

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GEORGE RODRIGUEZ	§	
	§	
v.	§	CIVIL ACTION NO. H-06-2650
	§	(Jury Demanded)
CITY OF HOUSTON, ET AL.	§	

CITY OF HOUSTON’S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE VANESSA GILMORE:

Comes Now the City of Houston and files its Motion for Summary Judgment and would show the court:

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I.

NATURE AND STAGE OF PROCEEDINGS

1. Plaintiff has brought suit against the City and eight individuals pursuant to 42 U.S.C. § 1983 because he was denied a fair trial guaranteed to him under the Due Process Clause. Plaintiff claims he was wrongfully convicted and sent to prison for 17 years. This cause is set for trial in March 2009.
2. Defendant Clappart has been dismissed from this suit. Defendants Gonzalez, Garcia and Sisk has pending before this Court Agreed Motions to Dismiss. Defendant Tobar was never served.
3. An unopposed motion by defendants to extend the motion’s deadline two weeks, until October 6, 2008 is pending before the Court because of Hurricane related issues.

II.

ISSUES PRESENTED

1. Does plaintiff has evidence that Houston Police Department (HPD) officers were inadequately trained and supervised in investigative techniques and identification procedures.
2. Whether plaintiff has evidence that an HPD training and supervisory procedure directly caused the injury complained of.
3. Whether plaintiff has evidence that City policymakers ratified alleged criminal misconduct.
4. Whether plaintiff has evidence that a formal or customary policy regarding the City’s Crime Lab was the moving force behind plaintiff’s injuries.

III.

SUMMARY OF ARGUMENT

1. Plaintiff has no evidence that a training or supervisory policy of the City of Houston was the direct cause of the alleged constitutional violation. There is no evidence that HPD used unconstitutional suggestive identification techniques.
2. Plaintiff has no evidence that either HPD investigative or identification policies were the moving force behind constitutional violations of which he complains.
3. Plaintiff has no evidence that City policymakers ratified acts similar to those plaintiff of which plaintiff complains.
4. Plaintiff has no evidence that a policy or custom regarding the Crime Lab was the moving force behind the alleged constitutional violations.

IV.

ARGUMENT

A. Summary Judgment Standard

Summary judgment is proper when “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The court must view the evidence in a light most favorable tot he non-movant. *Coleman v. Houston Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1977). Initially, the movant bears the burden of presenting the basis of the motion and the elements of the causes of action upon which the non-movant will be unable to establish a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-movant to come “forward with ‘specific facts showing that there is genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e)). It is not the function of the court to search the record on the

non-movant's behalf for evidence which may raise a fact issue. *Topalian v. Ehrman*, 954 F.2d 1125, 1137 n.30 (5th Cir. 1992).

"A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted). The non-movant's bare assertions, standing alone, are insufficient to create a material issue of fact and defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Conclusory allegations unsupported by specific facts will not prevent an award of summary judgment; the plaintiff cannot rest on his allegations to get to a jury without any significant probative evidence tending to support the complaint. *Nat'l Ass'n of Gov't Employees v. City of Pub. Serv. Bd. of San Antonio*, 40 F.3d 698, 713 (5th Cir. 1994). Thus, the non-movant's burden cannot be satisfied by conclusory allegations, unsubstantiated assertions, metaphysical doubt as to the facts, or a scintilla of evidence. *Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir. 1998).

B. Prima Facie Case

1. To establish a prima facie case pursuant to 42 U.S.C. § 1983 the Plaintiff must prove (1) a policy; (2) of a city policymaker; and (3) a constitutional violation whose moving force is that policy. *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001); *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002). Formal policies may be a policy statement, ordinance, regulation or decision. Customary policies must be defined by a persistent widespread practice of City officials or employees. *Burge v. St. Tammany Parish*, 336 F.3d 363, 370 (5th Cir. 2003).

2. In failure to train and/or supervise cases the plaintiff must prove (1) the training or supervisory procedure of the policymaker was inadequate (2) the policymaker was deliberately

indifferent in adopting the training or supervisory procedure (3) the inadequate training or hiring procedure directly caused the plaintiff's injury. *Conner v. Travis County*, 209 F.3d 794, 796 (5th Cir. 2000); *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005).

