IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, OHIO
GENERAL DIVISION

SHAWN D. COOLEY, et al., Plaintiffs,	:	Case No. 2023-0069
v.	:	Judge Jonathan P. Hein
JOSEPH EDGAR FOREMAN A/K/A AFROMAN, et al.	:	
Defendants.	:	

PLAINTIFFS' REPLY IN SUPPORT OF THEIR PARTIAL MOTION FOR SUMMARY JUDGMENT

Now come Plaintiffs, Shawn D. Cooley, Justin Cooley, Michael D. Estep, Shawn S. Grooms, Brian Newland, Lisa Phillips, and Randolph L. Walters, Jr. ("Plaintiffs"), by and through counsel, and hereby respectfully submit this reply in support of Plaintiffs' Ohio R. Civ. P. 56(c) Partial Motion for Summary Judgment. Plaintiffs seek summary judgment on all of Defendant's counterclaims as the pleadings, depositions, and other evidence demonstrate there is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law. The evidence shows that Plaintiffs are entitled to both qualified and statutory immunity as law enforcement officers, and Defendant's Counterclaims fail to meet their respective prima facie elements. Defendant failed to demonstrate that he suffered any deprivation of his constitutional rights. Defendant has likewise failed to demonstrate that there is a genuine issue of material fact regarding the validity of the search warrant, the lawfulness of its execution, or the applicability of immunity protections to the officers' conduct.

Defendant's Opposition to Plaintiffs' Partial Motion for Summary Judgment offers no meaningful rebuttal advanced by Plaintiffs, nor any citations to caselaw, establishing that no genuine issues of material fact remain to be litigated, and that Defendants are entitled to judgment as a matter of law.

I. LAW AND ARGUMENT

Defendant makes conclusory assertions with no legal precedent or material facts to support his reasoning and thus fails to offer Fed. R. Civ. P. 56(e) evidence to establish any genuine issues of material fact. Such generalizations without factual support are insufficient to overcome Plaintiffs' Partial Motion for Summary Judgment. *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir.1997) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived")(citation omitted); *Magnum Towing & Recovery v. City of Toledo*, 287 F. App'x 442, 449 (6th Cir.2008) ("It is not the district court's (or our) duty to search through the record to develop a party's claims; the litigant must direct the court to evidence in support of its arguments before the court"). As a result, this Court should grant Plaintiffs' Partial Motion for Summary Judgment and dispose of Defendant's claims in their entirety.

At the onset, Plaintiffs are only addressing the Counterclaims presently against them. Defendant's description of a SLAPP case is inapplicable. Defendant has not raised a SLAPP claim, nor are these claims cognizable in Ohio, as no anti-SLAPP statute exists. Additionally, some citations to deposition testimony are improper as facts from the search warrant are improperly inferred into the testimony of the Plaintiffs.[1] Additionally, Defendant cites to bodycam footage in pages eight through ten (8-10), all of which has neither been admitted into evidence nor filed with

[1] For example, Defendant references a lady named "Joe" (the woman allegedly held hostage) as though this name was provided in the testimony by Plaintiff Shawn Cooley. (Def. Opp. Pg. 5). However, the name "Joe" is only mentioned in the search warrant. In all deposition testimonies, no Plaintiff could recall the name of the woman alleged to be held hostage at Defendant's residence, as stated by the Confidential Informant. Other citations within this same paragraph are improper, as Plaintiff Shawn Cooley testified, "As far as I know, it was just one [lady]. I wasn't aware at that time she was a juvenile. I heard that later on." Deposition of Shawn Cooley, p. 63, ¶¶ 1-3.). These incorrect citations should not be construed as any issue of fact; they are simply an incorrect recitation of the record.

the court. Defendant has not authenticated nor incorporated in a properly framed affidavit, and Plaintiffs further question whether it is even in the Court's possession. Regardless, the bodycam footage, or any references to such evidence, cannot be considered for their deficiencies in its presentation to the Court as required by Ohio Civ.R. 56(C). *Zapata Real Estate L.L.C. v. Monty Realty Ltd.*, 2014-Ohio-5550, ¶ 25 (8th Dist.), citing, *Unger*, 2012-Ohio-1950 at ¶ 43. Defendant objects to the inclusion or reference to body cam footage pursuant to Ohio Civ.R. 56(c), including all factual inferences made from such footage. Plaintiffs likewise move to strike such improper evidence and factual inference made from that evidence pursuant to Ohio Civ.R. 12(F).

