowledge, Robert D'Lucca was not the individual who fired the weapon on the day in question. I never saw Robert D'Lucca fire into the vehicle that night and the assistant district attorney had to know that I did not testify truthfully at the trial because she told me to say that I knew it was him.

Since the trial concluded I have had a lot of time to think about what I did and why I testified the way I did and realized that I may have helped convict an innocent person. My testimony was not based upon my observations, but rather because of what others had told me in the car or on the street, leading me to conclude that it was Robert D'Lucca who committed the crime. For instance, Anthony was yelling that "Lite" was shooting at us even though I never actually saw Robert D'Lucca. And on the street afterwards, Ron Du kept telling me

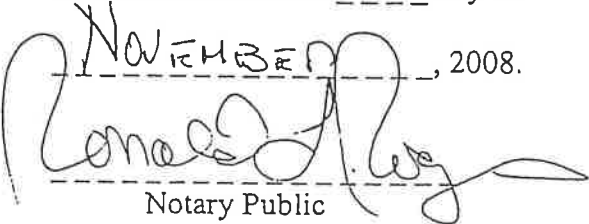
that "Lite" was responsible for the shootings. Ron Du was also showing Bruce King, another victim of the shooting, photographs of Robert D'Lucca in an effort to firm up Bruce King's identification of Mr. D'Lucca as the shooter. I have not come forward earlier because of my fear of what could happen to me if I disclosed this information.

One day I was playing dice on the street, when I ran into a friend of Robert D'Luccas, and after discussing the situation, and my desire to straighten this matter out, I gave him my telephone number and asked him to contact Robert D'Luccas mother. Thereafter, I was incarcerated and was contacted by an investigator who was assisting Mrs. D'Lucca in helping her son. At that time I told him the truth about what happened that evening and why I had not come forward previously. I am now signing this affidavit of my own free will and have not been threatened or coerced by anyone now has anyone promised me anything in return for this statement.


TAIWAN JAMISON

Sworn before me this 14TH day of

NOVEMBER, 2008.


Notary Public

RONALD L. ROGERS
Notary Public State Of New York
No. 01R05019060
Qualified In Kings County
Commission Expires 05-06-10

THE 2008 AFFIDAVIT OF BRUCE KING

We also obtained an updated affidavit from Bruce King. The second and only other witness who testified and committed perjury at my trial.

King's affidavit also explained the circumstances of his testimony in more detail

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.
-----X

AFFIDAVIT

INDICTMENT NO.:
3724/94

STATE OF NEW YORK)
COUNTY OF ~~GREENE~~) ss:
 FRANKLIN

BRUCE M. KING, being duly sworn hereby states under penalty of perjury:

1. In November of 1994, I was one of the prosecution's witnesses in the matter of People v. D'Lucca, in the Supreme Court of the State of New York, County of Kings. The defendant Robert D'Lucca was indicted for murder and attempted murder.
2. The indictment that I was called to testify about occurred on March 12, 1994, while I was a passenger in the rear seat of my Volkswagon Jetta.
3. During my testimony, I stated that I observed the shooter and then I identified Mr. D'Lucca in the courtroom as the individual who I observed shooting the weapon which caused the death of two others, and caused injury to myself and another. However, the truth is that I never did see who shot into my car that morning, and my trial testimony was inaccurate and was based upon facts other than my personal knowledge.
4. After the incident I was interviewed by a Kings County Detective named Falcone. Detective Falcone showed me several photographs of different individuals, none of which I could identify as the shooter.

5. After I failed to identify the shooter at the first lineup procedure, Detective Falcone showed me some photographs of a man whom I did not recognize named Robert D'Lucca. Detective Falcone showed me several photographs of this man, including some pictures of him with a female and a more recent "arrest" photograph of him. Detective Falcone told me that this was the "guy who did the shooting" and that he was just arrested for a domestic related crime upstate somewhere. Detective Falcone advised me that this guy was the individual who shot me and the others I was with. I was informed that this individual's name was Robert D'Lucca a/k/a Lite. I asked the detective how he knew that Mr. D'Lucca was the shooter and he explained to me the basis for his case and convinced me that he was correct and I accepted his statements as the truth.