1. Plaintiff's First Amended Complaint must be described as expansive. Nevertheless, the allegations against HPD exclusive of its crime lab can be divided into two categories. Firstly, there are complaints about the conduct of the investigation of the crimes. Secondly, there are complaints about the identification procedures. The former category will be addressed first.

2. Plaintiff faults the investigation inter alia because HPD failed to (a) take custody of Yanez's car and examine it for evidence; (b) failed to put Yanez on a list of persons wanted in connection of the crimes; (c) failed to apprehend Yanez at Ben Taub Hospital; (d) failed to question Yanez about his whereabouts at the time of the crimes; (e) failed to show the victim and her friend, Marco Saldana, a photograph of Yanez after the Bethan brothers implicated him; (f) failed to ask the victim and Saldana to try to identify in a show up (line up); (g) failed to disclose exculpatory evidence to prosecutors and defense counsel; and (h) failed to consider plaintiff's alibi as valid. Plaintiff alleges that these failures are the results of training and supervision policies of HPD.

C. No Evidence of a Claim Regarding HPD Officers (Count VIII) of First Amended Complaint

1. Investigative Procedures

3. Plaintiff claims an error filled investigation deprived him of due process. Nevertheless, the constitution does not require an error free police investigation. *Baker v. McCollan*, 99 S.Ct. 2689, 2695-96 (1979); *Moreno v. City of Progresso*, 161 Fed. Appx. 371, 373 (5th Cir. 2005). Nevertheless, this invalid claim will analyzed below under the principles of municipal liability.

4. To prevail on an inadequate training claim, a plaintiff must prove (1) an inadequate training procedure; (2) the municipality was deliberately indifferent in adopting the training procedure; (3) the inadequate training procedure directly caused the plaintiff's injuries. *Conner v. Travis County*, 209 F.3d 794, 796 (5th Cir. 2000). Municipal liability for failure to train arises only when failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. *City of Canton v. Harris*, 109 S.Ct. 1197, 1204 (1989). Plaintiff must prove with specificity how a particular training program is defective *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). It is not enough to present proof that the injury could have been prevented if the officer had received better or additional training. *Roberts*, 293 citing *Snyder v. Trepagnier*, 142 F.3d 791, 798 (5th Cir. 1998).

5. The Fifth Circuit has held that the policymakers for HPD are the Mayor, City Council, and the Chief of Police. *Webster v. City of Houston*, 735 F.2d 838, 852-853 (1984). Also see City of Houston Code of Ordinance, Ch. 34 § 34-23 which makes the Chief of Police the only policymaker within HPD. **Exhibit 1.**

6. Plaintiff has no evidence that a training policy of HPD caused the conduct and injuries of which plaintiff complains. Plaintiff must reference the training procedures and prove how it is inadequate. *Pineda v. City of Houston*, 291 F.3d 325, 334 (2002). Plaintiff must prove that a training policy was the cause in fact of his injuries and Plaintiff has no such evidence. *Pineda*, 332.

7. To prevail on an inadequate supervision claim a plaintiff must prove (1) supervisory policy of a policymaker; (2) the policymaker was deliberately indifferent in adopting the supervisory policy; (3) the supervisory policy directly caused the plaintiff's injuries. *Roberts*, 397 F.3d at 292. Failure to supervise and failure to train have the same standards for municipal liability *Roberts, supra, Baker*

v. Putnal, 75 F.3d 190, 200 (1996); *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005).

8. Plaintiff has no evidence that a supervisory procedure of HPD directly caused the conduct and injuries of which he complains. *Cozzo v. Tangipahoa Parish Council*, 279 F.3d 273, 286(5th Cir. 2002).

9. A claim of inadequate training or inadequate supervision will not prevail unless plaintiff has evidence of a pattern of similar incidents. *Conner*, 209 F.3d 797-98; *Cozzo*, 279 F.3d at 286-87. Plaintiff has no evidence of a pattern of similar incidents or investigations. Accordingly, plaintiff's failure to train and supervise claims should be dismissed.