There is some language in the footnotes and brief that is more suitable and appropriately reserved for addressing Plaintiffs' claims against Defendant and is likewise not central to Defendant's Counterclaims against Plaintiffs. For example, one footnote relates to Defendant's supposition as to the reasoning for filing their Complaint. Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss, pg. 7, footnote no. 11. This has no bearing on Defendant's claims against Plaintiff, so these will not be addressed in this brief.

Plaintiff Newland was the primary officer who interviewed the Confidential Informant, drafted the search warrant, and presented it to Magistrate Judge Gabbert. Pl.'s Partial Mot. for Summ. J., pg. 4. Plaintiffs Shawn Cooley and Estep made initial contact with the Confidential Informant, but contacted Plaintiff Newland once the Confidential Informant informed them about a hostage allegedly being held at Defendant's residence, as well as marijuana.

Plaintiff Shawn Cooley testified that his questioning with the Confidential Informant was limited. Deposition of Shawn Cooley, p. 59, ¶¶ 3-9; 59, ¶¶ 2-9. Plaintiff Shawn Cooley testified that the Confidential Informant stated that she had a disagreement with Defendant, but he did not remember what she said regarding the marijuana, and he was not sure whether she "took" it or was

"holding it."[2] *Id.*, p. 60, ¶¶ 6-17. He further testified that, from his limited questioning, the Confidential Informant stated that she was the personal assistant for the Defendant. *Id.*, p. 58, citing, ¶¶ 19-21. Plaintiff Shawn Cooley testified that the Confidential Informant stated that the marijuana "supposedly was in a storage building that belonged to her. She took it out [of the storage building] and took it to her residence." *Id.* p. 60, ¶¶ 11-15. Plaintiff Shawn Cooley likewise testified that, aside from proofreading, he was not involved in the preparation of the search warrant. *Id.*, citing, ¶¶ 11-25.

Plaintiff Shawn Cooley's vague account, based on his limited questioning with the Confidential Informant, does not amount to a genuine issue of material fact. Further, construing the inference most favorable to Defendant, deficiencies in an informant's veracity, reliability, or basis of knowledge do not negate probable cause if there is a strong showing on other factors or corroboration of the informant's statements through independent police investigation. *State v. Thomas*, 2014-Ohio-1489, ¶ 11 (10th Dist.) ("[A] deficiency in one of these principles does not negate probable cause if there is a strong showing on another or if there is some other indicia of reliability," citing *Gates*. "Ohio courts have held that, even where there is an absence of evidence in an affidavit to demonstrate an affiant's prior knowledge of the veracity of a confidential informant, corroboration of the informant's statements by police investigation can provide 'sufficient indicia of the reliability and veracity of the informant's statements,'" citing, *State v. Pustelnik*, 8th Dist. No. 91779, 2009-Ohio-3458, ¶ 23). Plaintiff Shawn Cooley's unsure memory

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[2] Defendant again misquotes the record before the court by stating "she had admitted that she lied to the officers at Heather Holly Lane when she told him she was holding the weed for Afroman. She was not holding anything, she stole it." Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss, pg. 6. Plaintiff Shawn Cooley testified to having limited questioning with the Confidential Informant, and that he did not know whether she took it or was holding it. Deposition of Shawn Cooley, p. 60, ¶¶ 6-17. Both Plaintiff Newland and Plaintiff Estep testified that she was holding the marijuana for Defendant.

of what the Confidential Informant represented to him about whether the Confidential Informant took or held Defendant's marijuana does not present a genuine issue of material fact, nor does it rise to the level of an omission. Finally, construing it most favorable to Defendant and presuming she did communicate to Plaintiff Shawn Cooley that she took the marijuana, which he testified she did not, there is no indication that Plaintiff Shawn Cooley communicated this to Plaintiff Newland.

Plaintiff Estep testified that his first contact with the Confidential Informant derived from a follow-up investigation of a complaint Deputy Shawn Cooley was working on. Deposition of Michael Estep, p. 11, ¶¶ 19-24 (August 6, 2025). Plaintiff Estep testified that when he first spoke with the Confidential Informant, he learned that someone was being held hostage in Defendant's resident and there was supposed to have been a large amount of marijuana within the residence or on the premises. *Id.*, p. 18, ¶¶ 5-10. Plaintiff Estep did not testify as to the Confidential Informant's possession of the marijuana, nor was the question posed during his deposition.