6. At that time I was angry, because I had been wounded, two others were killed, and had no reason to disbelieve what I had been told. Therefore, I adopted Detective Falcone's statements as the truth. When I testified in the courtroom and identified Mr. D'Lucca as the shooter, I did so because he was the individual I had seen in the photographs presented to me by Detective Falcone, and also because the assistant district attorney told me that the shooter would be sitting at the table across from her. If the assistant district attorney did not inform me of where the shooter would be located, I would have likely had a problem identifying Mr. D'Lucca in the courtroom. At the time I testified, I did not believe that an innocent man could have been indicted for the shooting and I therefore had accepted Detective Falcone's assertions as the truth.

7. However, the truth is that I was not able to identify the shooter from the viewing that I had at the time of the incident, and I erred in positively testifying that Mr. D'Lucca was the shooter. I later realized that my testimony may have assisted the prosecution in convicting an

innocent person, Mr. D'Lucca, and I am once again taking this opportunity to correct any errors that may have occurred at his trial.

8. It is my belief that whoever opened fire on my Jetta on March 12, 1994 was trying to kill a man named Ron Du, but Ron Du was not in my car that ~~morning~~^{day}. Ron Du was eventually killed about a year after Robert D'Lucca's trial and I believe the same individual who later killed Ron Du attempted to kill us that ~~morning~~^{day}. The man who killed Ron Du could not have been Robert D'Lucca because he was already in prison for about a year at the time Ron Du was shot.

9. Again, I am reaching out and making this statement of my own free will and have not been coerced or promised anything in return for doing this. I am simply stating facts which have been on my mind and have been haunting me since the trial. Because of my own legal problems, amongst other things, I have never really had the opportunity or courage to come clean and come forward with this information before.

10. The prosecution never advised me as to the extent of any other evidence they had regarding Mr. D'Lucca other than where he would be sitting in the courtroom, and therefore, I do not know whether or not my coming forward will change the outcome of Mr. D'Lucca's situation. However, I believe that the court should know and understand what actually transpired.

BRUCE M. KING
BRUCE M. KING

Sworn before me this 9 day of

December, 2008.

[Signature]
Notary Public

ROY RICHARDS
Notary Public, State of New York
No. 01R16138298
Qualified in Franklin County
Commission Expires December 19, 2009

THE 2009 AFFIDAVIT OF DAVID CALAFELL

David Calafell was not a newly discovered witness, but he was the first person whom Jamison confessed his perjury to. The law makes exceptions for situations where evidence is expired due to time limits.

Calafell was the first person that Jamison expressed his desire to come forward and admit that he lied at my trial when he said that he saw me commit the crime.

The following is Calafell's sworn statement about his conversation with Jamison.

THE COURT OF THE STATE OF NEW YORK
CITY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.
-----X

AFFIDAVIT

INDICTMENT NO.:
3724/94

State of Connecticut)
County of Hartford) ss:

DAVID CALAFELL, JR., being duly sworn does hereby state under penalties of perjury:

1. I personally know Taiwan Jamison and we used to be acquaintances. We recently lost touch however because we both moved out of our old neighborhood. I have known Taiwan since he was nine or ten years old. I was friends with his older sister Charlene when we were growing up in Brooklyn. Taiwan and his family used to live on Miller Avenue in Brooklyn around the same neighborhood as myself.
2. I know that Taiwan was a victim of a shooting that occurred sometime in 1994 and that Taiwan testified for the prosecution during the trial of the individual who the police accused of committing the crime, Robert D'Lucca. I am aware that Taiwan stated at trial that he was "sure" that Robert D'Lucca had shot at Taiwan and his group of people. However, shortly after Mr. D'Lucca's trial had ended, Taiwan admitted to me that he offered perjurious testimony at Mr. D'Lucca's trial.
3. Taiwan stated that he was pressured by the District Attorney and by a gang leader named "Ronde" to blame the shooting on Robert D'Lucca, even though, at the time, Taiwan was unsure as to who actually fired at him.

4. To be specific, towards the end of 1996 I had a lengthy conversation with Taiwan Jamison outside the front of my grocery store on the corner of Hegeman Avenue and Wyona Street in Brooklyn, New York. I was hanging out in front of the grocery store and Taiwan approached me on his way into the store and we talked about Robert D'Lucca. Taiwan told me that he feels sorry and guilty about what happened to Robert, he felt guilty about the fact the he was doing life in prison for a crime he did not commit. Taiwan told me that a gang leader/drug dealer named Rondu pressured him to tell the police that Robert was the gunman.