10. As stated above plaintiff complains of also of not making exculpatory materials available to defense counsel. Nevertheless, police officers do not have a Brady duty to disclose exculpatory information to defense counsel. *Mowbray v. Cameron County*, 274 F.3d 269, 277-78 (5th Cir. 2001). There is no evidence of an HPD investigative or identification policy or custom of withholding exculpatory evidence from the prosecution.

2. Identification Procedures

1. Plaintiff also alleges that HPD training and supervision regarding pre-trial identification procedure were inadequate. He alleges that officers coached witnesses, used unduly suggestive identification procedures and manipulated the recollections of witnesses.

2. As states above training and supervisory claims have similar standards for recovery. *Baker*, 75 F.3d at 200; *Estate of Davis*, 406 F.3d at 381. Plaintiff must show that the training or supervisory procedure regarding identification of a policymaker was inadequate; (2) the policymaker was deliberately indifferent in adopting the training or supervisory procedure; (3) the training or

supervisory procedure directly caused plaintiffs's injuries. Under *Shields v. Twiss*, 389 F.3d 142, 151 (5th Cir. 2004); plaintiff's claims should be dismissed, because plaintiff has no evidence that HPD had a custom or practice that encouraged unconstitutional identification techniques. Certainly, plaintiff has no evidence of a pattern of the use of unconstitutional techniques.

3. Plaintiff's expert, Paul Carroll, adds nothing to plaintiff's case because he confirms that he has no idea of what HPD or its Chief were doing in 1987. **Exhibit 2**, p. 260, L.24 through p. 264, L. 21. He also confirms that he does not know Texas State requirements on identification procedures in 1987. TCLEOSE is that state's police licensing agency. **Exhibit 2**, p. 271, L 7 through L. 25. Under *Benavides v. County of Wilson*, 955 F.2d 968, 973 (5th Cir. 1992), Plaintiff's burden is not to show what is best, but to how state requirements and HPD training and supervisory procedures are inadequate.

4. Furthermore, plaintiff has no evidence that HPD procedures were unconstitutionally defective. There were three identification procedures. Firstly, there was the photo array. The victim, in deposition, states that she did not remember that **Exhibit 3**, p. 52, L. 16 through L. 21; p. 54, L. 21 through L. 24. Secondly, there was a show up (line up) **Exhibit 4**, p. 81, L. 25 through p. 82, L. 3. **Exhibit 5**, (p. 35 of HPD report). Thirdly, there was the binder with approximately 100 photos **Exhibit 6**, (p. 49 of HPD report); **Exhibit 4**, p. 83, L. 5 through 12.

5. George Rodriguez is the fifth man in **Exhibit 7**, which is cited as Exhibit 144 in the deposition of Mariesala Castillo. See **Exhibit 4**, p. 81, L. 18 through p. 83, L. 3. The victim denies that HPD informed her that the plaintiff's name is George in the show up (**Exhibit 4**, p. 82, L. 20 through p. 83 L. 3) or while reviewing the binder of photos **Exhibit 4**, p. 84, L. 15 through p. 85, L. 7). The victim repeatedly denies that anyone coached her in selecting the plaintiff during the show

up or while viewing photos in the large binder. **Exhibit 4**, p. 81, L. 18 through p. 85, L. 2. These exchanges are indicative of the fact that officers did not direct the victim's attention to plaintiff.

6. In addition, the victim's level of certainty is compelling. She never told HPD she wanted to change her mind; that she had made a mistake or she was unsure of her choice. **Exhibit 4**, p. 85, L. 3 through p. 86, L. 15. One of the factors this Circuit relies upon in determining the reliability of pretrial identification is the witnesses' level of certainty. *U.S. v. Merkt*, 794 F.2d 950, 958 (5th Cir. 1986). Another factor relied upon is the witnesses degree of attention. The victim was pushed to the floor of the car after the kidnapping. Nevertheless, she was able to tell the officers the location of the house where she was assaulted by the turns the car made; she drew a diagram of the house; described the composition of driveway. **Exhibit 4**, p. 78, L. 15 through p. 80, L. 7.