As Defendant likewise notes, Plaintiff Newland was contacted to assist due to his work in narcotics and drug trafficking. Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss, pg. 3. Plaintiff Newland interviewed the Confidential Informant, and consistent in both his testimony and his prepared search warrant, the Confidential Informant represented that she was Defendant's personal assistant and that she was storing marijuana for Defendant. Deposition of Brian Newland, p. 50, ¶¶ 1-9; Ex. "A," Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss. As stated in the Motion to Dismiss, 2,131 grams of marijuana were found on the Confidential Informant's premises, and a separate small plastic cylinder had the label "Afroman" and "high grade cannabis," all of which the Confidential Informant stated she was "holding" for Defendant. Pl.'s Partial Mot. for Summ. J., pg. 3, citing, Deposition Exhibit 8, Deposition of Joseph Foreman, p. 3 (August 6, 2025). Plaintiff Newland asked the Confidential Informant questions about the residence to verify and

determine the basis of the Confidential Informant's knowledge. Deposition of Brian Newland, p. 55, ¶¶ 5-25. Plaintiff Newland had the Confidential Informant verify the setup of Defendant's kitchen, the color of the floors and walls, and what was in the kitchen, as he had previously been in Defendant's residence from work with the Marshal's Service. *Id.*

Defendant's persistent references to "50 Shades of Grey" are perplexing. The Confidential Informant represented that she had an intimate and professional relationship with Defendant for eight years. Ex. "A," Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss. The Confidential Informant informed Plaintiff Newland that she had experienced being urinated on by Defendant, which, as stated in Plaintiffs' Partial Motion for Summary Judgment, and a video of such was distributed to her children and her husband. Pl.'s Partial Mot. for Summ. J., pg. 10. The consensual or nonconsensual nature of their intimacy or the choice of their intimacy is not at issue. In fact, from all accounts, Plaintiff Newland had no reason to doubt the Confidential Informant's description of their relationship. Defendant and the Confidential Informant were both in the video, engaged in an intimate act, thus corroborating the veracity of the Confidential Informant's relationship with Defendant. Deposition of Brian Newland, p. 50, ¶¶ 17-18; p. 142, ¶¶ 16-25; p. 143, ¶¶ 1-6.

Defendant included a portion of the search warrant affidavit for the items to be searched, but failed to note that the search warrant included a search for persons and marijuana (narcotics), as well as the search warrant affidavit, all of which are attached to Defendant's Opposition to Plaintiffs' Partial Motion for Summary Judgment as Exhibit "A." The full description of the search warrant affidavit shows that Judge Gabbert signed and authorized "a search to be made of…the current residence of Joseph E. Foreman to include any and all other outbuildings, storage

containers, curtilage, vehicles and/or **persons located on the property**.[3] Ex. "A," Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss. (Emphasis added). This Court has also requested that Defendant clarify his claims for relief. Judgment Entry Ordering Def. to Provide Additional Clarity on Claims and Causes of Action at 2 (filed Jan. 20, 2026). Plaintiffs address the facts in the context of both the Court's Orders and Defendant's Response.

A. Defendant's Counterclaim (Count VII) Fails as a Matter of Law as Probable Cause Existed for the Search and Defendant Failed to Properly Allege a Claim under 42 USC § 1983, Despite Additional Opportunity to Cure by the Court

Defendant's 42 USC § 1983 Counterclaim fails to allege any cognizable claims for which this Court can offer relief. Plaintiffs possessed probable cause for the search, and the existence of probable cause is fatal to Defendant's § 1983 Counterclaim. The record does not implicate any unconstitutional action or conduct taken by Plaintiffs, let alone any action that would override their defenses of qualified and statutory immunity. To the same degree, Defendant fails to identify any practice or policy that caused any alleged unconstitutional conduct, fails to allege facts to support that unconstitutional conduct even occurred, and fails to allege any facts that would indicate any supervisor participated in or encouraged any unconstitutional conduct.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250 (1988); see also *Miller v. Sanilac Cnty.*, 606 F.3d 240, 247 (6th Cir. 2010). **The**

[3] Defendant states that "no mention was made of Narcotics by the CI, nor anywhere in the search warrant." Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss, pg. 7. Marijuana is legally classified as a narcotic; it is still federally a Schedule I drug, and regardless of the recent legalization, distribution is prohibited and the industry is heavily regulated. Defendant self-recategorizes marijuana as though a self-redesignation would apply a new meaning and render a search for "narcotic" outside the scope. This inference has no basis in logic. Marijuana is legally classified as a narcotic, and all Plaintiffs understood the search for marijuana was synonymous with the search for narcotics.

Supreme Court of the United States has made clear that there is no respondeat superior liability under 42 U.S.C. § 1983. See *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). "[T]he liability of counties and other local governments under [§] 1983 depends solely on whether the plaintiff's constitutional rights have been violated as a result of a 'policy' or 'custom' attributable to the county or local government." *Id.* (Emphasis added). "A plaintiff raising a municipal liability claim under § 1983 must demonstrate that the alleged federal violation occurred because of a municipal policy or custom." *Bickerstaff v. Lucarelli*, 830 F.3d 388, 401-02 (6th Cir. 2016) (quoting *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013)). This means that the plaintiff must show "'a direct causal link' between the policy and the alleged constitutional violation such that the [municipal policy] can be deemed the 'moving force' behind the violation." *Id.* at 402 (quoting *Graham ex rel. Estate of Graham v. County of Washtenaw*, 358 F.3d 377, 383 (6th Cir. 2004)).