5. All the young kids in neighborhood were scared of Rondu, including Taiwan. Despite being scared however, Taiwan informed Rondu that he was not going to blame Robert for the shooting because he did not know who the shooter was. Rondu then told Taiwan that if he does not say that Robert did it, Rondu would kill Taiwan. Additionally, Taiwan wasn't the only one that told me that Rondu was going to kill him if he didn't blame Robert. A couple of other individuals also told me that Rondu was making and pressuring Taiwan to blame the incident on Robert. This situation was kind of the talk of the neighborhood for awhile.

6. I eventually heard it from Taiwan's mouth however that day in front of the grocery store. The fact that the neighborhood had been talking about this incident and Rondu and Robert prior to hearing it directly from Taiwan's own mouth is one of the reasons why I believed Taiwan when he told me the truth.

7. Taiwan told me that he tried to tell the District Attorney that he wasn't sure who the shooter was and that people were being pressured to blame Robert, but Taiwan said that the District Attorney basically told him that they had used up a lot of time and money on the case against Robert and that it was too late to turn back.

8. During the conversation outside the grocery store, Taiwan asked me, "What should I do?" because he felt horrible about the whole situation. Now that Rondu is dead, Taiwan feels like he can do the right thing now because he's no longer facing pressure from him or the D.A.

9. I know how Rondu can act because I also knew him personally and we were good friends. Rondu was cool with me, but he always seemed to dislike Robert, even when we were younger. Rondu was always a bully and I completely understand why Taiwan was scared of him.

10. Taiwan feels guilty that Robert D'Lucca has had to be incarcerated for so long for something that he did not do. Everybody in the neighborhood was nervous and had used Robert as an example about being innocent about something and somebody could just throw your name in a situation and you could do "life." It's always in the back of my mind now also.

11. I am now signing this affidavit of my own free will and have not been threatened or coerced by anyone and no one has promised me anything in return for this statement.

Dated: 5/28/09

David Calafelli Jr.

DAVID CALAFELLI, JR.

Sworn before me this 28th day of

May, 2009.

Kristine Valente

Notary Public

Kristine Valente
Notary Public
My Commission Expires May 31, 2010

THE 2009 AFFIDAVIT OF DANIEL DEL

I did my best to investigate as much as I could on my own. It was difficult to do without a professional investigator but we just could not afford all the added legal fees.

I managed to discover another witness who had a conversation with Jamison and was a witness to the fact that Jamison never saw who the shooter was.

The following is Del's sworn statement as to what Jamison told him about what happened the night the shooting occurred.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.

AFFIDAVIT

INDICTMENT NO.:
3724/94

-----X
State of New York)
County of Bronx) ss:

DANIEL DEL, being duly sworn does hereby state under penalties of perjury:

1. I moved to East New York, Brooklyn from Flatbush when I was around 13 years old. I lived in the same neighborhood Robert D'Lucca and Taiwan Jamison's family. I would see Robert D'Lucca every once in awhile and I would see Taiwan Jamison when he would come to East New York to visit his family. The neighborhood was not that large and so when we would see each other we would be friendly and say hello and make sure that everything was alright. Robert D'Lucca basically lived across the street from me on Wyona Street and Taiwan Jamison's family lived close by. I had gotten to know Taiwan real well about two years before he was involved in a shooting that occurred sometime in early 1994.

2. In approximately March of 1994, I was arrested and charged with Robbery. I was temporarily incarcerated at Riker's Island in C74 while I awaited my court dates. One day during the month of April while I was waiting to be transported by Corrections from Riker's Island to criminal court in King's County I noticed Taiwan Jamison in a holding cell. Upon my arrival at King's County Criminal Court while I was in a holding cell waiting to go to my courtroom I saw Taiwan Jamison being walked into a holding cell across from mine. I noticed

that he was bandaged up and had a large cast covering his arm. Being that I knew Taiwan from my East New York neighborhood, I asked him what happened to him, how did he get all bandaged up and injured, and how did he end up in Riker's. He explained to me that he had been locked up after he was arrested on Miller Avenue and charged with a weapon possession crime. I then asked him if he was injured from when he was arrested for the weapon possession, and he told me, "No," that he was just recently shot approximately two or three weeks prior to being arrested.

3. After hearing that he had been shot, my first question was if he knew who had shot him. Taiwan told me, "No," that he had no idea who the shooter was. Since he did not know who shot at him, I took the chance to explain to him that he was hanging around the wrong crowd and that it was the people whom he was hanging out with that had attracted his problems. I told him to get out of that group and leave if he wanted to make his life better. The majority of the people who Taiwan hung out with were older than him, were involved with gangs, and were dangerous influences on him.