7. In addition, the victim made an in-court identification of plaintiff independent of her pre-trial identification. **Exhibit 4**, p. 88, L. 18 through p. 91, L. 11. Courtroom identifications can only be a basis for reversals of convictions where the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. *Simmons v. U.S.*, 88 S.Ct. 967, 971 (1968). See also **Exhibit 8**, p. 119, L. 25 through p. 120, L. 8. Plaintiff's expert Carroll confirms he has no knowledge of a forced-choice response being elicited. **Exhibit 2**, p. 287, L. 3 through p. 289, L. 11. Accordingly we ask that these claims are dismissed.

D. 42 U.S.C. § 1983 Claim Against the City of Houston for Its Policies and Customs With Respect to the Crime Laboratory (Count VII of the First Amended Complaint)

1. The foundation for a motion for summary judgment is the pleadings. James Wm. Moore, II Moore's Federal Practice, 3rd Ed. Section 56.30[8] p. 56-239. Plaintiff's First Amended Complaint

is his live pleading. Count VII is a claim based upon serological principles which the plaintiff discusses in his pleadings. In paragraph 143 through 146 plaintiff discusses serological concepts.

2. As plaintiff points out within the ABO blood typing system there are four possible blood types - A, B, AB and O. There is a substance called the H blood group substance. Individuals who are type O only possess this substance. This substance is the precursor on which the A, B, and AB blood group substances are built. Individuals who are types A, B or AB, possess the H substance in addition to their own blood group substance. A basic principle is that when group A, B, or AB substance are detected the H substance is always present, although not detected in conventional serological analyses. Therefore, when there have been more than one contributor to a semen stain, a type O secretor can never be eliminated as a possible contributor.

3. "Secretors" are those individuals who have detectable levels of their ABO substantive type in other body fluids such as semen, saliva, and vaginal secretions. Approximately 20% of the population are called "non-secretors" because detectable levels of their ABO substance type cannot be found in other body fluids.

4. Plaintiff complains that Kim reported that plaintiff is a Type O non-secretor and could have contributed to the semen recovered from the victim. Kim also reported that Yanez is a type O secretor who could not have contributed to the semen in question. See paragraph. 143 of Complaint. The report of plaintiff's expert Robert Shaler is **Exhibit 9**. At the bottom of page 13 he points out that there is no scientific bases exclusion of Yanez as a donor to the semen. (Relevant serological concepts are also explained.)

5. Plaintiff plead that Kim knew or should have known that her conclusions were unsound. He pleads that Bolding knew that his trial testimony which echoed Kim's findings was not true. See paragraphs 146 and 147 of the First Amended Complaint.

6. The opinions of Shaler are used to support the plaintiff's claims of intentional fabrication by Kim and Bolding. Shaler emphatically rejects any finding of incompetence as the bases for the report of Kim and the testimony of Bolding. See Shaler report **Exhibit 9**, p. 4 (General Conclusions).

7. A chart based upon Kim's findings were admitted in evidence during plaintiff's trial. Bolding testified from the chart. **Exhibit 10**, p. 380 through p. 388. Shaler in general conclusion 3 and 4 finds Bolding dishonest and giving false testimony **Exhibit 9**, p. 4.

8. During deposition testimony addressed to the Court and Jury Shaler repeatedly states that Bolding were intentional and dishonest. Bolding lack of moral character was the bases of his testimony, **Exhibit 11**, p. 26, L. 24 through p. 28, L. 4. Bolding's lack of character is an inherent flaw. **Exhibit 11**, p. 28, L. 5-24. Bolding would fabricate results to satisfy the prosecution. **Exhibit 11**, p. 29, L. 19 through p. 30, L. 18. Bolding knew his testimony was contrary to fundamental principles **Exhibit 11**, p. 30, L. 22 through p. 32, L. 2. Shaler is telling the Court that Bolding deliberately tailored his testimony to help the state convict the plaintiff. **Exhibit 11**, p. 32, L. 24 through p. 33, L. 6. Shaler is telling the Court that Bolding deliberately biased and false testimony **Exhibit 11**, p. 30, L. 13 through L. 18.