The Fourth Amendment "guarantees individuals the right to be free from 'unreasonable seizures' and the right to be 'secure in their persons.'" *Marbury v. Karish*, No. 20-cv-10182, 2022 U.S. Dist. LEXIS 5771, at *15-16 (E.D. Mich. Jan. 11, 2022), citing, U.S. Const. Amend. IV. In order for Plaintiff to allege a claim for unlawful arrest, detention, and search and seizure pursuant to § 1983, Plaintiff "must prove that the police lacked probable cause." *Silver v. Giles*, No. 1:07-cv-103, 2009 U.S. Dist. LEXIS 63435, at *14 (W.D. Mich. July 23, 2009), citing, *Logsdon v. Hains*, 492 F.3d 334, 341 (6th Cir. 2007); *Fridley v. Horrighs*, 291 F.3d 867, 872 (6th Cir. 2002). The existence of probable cause must be assessed from the perspective of a reasonable officer on the scene, rather than with the benefit of 20/20 hindsight. *Id.*, at *15, citing, *Radvansky v. City of*

Olmsted Falls, 395 F.3d 291, 302 (6th Cir. 2005); *Klein v. Long*, 275 F.3d 544, 550 (6th Cir. 2001).[4]

Defendant cannot establish a claim for relief under § 1983, as he has failed to assert, nor does the record reflect any factual support that would refute the existence of probable cause, on the scene. Looking to the results of the search or relying on the vague uncertainty of Plaintiff Shawn Cooley's recollection of his limited questioning with the Confidential Informant, is a viewing of the reasonableness of Plaintiff Newland's actions in 20/20 hindsight. At the start, Plaintiffs were acting under the color of law; there is no need for further discussion in that regard. However, Defendant has failed to allege, nor does the evidentiary record demonstrate, that Plaintiffs acted to deprive, interfere with, or take away Defendant's constitutional rights. Defendant has likewise failed to link any act of Plaintiffs as the moving force behind any alleged constitutional violation.

As previously stated in Plaintiffs' Partial Motion for Summary Judgment, probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." (cite, MSJ), citing, *Chumley v. Miami Cnty.*, No. 3:14-cv-16, 2015 U.S. Dist. LEXIS 24286, at *11 (S.D. Ohio Feb. 27, 2015), citing, *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). The U.S. Supreme Court affirms that "[p]robable cause is not a high bar," and the burden is slight. *Id.*, citing, *Kaley v. United States*, U.S., 134 S. Ct. 1090, 1103, 188 L. Ed. 2d 46 (2014). Defendant devotes the majority of his oppositional briefing to the

[4] The majority of Defendant's assertions are not appropriately construed from a reasonable officer on the scene but demonstrate a hindsight 20/20 view of the factual circumstances presently in the record. Under the present facts and assessing the probable cause determination based on a reasonable officer, on the scene, Plaintiffs acted reasonably when interviewing the Confidential Informant, as well as corroborating and verifying her knowledge of Defendant's residence.

Confidential Informant's reliability, but again, this must be viewed at the scene, not in hindsight 20/20.

Defendant overlooks an important section of the search warrant and warrant affidavit attached to his brief in opposition. The search warrant signed by Judge Roy Gabbert, Jr. on August 21, 2022, states that "this search warrant may be executed without the statutory precondition for nonconsensual entry." Ex. "A," Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss. This statement waives the statutory requirement for law enforcement officials to knock and announce their presence before entering a premises if there is probable cause to believe that compliance would subject law enforcement officers to a risk of serious harm. R.C. § 2933.231. Further, exceptions exist under R.C. § 2933.231 if officers have a reasonable suspicion that knocking and announcing would be dangerous, futile, or would inhibit the investigation (e.g., destruction of evidence). R.C. 2933.231; *State v. Smith*, 9th Dist. No. 21069, 2003 Ohio 1306, at P35-39, quoting, *Richards v. Wisconsin*, 520 U.S. 385, 394-95, 117 S. Ct. 1416, 137 L. Ed. 2d 615 (1997) ("[i]n order to justify a 'no-knock' entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.").