4. My conversation with Taiwan Jamison took place approximately two or three weeks after he was actually shot and was prior to any trial in the matter. I spoke with Taiwan while we were both locked up in Riker's before anyone had been put on trial for the shooting.

5. I spent the next four years incarcerated for Robbery and had no idea that Robert D'Lucca was charged and put on trial for shooting at Taiwan and others.

6. When I was released from prison in 1998, I returned back to East New York. About two years went by before I ran into Robert D'Lucca's mother, Louisa-Melendez Delorbe. During my conversation with her, she informed me that Robert had been arrested, tried, and convicted of the shooting.


7. I always found it odd that Robert D'Lucca was charged with shooting at Taiwan Jamison because Taiwan knew Robert from when we were kids and when I had asked Taiwan who shot at him, he told me that he did not know. If Taiwan really knew that Robert D'Lucca had shot at him, I am convinced that he would have told me so during our conversation at Riker's Island shortly after the shooting. Taiwan had no reason to lie to me.

8. I am now signing this affidavit of my own free will after being contacted by Robert D'Lucca's new attorney. The above statements are from my personal knowledge and I am now signing this affidavit of my own free will and have not been threatened or coerced by anyone and no one has promised me anything in return for this statement.

Dated:


DANIEL DEL

Sworn before me this 27 day of
May, 2009.


Notary Public

Michael J. Ryan
Notary Public, State of New York
No. 02RY6197294
Qualified in Bronx County
Commission Exp. 11-24-12

THE 2009 AFFIDAVIT OF LES WOLFF

We also decided to include a sworn statement by my investigator, Les Wolff.

The purpose of this affidavit was to explain why certain details were not included in Jamison's first affidavit.

The reason this was necessary was because the District Attorney who opposed my case, attempted to insinuate that Jamison was inventing new facts (or lying) just to make my case stronger. These allegations were not true and the following sworn statement is proof of that.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.
-----X

AFFIDAVIT

INDICTMENT NO.:

3724/94

State of Florida)
County of Polk) ss:

LESLIE WOLFF, being duly sworn does hereby state under penalties of perjury:

1. Before I retired, I ran and operated my own private investigations and security firm in New York City. Around the year 2000, my office was located at 401 Broadway, Suite 306, New York, New York 10013. The name of my firm was Les Wolff Investigations and Security, Ltd.
2. During the early half of the year 2000, I was contacted by an attorney named Jeffrey Rabin, Esq., who was working for his client named Robert D'Lucca. Mr. D'Lucca was wrongly convicted of two murders, and two attempted murders, that occurred in Brooklyn. Mr. Rabin stated that he needed an investigator to assist him in finding leads which may eventually help Mr. D'Lucca clear his name. I was eventually retained and hired by Robert D'Lucca's mother, Ms. Louisa Melendez-Delorbe.
3. One of my first assignments was to help find an individual named Taiwan Jamison, nicknamed "Red." Mr. Jamison was a victim of the crime allegedly perpetrated by Robert D'Lucca and testified as a prosecution witness during Mr. D'Lucca's trial in Brooklyn. I began to investigate a lead that Taiwan Jamison gave false and perjurious testimony during Mr.


4/22/09

D'Lucca's trial. It was brought to my attention that, at trial, Mr. Jamison may have falsely accused Robert D'Lucca as being the gunman due to prosecutorial pressure.

4. On June 22, 2000, shortly after I began my search, I found Taiwan Jamison on the street in Brooklyn and he agreed to accompany me to Jeffrey Rabin's office. Mr. Rabin and I proceeded to interview Taiwan Jamison and during the interview it became apparent that he offered perjurious testimony during Robert D'Lucca's criminal trial. For instance, Mr. Jamison told us that he did not see Robert D'Lucca on the evening of the murders, even though he testified that he was sure he did see him. He proceeded to tell us further that he did not tell the truth at trial and that the Assistant District Attorney handling the case made him say that he was sure the gunman was Robert D'Lucca, even though he was not.

5. Additionally, Mr. Jamison told us that Bruce King, another victim and prosecution witness, was also being pressured by a gang leader named Ron Du to say that Robert D'Lucca was the gunman. In fact, Taiwan told us that because Bruce King did not know Robert D'Lucca, Ron Du started showing Mr. King photographs of Robert D'Lucca on the street so that Bruce King would be able to identify Mr. D'Lucca's photograph in a lineup.