9. Shaler faults Kim for intentionally excluding from her report that Yanez could not be excluded as a semen donor. **Exhibit 11**, p. 51, L. 22 through p. 53, L. 21. He defines "marginally competency" at **Exhibit 12**, p. 168, L. 9 through p. 169, L. 5. At the conclusion of his deposition

he backs out of his conclusion that Kim has a history exclusive of the Rodriguez case of giving false reports. **Exhibit 13**, p. 366, L. 5 through 17.

1. Criminal Misconduct

10. Shaler points out that all criminalist are trained to understand perjury. **Exhibit 11**, p. 39, L. 21 through p. 43, L. 7. Shaler opines that Bolding's testimony is a lie. **Exhibit 11**, p. 20, L. 5 through L. 24. According to Shaler the acts of Bolding and Kim during plaintiff's prosecution were intentional. **Exhibit 11**, p. 20, L. 5 through p. 22, L. 81. A municipality need not train or supervise its employees not to act in a manner which is obviously wrong to avoid liability under § 1983 for an employee' unconstitutional conduct. *Walker v. City of N.Y.*, 974 F.2d 293, 299-300 (2nd Cir. 1992) citing *City of Canton v. Harris*, 109 S.Ct. 1197 (1989). It is not enough to show that a situation will arise and that taking the wrong course in that situation will result in injuries to citizens; rather there must be the likelihood that failure to train or supervise will result in the employee making the wrong decision. *Walker, id.* A city is entitled to rely upon the belief that its employees will not perjure themselves. A City is entitled to rely upon the assumption that its employees will not commit crimes. *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 490 (11th Cir. 1997). *Also see Floyd v. Waiters*, 133 F.3d 786, 796 (11th Cir. 1998).

11. A salient factor is the predictability that an employee will make the an offending choice. Plaintiff has no evidence that the City rewarded or promoted criminalist who participated in or testified in trials which led to convictions. **Exhibit 11**, p. 99, L. 18 through p. 101, L. 6. Former Chief Lee Brown testified that criminalist were not rewarded for participation in criminal trials which led to convictions. **Exhibit 14**, p. 142, L. 20 through p. 143, L. 17. Shaler testified that he had no evidence that criminalist were rewarded on that basis. **Exhibit 11**, p. 99, L. 18 through p.

101, L. 6. But see *Limone v. U.S.*, 497 F. Supp. 2nd 143, 159 (D. MASS. 2007) [where officers rewarded perjury].

a. No Pattern

12. One way to hold the City liable for criminal acts is to present evidence of pattern of misconduct. *Walker*, p. 300. Plaintiff has no evidence of a pattern of fabrication or perjury. Shaler on p. 8 of **Exhibit 9**, presents evidence of a “pattern” of misconduct by Bolding. The stated purpose of this “pattern” is to show that Bolding had the requisite understanding of serology and lied in Plaintiff’s trial **Exhibit 12**, p. 169, L. 11 through p. 171, L. 18; **Exhibit 15**, p. 414, L. 24 through 415, L. 11. The four pattern cases are subsequent to plaintiff’s case. Accordingly, they cannot be used as a pattern for § 1983 purposes. A pattern must have antedate the event in order to prove deliberate indifference. *Burge v. St. Tammany Parish*, 336 F.3d 363, 370 (5th Cir. 2003). Furthermore, in the Dutton and McFarland cases Shaler cannot point to any wrongdoing. **Exhibit 11**, p. 56, L. 1 through p. 59, L. 18. Legal conduct cannot be the bases for a § 1983 pattern. *Roberts*, 397 F.3d at 295. N.10.

b. Ratification

1. Ratification which has a stringent test is inapplicable. *Miliam v. San Antonio*, 113 Fed. Appx. 622, 628 (5th Cir. 2004). Ratification or condonation requires specific knowledge by the policymaker of the illegal acts done by the subordinate. *Beattie v. Madison County School Dist.*, 254 F.3d 595, 603 N. 9 (5th Cir. 2001). “If the authorized policymaker approves a subordinate’s decision and the bases for it, their ratification would be chargeable to the municipality because their decision is final.” *St. Louis v. Praprotnik*, 108 S.Ct. 915, 926.