In the present matter, considering only the reasonableness on that day: the Confidential Informant informed Plaintiff Newland about marijuana stored and an alleged kidnapping victim being held; the Confidential Informant had a lengthy and intimate relationship with Defendant, and that relationship was corroborated; the Confidential Informant accurately described Defendant's residence through Plaintiff Newland's questioning and prior presence at Defendant's residence. Looking only at the reasonableness on the day of the execution of the search warrant,

and not in "hindsight 20/20," it was reasonable for Plaintiff Newland to believe that knocking and announcing would inhibit an effective investigation of a crime or would allow for the destruction of evidence. As such, probable cause existed for the search, and the search was lawfully executed. Defendant's claim for any constitutional deprivation pursuant to 42 USC § 1983 must be dismissed as a matter of law.

B. Defendant's Counterclaim for Conversion Fails as a Matter of Law

Defendant has failed to cite to the record or alleged facts that support claims for conversion as to any of the counterclaims relating to his property damage. Relevant to the inquiry here, Defendant is unable to establish that Plaintiffs engaged in an unauthorized act. Courts employ a "reasonableness" standard to determine whether destruction of property was "reasonably necessary to effectively execute a search warrant." *State v. Donley*, 2017-Ohio-562, ¶ 144 (2nd Dist.), citing, *United States v. Church*, 823 F.3d 351, 364 (6th Cir.2016). Any exercise of dominion over Defendants' property by Plaintiffs was pursuant to the execution of a lawful search warrant with probable cause. Because Defendant cannot establish that Plaintiffs' actions were unauthorized or inconsistent with Defendant's rights, Defendant's claims for conversion must fail as a matter of law.

As to Defendant's doors, Defendant has failed to rebut Plaintiffs' argument that damage to a door to gain entry pursuant to the lawful execution of a search warrant is *de minimis* damage. *Dunigan v. Thomas*, No. 22-cv-11038, 2023 LX 10518 (E.D. Mich. Feb. 24, 2023). *See also*, *State v. Donley*, 2017-Ohio-562, ¶ 144 (2nd Dist.), citing, *Dalia v. United States*, 441 U.S. 238, 258, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979) ("officers executing search warrants on occasion must damage property in order to perform their duty."). See also, *United States v. Church*, 823 F.3d 351, 364 (6th Cir.2016) ("officers did not act unreasonably in using a prying ram to open defendant's safe while executing search warrant."); "officers executing search warrants on occasion must damage

property in order to perform their duty." *Dalia v. United States*, 441 U.S. 238, 258, 99 S.Ct. 1682, 60 L.Ed.2d 177 (1979). As Defendant cannot demonstrate that Plaintiffs' actions were unauthorized, Defendant is likewise unable to demonstrate conversion as to the *de minimis* damage to his doors from entry into his residence pursuant to lawful execution of a search warrant. Finally, Defendant is correct that he can rely on receipts or testimony as to the repairs of his door, but Defendant testified that he did not have any receipts, nor has he been able to testify through two separate depositions what his damages were for the repairs. Pl.'s Partial Mot. for Summ. J., pgs. 11-12, citing, Deposition of Joseph Foreman, ¶ 20-25, p. 47 (August 6, 2025).

As to the damage to his closet, the damage was pursuant to an authorized act and lawful search warrant, the damage is *de minimis* and likewise fails to establish the necessary elements for conversion. Defendant has failed to rebut any of Plaintiffs' legal basis for the *de minimis* nature of the damage to Defendant's residence as a result of the lawful execution of the search warrant. As stated in Plaintiffs' Partial Motion for Summary Judgment, the "reasonableness of the damage must be evaluated with reference to the target of the search," and *de minimis* damage is not compensable. *Dunigan v. Thomas*, No. 22-cv-11038, 2023 LX 10518 (E.D. Mich. Feb. 24, 2023). Plaintiffs' search of Defendant's closet was included in the scope of the search warrant, as the closet was located in the closet of his sports room of his primary residence, and the search included his residence. Pl.'s Partial Mot. for Summ. J., pg. 17, citing, Deposition of Joseph Foreman, ¶¶ 13-22, pg. 33 (August 6, 2025). As stated in Plaintiffs' Partial Motion for Summary Judgment, "[m]arijuana, marijuana derivatives, paraphernalia, scales, packaging, money obtained from the sale of illegal drugs, and documentation regarding the sale of illegal drugs could logically be located in the compartments of Defendant's sports room located in his residence." *Id.* See also, *Dunigan v. Thomas*, No. 22-cv-11038, 2023 LX 10518 (E.D. Mich. Feb. 24, 2023) (Officers who

"broke down the front door of their residence to gain entry into the home, and 'ransacked their home, pull[ing] clothes and personal items out of their closets and dressers' was also *de minimis*.").