6. I took thorough notes during all of my investigations, including this meeting on June 22, 2000 with Mr. Jamison and Mr. Rabin. Robert D'Lucca's new attorney has shown me a copy of my notes from that interview and I can truthfully state that the handwriting on the notes is mine, the signature on the notes is mine, and the notes truthfully and accurately reflect the information told to me by Mr. Jamison on that date. It has been brought to my attention that for some reason this information was not included in Mr. D'Lucca's previous legal challenges to his conviction and I simply want to assure the Court that Mr. Jamison truthfully made those allegations on June 22, 2000.

A handwritten signature in the bottom right corner, appearing to be "J. P. King" with the date "6/22/00" written below it.

7. I am now signing this affidavit of my own free will and have not been threatened or coerced by anyone and no one has promised me anything in return for this statement. I was contacted by Mr. D'Lucca's new attorney to verify that the notes dated June 22, 2000 were, in fact, mine and they are.


LESLIE WOLFF

Sworn before me this 22nd day of
April, 2009.

Doris S Humphrey



THE 2010 AFFIDAVIT OF NOVALEE YOUNG

Novalee Young was my girlfriend at the time this crime occurred. I was with her on the night of the incident. She was my alibi witness at trial.

Ms. Young and I are no longer together, and for more than a decade we have not spoken to each other. But she was still willing to make the following statement in order to reaffirm what she testified to at trial, that I was innocent of the crime that I was charged with because I was with her when the incident took place.

The following is her sworn statement.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ROBERT D'LUCCA,

Defendant.
-----X

AFFIDAVIT

INDICTMENT NO.:
3724/94

State of New York)
County of Kings) ss:

NOVALEE YOUNG, being duly sworn does hereby state under penalties of perjury:

I am writing this affidavit on behalf of Robert Dlucca. It has been brought to my attention that new evidence was presented regarding his case. Actually, I was aware of Taiwan Jamison admitting that he lied, and changing his statement a few years ago. I've now learned that both eye witnesses have retracted their statements/ testimonies. So, I am writing to express my delight and grief on this whole situation.

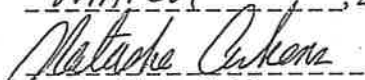
Mr. Dlucca and myself began a relationship in Brooklyn January of 1990, and in August, 1993 I went away to college in Canton, New York. Robert visited my campus on several occasions. One of which was in March 1994, when the murders that Robert was wrongly convicted of occurred. I testified at his trial attempting to confirm his presence at my college. I am again writing in light of this new evidence to state that Robert Dlucca came to visit me in Canton New York in March 1994, and he stayed with me the entire weekend in my dorm room.

Please grant Robert some compassion at this time. He has had so much taken from him. I have not seen or spoken to Robert in over 6 years. I am saddened to state that the distance was too much for me to endure. We eventually lost our friendship because of his incarceration. His imprisonment has caused so much hardship for so many people, including myself. His family has missed many years with him. Most importantly, Robert has missed so much time and opportunity to become a productive member of society. Please allow him this opportunity because he is innocent of the crime for which he has been wrongly convicted.


NOVALEE YOUNG

Sworn before me this 20 day of

March, 2010.


Notary Public

NATASHA A. AIKENS
Notary Public, State of New York
Qualified in Kings County
No. 01A16195343
My Commission Expires 10-20-2012

THE LAWSUIT AGAINST DETECTIVE JOSEPH FALCONE

FOR FALSE ARREST AND FALSE IMPRISONMENT

The lead Detective in my case was known to falsely arrest and imprison people. In 1991 he falsely arrested and imprisoned Kevin Pendleton who was later released and sued Detective Falcone for his corrupt practices. The suit was later settled for 1.5 million dollars.

The following is a portion of that lawsuit.

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Pendleton v City of New York

[*1] Pendleton v City of New York 2006 NY Slip Op 50632(U) [11 Misc 3d 1080(A)]
Decided on March 24, 2006 Supreme Court, Kings County Hinds-Radix, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 24, 2006
Supreme Court, Kings County

Kevin Pendleton, Plaintiff,

against

The City of New York, New York City Police Department and Det. Joseph Falcone,

10694/94

Sylvia Hinds-Radix, J.