2. Plaintiff has no evidence that City policymakers ratified the illegal acts of Bolding or Kim or perjury or fabrication of evidence. Shaler repeatedly stated that he had no proof that City policymakers had any knowledge of or condoned the alleged types of offense. See **Exhibit 11**, p. 99, L. 5-17; **Exhibit 11**, p. 105, L. 14-22; **Exhibit 11** p., 105, L. 23 through p. 106, L. 5, **Exhibit 11**, p. 104, L. 7 through L. 19; **Exhibit 11**, p. 103, L. 17 through p. 104, L. 4. Former Chief Brown confirms that he had no knowledge of a custom of condoning perjury. **Exhibit 14**, p. 141, L. 19 through p. 146, L. 8; **Exhibit 14**, p. 151, L. 10 through p. 153, L. 7.

2. Formal Policy

1. Plaintiffs generally allege that formal policies of the City caused plaintiff's injuries. Plaintiff cites no formal policy as being facially unconstitutional. Unless a policy is facially unconstitutional rigorous standards of culpability and causation must be applied to ensure the City if not held liable solely for the actions of its employee. *Victoria W. v. Larpenter*, 369 F.3d 475, 482 (5th Cir. 2004). A policy is facially unconstitutional if as written it is unconstitutional. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (Alabama statute excluding 99% of blacks from voting was unconstitutional on its face); *Strauder v. West Virginia*, 100 U.S. 303 (18779) (W. Virginia law prohibiting blacks from jury service per se unconstitutional). Plaintiff has no evidence of City policies with such clearly transparent illegal aims. Where a plaintiff claims that the City has not directly inflicted an injury, but caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employees. *Bd. County Com. v. Brown*, 520 U.S. 397, 405. Plaintiff must show that the policies were established with deliberate indifference to their known or obvious consequences. *Id.* at 407. Plaintiff has no evidence that City policymakers knew that city policies would be direct cause of criminal misconduct.

Plaintiff has failed to identify such a policy. Plaintiff's case is exacerbated because Shaler admits that Bolding failed to enforce a crucial standard operating procedure: one that documents oral reports, **Exhibit 11**, p. 106, L. 11 through p. 109, L. 10; **Exhibit 9**, p. 26, paragraph 2; **Exhibit 16** (exhibit 217 to Shaler's deposition.) It is the oral report from Bolding to the prosecutor for which plaintiff complains. The City had a procedure in place to prevent such; Shaler admits he has no evidence that policymakers were aware that Bolding was not enforcing that SOP. **Exhibit 11**, p. 109, L. 1 through 18.

2. Plaintiff has no evidence of a policy or custom of withholding from prosecutors evidence.

3. Plaintiff has no evidence that a formal policy was the moving force behind his injuries. There must be a direct causal link between the municipal action and the deprivation of rights). Mere "but for" causation is insufficient. *Freire v. City of Arlington*, 957 F.2d 1268, 1281 (5th Cir. 1992). In fact the plaintiff has no evidence that the misconduct of Bolding and/or Kim was the direct cause of the denial of due process and a fair trial.

3. Customary Policy

1. As stated above pattern has no evidence of customary policy based upon a pattern of misconduct was the direct cause of his injuries. Plaintiff has no evidence of the requirements of a customary policy: (1) a pattern; (2) deliberate indifference; (3) direct causation. *Johnson v. Deep E. Tx Reg. Nar. Task Force*, 379 F.3d 293, 309 (5th Cir. 2004).

4. No Derivative Liability

1. Absolute witness immunity bars § 1983 liability for Bolding. *Mowbray*, 274 F.3d at 277-78. If Bolding is not liable, derivatively the City is not liable. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

Conclusion

For all of the reasons cited above the City ask that this motion is granted and these causes against it are dismissed with prejudice.

Respectfully submitted,

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Certificate of Service

I, Robert L. Cambrice, hereby certify that on the **29th** day of **September, 2008**, a copy of the foregoing pleading was served upon the following parties via certified mail, return receipt requested:

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/s/ Robert L. Cambrice
ROBERT L. CAMBRICE

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