As Defendant's security system, Plaintiff Phillips testified that she came into contact with the security system as she was told to take it as evidence, as it was common practice that if something like that was happening, somebody was being held against their will, it's a good possibility that that would be on a camera." Deposition of Lisa Phillips, pg. 20, ¶¶ 15-25; pg. 21, ¶¶ 1-14. As stated in Plaintiffs' Partial Motion for Summary Judgment, and unrebutted by Defendant, the court in *Izquierdo v. Boldin,* stated that cut cables, broken routers, and damage to evidence tape was *de minimis* damage. *Izquierdo v. Boldin*, No. 4:11CV01826, 2012 U.S. Dist. LEXIS 85157, at *9 (N.D. Ohio June 20, 2012). In this matter, the damage is far less, as the cables were not cut, Defendant requests compensation for the reconnection of his security system. As the cables to Defendant's security system were disconnected pursuant to the lawful execution of a search warrant, which included a search for an alleged person and/or kidnapping victim, Plaintiffs' actions were not unauthorized, and the nature of the damage is definitionally *de minimis*.

Plaintiffs ultimately did not confiscate the security system as Defendant's wife informed Plaintiff Newland during the search that Defendant's system was cloud-based, negating the need to retain Defendant's system as physical evidence. Deposition of Brian Newland, ¶¶ 1-11, p. 138 (August 8, 2025). As has been consistent with most of Defendant's testimony, Defendant failed to testify during either of his depositions regarding who reconnected his security system, how much he paid for it, nor does he have any supporting documentation or evidence for the same. Defendant could not even provide basic information, such as the name of the individual who reconnected the security system.

As to the $390.00 Defendant realleges was "missing" or taken in his oppositional brief, Defendant duplicitously testified that the basis for his belief that $390.00 was missing was that "a lady at the sheriff's office said it was $400 short from sealed bags." Pl.'s Partial Mot. for Summ. J., pg. 10, citing, Deposition of Joseph Foreman, ¶¶ 8-9. As stated in Plaintiffs' Partial Motion for Summary Judgment, "[a]n investigation was prompted and a review of Plaintiff Newland's bodycam demonstrated that there was a miscount." *Id.* ¶¶ 13-20, p. 81. The confiscation of Defendant's cash was included within the scope of the search warrant, but Defendant's theory of deprivation of currency is founded on a miscount, not on any actual deprivation of property. Defendant's conversion and trespass for chattel claim, on a deprivation of something that was never in possession to begin with, fails not only as a matter of law, but as a matter of fact.

The record demonstrates that Plaintiffs acted reasonably and proportionately during the lawful execution of the search warrant, and with probable cause. Because Plaintiffs' actions were reasonable and proportionate, they did not commit any "unauthorized act" or a "wrongful exercise of dominion" over Defendant's property or possessions. Any damage is *de minimis* in nature and is not compensable as a matter of law.

C. Defendant's Counterclaim for Trespass to Chattel Fails as a Matter of Law

Under Defendant's recitation of law, trespass to chattel is dispossession of the chattel, chattel is then impaired as to its condition, quality or value, or, the possessor is deprived of the use of the chattel for a substantial time…or harm is caused to a person or thing in which a possessor has a legally protected interest. Def.'s Resp. to Court's January 20, 2026 Order (filed January 23, 2026). Defendant has failed to show that Plaintiffs exceeded the scope of their lawful authority or caused harm beyond *de minimis* damage. Based on the pleadings and the record before the Court, Defendant has failed to cite to any damage beyond minimal interference.

Defendant's property damage claims should be dismissed as Plaintiffs did not cause the damage alleged in Counts I and II, and the damage was de minimis and lawful. Defendant likewise is unable to meet the required elements in Counts V and VI. for Counts III and IV, the disconnection of the security cameras was *de minimis*. Defendant has failed to provide evidence that the disconnection was malicious, in bad faith, or wanton or reckless, or that would rise to the level of abrogating Plaintiffs' statutory immunity. Thus, Defendant's counterclaims I-VI should be dismissed as a matter of law.