Upon the foregoing papers, plaintiff Kevin Pendleton moves, pursuant to CPLR 3126, for an order striking the answer of defendants The City of New York, New York City Police Department and Det. Joseph Falcone or, alternatively, for an order, pursuant to CPLR 3124, compelling defendants to comply with all outstanding discovery. Defendants oppose the instant motion and cross-move for an order: (1) pursuant to GML 50-e and 50-i, dismissing plaintiff's first cause of action for false arrest and Imprisonment; (2) pursuant to CPLR 3211(a)(5), dismissing plaintiff's fifth cause of action for violation of his civil and constitutional rights under 42 USC §1983 and for attorneys fees under 42 [*2]USC §1983; (3) pursuant to CPLR 603 and 4011, bifurcating plaintiff's 42 USC § 1983 claim for discovery and trial; (4) pursuant to CPLR 3126 dismissing plaintiff's complaint for failure to provide court-ordered discovery; and (5) pursuant to CPLR 3124, compelling certain discovery.

In the instant action, plaintiff seeks damages based upon claims of false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent hiring, training, supervising and retention and the violation of his civil and constitutional rights. The action was commenced on April 4, 1994. Issue was joined by service of the defendants' answer on or about May 25, 1994. On February 2, 2005, plaintiff was granted leave by this court to file and serve an amended complaint and the amended complaint was filed and served on February 3, 2005.

The original complaint in this action avers that on August 31, 1991, plaintiff was "falsely, wrongly and illegally arrested" by a New York City police officer, Detective Joseph Falcone, and was "intentionally, wantonly and maliciously" prosecuted "as a common criminal." The complaint further alleges that on November 13, 1992, all criminal charges against plaintiff were dismissed. With regard to the negligent hiring and supervision claims alleged by plaintiff, the complaint states that defendants The

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in this case, occurred on September 6, 1992 (see *Jackson v New York City Police Department*, 119 AD2d 551, 552 [1986]). Plaintiff, therefore, was obligated, pursuant to General Municipal Law 50-e(1)(a), to file a notice of claim with regard to this cause of action on [*4] or before December 8, 1992. He failed to do so, however, and did not file a notice of claim with regard to his false arrest and imprisonment causes of action until February 4, 1993, two months beyond the requisite deadline. Subsequently, as plaintiff acknowledges, the statute of limitations expired for said claim without the plaintiff moving for leave to file a late notice of claim. Accordingly, the court is without authority to allow plaintiff to file a late notice of claim, given that the relevant limitations period expired more than ten years ago (see *Plerson v City of New York*, 56 NY2d 950, 955-956 [1982]). As a result, the court is constrained to dismiss plaintiff's cause of action for false arrest and imprisonment.

With regard to plaintiff's civil rights claim against the municipal defendants, the court finds that such claim is also time barred. The statute of limitations for a cause of action pursuant to 42 USC § 1983 based upon alleged civil rights violations is three years (*Owens v Okure*, 488 US 235, 251-252 [1989]). Accordingly, the relevant limitations period for this claim also expired approximately ten years ago. Plaintiff's section 1983 claim, however, was not asserted until February 3, 2005, upon the filing and service of the amended complaint in this action. CPLR 203 (f) provides that "[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences or series of transactions or occurrences, to be proved pursuant to the amended complaint." The court finds, however, that in the instant case, the original pleading did not give sufficient notice of the transactions and occurrences to be proved with regard to the section 1983 claims asserted against the municipal defendants to warrant the application by this court of the "relation back" rule to such claim.

It is well settled that in order to establish municipal liability for section 1983 claims, "a plaintiff must show that the violation of his constitutional rights resulted from a municipal custom or policy" (*Ricciuti v New York City Transit Authority*, 941 F2d 119, 122 [2d Cir 1991]). There is no respondeat superior liability for a municipality under section 1983 and, accordingly, the violation of plaintiff's civil rights by a municipal employee, without more, will not render the municipality liable for such violation (see *Monell v Dep't of Social Services*, 436 US 658, 694 [1978]; see also *Ramos v City of New York*, 285 AD2d 284, 302 [2001]). Moreover, "a single incident alleged in a complaint, especially if it involved only actors below the policy-making level, does not suffice to show a municipal policy" (*DeCarlo v Fry*, 141 F3d 56, 61 [1998], quoting *Ricciuti*, 941 F2d at 123).

It is generally recognized that there are four situations in which a municipality can be held liable under section 1983: (1) an officially promulgated policy endorsed or ordered by the municipality; (2) a custom or practice that is so widespread that the municipality had either actual or constructive knowledge of it; (3) actions taken or decisions made by the municipal employee who, as a matter of state law, is responsible for establishing municipal policies with respect to the area in which the action is taken; or [*5](4) where the failure of the municipality to train its employees rises to the level of deliberate indifference to the constitutional rights of others (see *Wahhab v City of New York*, 386 F Supp 2d 277, 285 [2005]). In order to establish the existence of "deliberate indifference" on the part of a municipality, it is insufficient to merely plead a failure to train employees (see *Dwares v City of New York*, 985 F2d 94, 100 [2d Cir 1993]). Deliberate indifference can generally be inferred where it can be shown, "to a moral certainty," that employees will confront a given situation which presents the employee with a difficult choice of the sort that training or supervision will make less difficult and that the wrong choice will frequently result in the violation of a citizen's constitutional

contained in the original complaint and, therefore, because the original complaint did not give notice of the civil rights claim contained in the amended complaint, said claim cannot receive the benefit of the "relation back" rule. Accordingly, such claim is untimely and must be dismissed.[FN2]

To the extent plaintiff also asserts a civil rights claim pursuant to section 1983 against Detective Falcone, as an individual acting in his official capacity, the court finds that such claim does relate back and shall, therefore, not be dismissed. Detective Falcone's alleged liability under section 1983 stems solely from the malicious prosecution claim asserted against him by plaintiff, given that plaintiff's false arrest and imprisonment claim has been dismissed. It is well established that "[s]ection 1983 . . . malicious prosecution claims rooted in the Fourth and Fourteenth Amendments are substantially the same as . . . malicious prosecution claims under New York state law, with the exception that § 1983 requires that the tortfeasor act under color of state law" (Davis v City of New York, 373 F Supp 2d 322, 328-329 [2005][internal quotation marks and citations omitted]; accord Raysor v Port Authority of New York and New Jersey, 768 F2d 34, 39 [*7][2d Cir 1985], cert denied 475 US 1027 [1986]). Moreover, "[t]he requirement of pleading an official policy or custom of a municipality through which a constitutional injury has been inflicted upon a plaintiff applies only to 42 USC § 1983 claims against a local government, and not to such claims against individual defendants in their official capacities" (Bosone v County of Suffolk, 274 AD2d 532, 534 [2000]). Since plaintiff pled his malicious prosecution claim in the original complaint, and was not required to plead the existence of an official policy or custom with regard to Detective Falcone's alleged violation of plaintiff's constitutional rights, the section 1983 claim contained within his amended complaint is deemed to "relate back" to the original complaint, rendering such claim timely. As a result, to the extent that defendants seek dismissal of such claim as time barred, that portion of defendants' cross motion to dismiss is denied. In addition, to the extent that federal civil rights claims against Detective Falcone based upon the alleged malicious prosecution of plaintiff is sufficiently factually related to the state malicious prosecution claim, and no prejudice will accrue from trying such claims together, the court also denies defendants' application for a bifurcated trial.

Discovery Motions

With regard to outstanding discovery in the instant action, plaintiff moves to strike defendants' answer or, alternatively, to compel the production of various items of discovery and defendants cross-move to strike plaintiff's complaint or compel discovery. As an initial matter, the motion and cross motion to strike are denied. "It is well settled that actions should be resolved on their merits wherever possible, and that the drastic remedy of striking a pleading is inappropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious" (Jenkins v City of New York, 13 AD3d 342, 342 [2004]). The court does not find any evidence of conduct on the part of any of the parties to this action which would warrant the drastic sanction of striking a pleading. Concerning the parties' motion and cross motion to compel discovery, given that, pursuant to the instant decision, plaintiff's surviving claims are state law claims for malicious prosecution, intentional infliction of emotional distress and negligent hiring, supervision and retention and a federal claim stemming from plaintiff's alleged malicious prosecution, to the extent such claim can be sustained against Detective Falcone individually in his official capacity as a police officer, the court finds that an updated response from defendants with regard to the preliminary conference order dated April 25, 2004, as well as an updated response to plaintiff's notice of discovery and inspection, dated February 18, 2005, is warranted, particularly in light of defendants' assertion that they will "attempt to provide documents responsive to items No.1, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29" and apparently have not objected to same.