D. Defendant's Conclusion that the Court's Entries on October 10, 2023, and October 27, 2023, Demonstrates that His Claim for Frivolous Conduct Pursuant to R.C. § 2323.51 Has No Legal Basis and Misreads the Conclusions of this Court

In Defendant's Opposition to Plaintiffs' Motion to Dismiss, Defendant states that this Court has already ruled on his claims for frivolous filings through this Court's order issued on October 10, 2023. Throughout Defendant's oppositional brief, he has made several material misrepresentations to the court, despite being able to verify the information in the available deposition transcripts. However, the misrepresentation of this Court's own Orders is the most egregious.[5]

On October 10, 2023, this Court dismissed Plaintiffs' Counts 1, 2, 3, 4, and 5. Decision & Entry Granting in Part and Denying in Part Def.'s Mot. to Dismiss, pgs. 34-35 (Filed October 9, 2023). As Defendant states in his Opposition, he did not file an Answer and Counterclaim until October 27, 2023, which is when he first brought an action for Frivolous Conduct under

[5] An intentional misrepresentation of a Court's Order to the Court can be viewed as professional misconduct and likewise violates ethical and professional standards. The Ohio Rules of Professional Conduct explicitly prohibit attorneys from engaging in dishonesty, deceit, or misrepresentation, as well as avoiding making false statements of fact or law to a tribunal. Ohio Prof. Cond. Rule 8.4; Ohio Prof. Cond. Rule 3.3. While this could have been a misinterpretation of the Court's Order, Defendant's oppositional brief is peppered with factual misrepresentations.

R.C. § 2323.51. Def.'s Br. in Opp'n to Pl.'s Partial Mot. to Dismiss, pg. 28. At no point can Defendant's claim for Frivolous Conduct be applied retroactively to an Order issued to partially dismiss some of Plaintiffs' claims. In its Order, the Court only addresses the claims of Plaintiffs that were dismissed, but some claims remained, nor did the order establish the dismissed claims are frivolous, merely unsubstantiated. Decision & Entry Granting in Part and Denying in Part Def.'s Mot. to Dismiss, pgs. 34-35 (Filed October 9, 2023).

R.C. § 2323.51 does not punish a party for raising an unsuccessful claim; frivolous conduct requires more than just losing a legal argument. *City of Cleveland v. Abrams*, 2012-Ohio-3957, ¶ 19 (8th Dist.) ("Ordinarily, conduct is not frivolous merely because a claim is not well-grounded in fact or lacks evidentiary support. *Fornshell v. Roetzel & Andress, L.P.A.*, 8th Dist. Nos. 92132 and 92161, 2009 Ohio 2728, ¶ 71; *State Auto Mut. Ins. Co. v. Tatone*, 2d Dist. No. 21753, 2007 Ohio 4726, *5. Moreover, 'R.C. 2323.51 does not purport to punish a party for raising an unsuccessful claim.'" *Miller*, 5th Dist. No. 11CA020, 2012 Ohio 2905, at ¶ 18.").

This claim, and any Motion for Sanctions, should be directed at Plaintiffs' primary counsel for the claims they have brought in their individual and personal capacity, outside of their respective professions. Plaintiffs' claims against Defendant are disconnected from Plaintiffs' defense against Defendant's Counterclaims, particularly with respect to the search warrant and alleged property damage. R.C. § 2323.51 permits sanctions **against the attorney responsible for filing or pursuing claims that are not warranted under existing law, lack evidentiary support, or are filed for improper purposes such as harassment or delay**. R.C. § 2323.51.

Plaintiffs request this Court to direct Defendant's Motion for Sanctions against the appropriate attorney who brought the suit/claims, so the issue can be appropriately separated and briefed. A decision on the primary issues of Defendant's Counterclaims of a § 1983 claim,

conversion, and trespass to chattels should be rendered first, before any briefing on a Motions for Sanctions. However, since Defendant has requested the Court to convert the Counterclaim against Plaintiffs into a Motion for Sanctions, Plaintiffs are presuming that the frivolous conduct claim against Plaintiffs has been abandoned. Thus, the Court need not rule on the merits as Defendant has abandoned their claim to move for sanctions against Plaintiffs' Counsel for their personal, separate claims. In the event that Defendant is not abandoning his claim, there is no legal basis for a conclusion that a partial dismissal of claims amounts to a frivolous lawsuit, simply because the claims were partially dismissed. Defendant's claim for frivolous conduct should be dismissed as a matter of law, and any Motion for Sanctions should be brought by Defendant in a separate Motion to avoid a continued muddying of the issues.

II. Plaintiffs are Entitled to Qualified Immunity and Statutory Immunity.

A. Defendants Have Failed to Meet their Burden, and Plaintiffs are Entitled to Qualified Immunity

As stated in Plaintiffs' Partial Motion for Summary Judgment, Plaintiffs are entitled to qualified immunity as the record demonstrates that no conduct violated a clearly established law of which a reasonable person would have known. Pl.'s Partial Mot. for Summ. J., pg. 23, citing, *Crowley v. Anderson Cnty.*, 783 F. App'x 556, 560 (6th Cir. 2019), citing, *Berkshire v. Beauvais*, 928 F.3d 520, 529 (6th Cir. 2019), quoting, *Comstock v. McCrary*, 273 F.3d 693, 701 (6th Cir. 2001). Defendant's oppositional brief and the record demonstrate no more than metaphysical facts, which are insufficient to overcome Plaintiffs' qualified immunity. *Id.*, citing, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Hopson v. DaimlerChrysler Corp.*, 306 F.3d 427, 432 (6th Cir. 2002).

Only a "'deliberate falsehood…or reckless disregard for the truth' should make an officer ineligible for qualified immunity." Pl.'s Partial Mot. for Summ. J., pgs. 224, citing, *Butler v. City*

of Detroit, 936 F.3d 410, 418 (6th Cir. 2019), citing, *Vakilian v. Shaw*, 335 F.3d 509, 517 (6th Cir. 2003). In order for Defendant to overcome Plaintiff's qualified immunity, Defendant must present substantial evidence to show a more culpable mental state. *Id.* There must be more than mere factual inaccuracy, there "must be evidence going to the officer's knowledge or state of mind at the time the officer wrote the allegedly false affidavit." *Id.*, citing, *Morris v. Lanpher*, 563 F.3d 399, 403 (8th Cir. 2009).[6] As previously outlined in Plaintiffs' Partial Motion for Summary Judgment, Defendant testified that all aspects of the search warrant were correct, except for "dungeons and kidnapping victims." Pl.'s Partial Mot. for Summ. J., pgs. 24-25, citing, Deposition of Joseph Foreman, ¶ 14-24, p. 32 (August 6, 2025). There are no facts present in the record that demonstrate Plaintiff Newland had any reason to doubt the Confidential Informant on the date of the execution of the search warrant, nor did he have any reason to believe the Confidential Informant was being dishonest.

Plaintiffs are entitled to qualified immunity, as both Plaintiff Newland and Magistrate Gabbert had a substantial basis that probable cause existed in light of the totality of the circumstances. This is further supported by the fact that illicit items described in the search warrant were, in fact, seized during the execution of said warrant. Plaintiffs are entitled to qualified immunity, and Defendant's 42 USC § 1983 claim for deprivation of constitutional rights should be dismissed as a matter of law.

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[6] As referenced in Plaintiffs' Partial Motion for Summary Judgment, Morris, who bore the burden, "offered no specific, nonconclusory evidence that Lanpher believed his affidavit was false, or recklessly misconstrued [the witness'] identification…While we construe disputed facts in the non-moving parties' favor, we may not infer bad motive absent even a scintilla of material fact supporting that inference." *Morris v. Lanpher*, 563 F.3d 399, 403 (8th Cir. 2009).

B. Defendants Have Failed to Meet their Burden and Plaintiffs are Entitled to Qualified Immunity

Defendant has failed to demonstrate that Plaintiffs are not entitled to statutory immunity against Defendant's Counterclaims. Defendant presents an improper recitation of R.C. § 2744.03(A)(6). Defendant states that R.C. § 2744.03(A)(6) is an exception for when "officers acted in a reckless wanton misconduct, reckless conduct, and/or negligent manner." (cite def. opp. pg 22). This is not what the plain meaning of the statute reads. R.C. § 2744.03(A)(6) states that:

> (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:
>
> (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
>
> (b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

In Plaintiffs' Partial Motion for Summary Judgment, each Plaintiff and their actions are addressed, and the correct standard is applied as above. Defendant has not demonstrated, nor does the record support, that any action by any Plaintiff was malicious, in bad faith, wanton or reckless. Plaintiffs are entitled to statutory immunity as to all of Defendant's state law Counterclaims. Summary judgment in favor of Plaintiffs is proper "if the [] actions 'showed that he did not intend to cause harm, did not breach a known duty through an ulterior motive or ill will, [and] did not have a dishonest purpose.'" Pl.'s Partial Mot. for Summ. J., pg. 26 , citing, *Clark v. Campbell*, 2020-Ohio-3333, ¶ 32 (4th Dist.), citing, *Hackathorn v. Preisse*, 104 Ohio App.3d 768, 772, 663 N.E.2d 384 (9th Dist. 1995). As such, Plaintiffs' Partial Motion for Summary Judgment is appropriate as the facts are clear and fail to rise to the level of conduct that could be construed as malicious, in bad faith, or wanton and reckless. *Id.*

III. Conclusion

Based on the foregoing, and for the reasons discussed in Plaintiffs' Partial Motion for Summary Judgment, Plaintiffs Shawn D. Cooley, Justin Cooley, Michael D. Estep, Shawn S. Grooms, Brian Newland, Lisa Phillips, and Randolph L. Walters, Jr., respectfully request that their Partial Motion for Summary Judgment be granted and Defendant's counterclaims be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing was served by email, this 26th day of January 2026, upon the following:

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